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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16981/2024, CM APPL. 71906/2024 –Ex., CM APPL.**
71907/2024 –Int. dir.

SANJAY KHANNA & ORS.

.....Petitioners

Through: Mr. Dalbir Singh Kundu, Advocate

versus

CHIEF SECRETARY GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Ms. Hetu Arora Sethi, ASC for
respondent nos.1 & 2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

11.12.2024

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1. The present petition has been filed by the petitioners, who are the members of three societies seeking the following reliefs:

“a) Summon the original records from respondents.

b) Writ order or direction in the nature of Mandamus to interpret, hold and declare on conjoint reading of section 31, 35, 37, 60, 79 and 80 of DCS Act read with rules that business reserved is be transacted, as mandated under codified provisions of Governing statute and if transacted otherwise is inter-alia beyond jurisdiction, in violation of statutory provisions of DCS Act and colorable exercise, arbitrary, unlawful, infraction of rule of law, violation of fundamental rights, hence, void ab-initio, no-nest etc AND/OR

c) Writ, order, or direction in the nature of MANDAMUS to direct the respondent-2 to 4 must discharge statutory obligations under section 60, 31 and 35, 37, 79 and 80 etc.



read with rules and must ensure preparation of correct list of defaulters for the purpose of election from the audited accounts only"

d) Writ order or direction in the nature of Mandamus to hold and declare that acts of omissions I commissions of respondent-2 to 4 to keep pending the representations I letters dated 03-10-2024 dated 13-10-2024, dated 04-11-2024 with enclosures of petitioners (P-6 Colly) is arbitrary discriminatory, unjust, arbitrary discriminatory illegal non transparent infraction of rule of law in violation of fundamental rights of petitioners with further directions to respondent-2 to 4 to attend, and decide by speaking order in time bound manner the representation I letters dated 03-10-2024 dated 13-10-2024, dated 04-11-2024 with enclosures of petitioners (P-6 Colly) AND I OR

e) Writ order or direction in the nature of CERTIORARY to set aside or alternatively modify partially with consequential effects the order dated 18-11-2024 (P-7) and order dated 29-08-2023 (P-3) being inter-alia without jurisdiction, contrary to statutory provisions of DCS Act, unlawful, unjust, arbitrary discriminatory, deprivation of fundamental rights, infraction of rule of law and colorable exercise AND/OR

f) Writ order or direction in the nature of prohibition against respondents 2 to 4 to prohibit from conduct of elections in violation of statutory provisions of section 35, 60, 31 etc of DCS Act and to hold elections only in lawful manner AND/OR

g) Any other appropriate writ order or direction as considered appropriate and necessary in the facts and circumstances of the case and in the interest of justice, equity and fair play."

2. On the last date, one of the primary submissions of the learned counsel for the petitioner was that the respondent no.2 could not have issued any direction for completion of the elections without getting the audit



conducted in terms of Section 60 (6) of the Delhi Co-operative Societies Act, 2003, (the 'Act'). In view thereof, he therefore prays that the impugned order dated 18.11.2024 issued by the respondent no.2 directing the administrator to get the process of election completed within three months be set aside and the respondent no.2 be directed to first get the audit completed as per the aforesaid provisions of the Act.

3. On the other hand, learned counsel for the respondent nos.1 and 2 appearing on advance notice, submits that the respondent no.2 is conscious of its duties and, therefore, till date no election notice has been issued and the only direction to the Administrator is to try and expedite the process of election so that the Society can be run by duly elected Managing Committee.

4. She further submits that the petitioner has already moved a representation dated 19.09.2024 which is under consideration of the respondent no.2 and a considered decision thereon is likely to be taken shortly.

5. Having considered the submissions of the learned counsel for the parties, even though we find *prima facie* merit in the petitioners' plea that it is incumbent upon the respondent no.2 to adhere to the provisions of Section 60 of the Act, for which mandates conduct of audit in the manner laid down therein, the fact remains that till date no elections have been announced and, therefore, the petitioners' plea that elections are being directed to be conducted without the requisite/ aforesaid audit being done, cannot *per se* be accepted.

6. Further, since the petitioners have already moved a representation before the respondent no.2, for the sake of better clarity as also as it would be in the interest of justice that the said representation is first examined by



the said respondent. We, therefore, dispose of the petition alongwith the pending applications, by directing the respondent no.2 to dispose of the petitioners' representation by passing a reasoned and speaking order within a period of three weeks.

7. Taking into account the petitioners' plea that this factum regarding necessity of the audit has not been mentioned in the said representation, we permit the petitioners to file a supplementary representation within five days, which will be accordingly decided alongwith the representation dated 19.09.2024, already made by the petitioners.

8. Needless to say, in case the petitioners are aggrieved by the orders passed by the respondents, it will be open to the petitioners to seek legal recourse as per provisions available in law.

REKHA PALLI, J

SAURABH BANERJEE, J

DECEMBER 11, 2024/So