

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.141/2014

**Revision Petition under
Section 116 of DCS Act,
2003**

In the matter of:-

- 1. Shiv Shakti Cooperative Group Housing Society
Through its President/Secretary,
Plot No.10, Sector-10, Dwarka,
Delhi-110075.Petitioner**

**(Represented by Shri S.
M. Dalal, Counsel for
Petitioner)**

VERSUS

- 1. Registrar Cooperative Societies,
Govt. of National Capital Territory of Delhi,
Parliament Street,
New Delhi**
- 2. Deputy Registrar(SW)
Cooperative Societies,
Govt. of National Capital Territory of Delhi,
Parliament Street,
New Delhi**
- 3. Mrs. Chandrakant Bhalla
R/o 8B, Shiv Shakti Aptt.
Sector-10, Dwarka,
New Delhi. Respondents**

**(Represented by Sh.
Shyam Sunder,
Counsel for R-1 and
Shri Vishvender
Verma, Counsel for
R-3)**

ANAND PRAKASH, FINANCIAL COMMISSIONER

Dated 11th November, 2016

1. This order shall dispose of the Revision Petition filed by the Petitioner society against the order dated 20.06.2014 vide which Dy. Registrar conveyed that Secretary-cum-Registrar Cooperative Societies declared the election conducted by the society on 04.05.2014 as null and void and appointed an Administrator to

manage the affairs of the society and conduct the election of the Managing Committee of Shiv Shakti CGHS Ltd.

2. Petitioner society filed the revision petition with the following submissions : .

i. On the complaint from Smt. Chandrakant Bhalla, RCS vide order dated 11.07.2013 kept the order dated 26.06.2013 in abeyance and directed the society to explain how the joint members contested the election in violation of the DCS Act and Rules and why the election may not be declared *void ab initio*. Society filed the reply dated 20.12.2013 and after considering it RCS vide order dated 24.01.2014 vacated its order dated 26.06.2013 as the complaint against the managing committee was time barred. However, RCS advised to hold the next elections which were due in May, 2014 by the Returning Officer appointed by the department in order to avoid complaints/dispute in future. This order of RCS was arbitrary and without jurisdiction as the law does not vest such power in RCS.

ii. The elections in society were held on 04.05.2014. All steps required to be taken under Section 35 of the DCS Act 2003 for conducting the elections and a new managing committee was elected. Intimation of the result of elections was also sent to RCS office vide letter dated 05.05.2014.

iii. However, vide letter dated 01.05.2014 which was received in the society on 05.05.2014, AR(SW), appointed a returning officer for conducting the elections, which had already been held on 04.05.2014. This order was issued on the ground that number of complaints were received from various members, but no copy of such complaints was provided to the society. Society vide letter dated 07.05.2014 informed RCS that elections in the society were held as per provisions of Section 35(5) of DCS Act, 2003 and the returning officer was appointed under Schedule II read with Rule 53 of DCS Rules, 2007. Vide order dated 20.06.2014 RCS office appointed the administrator.

iv. There was no complaint/dispute against the proposed election before the said election was conducted on 04.05.2014, therefore no prior permission of RCS was required to conduct the elections.

3. R-1 and R-2 have filed the reply to Revision Petition with the following submissions :

i) RCS office received the complaints with regard to contesting of elections by joint members which was against the Act and Rules. Thereafter considering the fact that elections were held in 2011 and the complainants cannot file arbitration case being time barred, the society was directed to be careful in future and get the election held through the Returning Officer appointed by the RCS office. But R.O. appointed by the RCS office vide letter dated 01.05.2014 was not allowed to enter in the society premises and the society conducted the election at its own.

ii) It is denied that Shri Surender Singh Chail is the Secretary of the society as the RCS has declared the election of the MC as null and void, hence there is no managing committee in the society, no resolution could be passed authorizing Shri Surender Singh Chail to file the present petition.

iii) In the election held on 29.05.2011 joint members were allowed to contest the election of managing committee. A number of complaints were received in the office of RCS. The said complaints were examined and it was found that though election was not as per procedure, but on account of the delay in making complaints against procedural lapses in holding elections, society was advised to hold its next election through the Returning Officer appointed by the office of RCS, so that election may be held in a fair manner and the members of the society may not have any grievance against the same.

iv) Managing Committee of the society without following the directions of the RCS, appointed its own Returning Officer. Society did not allow the Returning Officer appointed by the RCS office vide order dated 01.05.2014 to enter into the premises of

the society, before the date of so called election conducted by the society.

4. The Managing Committee has filed the status report describing the work done by the present managing committee since 05.05.2014 along with the copies of 57 members reposing faith and trust in the managing committee.

5. R-1 & R-2 also filed the status report with the submissions that Administrator took the charge on 05.11.2014 and the Hon'ble High Court also in its order dated 10.09.2015 stated that as per record Administrator has taken over the society on 05.11.2014.

6. Petitioner society filed the written arguments with the following submissions :

i. RCS has no power to set aside the election conducted by the society as per law.

ii. Administrator appointed vide order dated 20.06.2014 cannot continue after expiry of 365 days.

iii. No complaint against the election held on 04.05.2014.

iv. Society cited the following judgements -

a. Supreme Court judgement dated 14.05.2015 in case of Dharampal Satya Pal Ltd. Vs. Deputy Commissioner of Central Excise Guhati & Ors. (2015) 8 SC 519 wherein Court held that natural justice has flexible nature, absence of any strait jacket formula and applicable to judicial, quasi-judicial and administrative authorities even if not provided for in statute.

b. Supreme Court judgement dated 21.10.2008 in case of Narender Kumar Jain Vs. GNCT of Delhi, 2008 XAD(Delhi) 105 wherein Court opined that election should be inferred with only a firm foundation should not be overlooked.

c. Supreme Court judgement dated 30.10.2001 in case of Santosh Yadav Vs. Narender Singh (2002) 15 CC 160 wherein Court held that success of winning candidate should not be lightly interfered with.

7. R-3 also filed the written arguments with the following main submissions :-

- i) RCS vide letter dated 24.01.2014 directed the society to conduct the next election by the R.O. appointed by the RCS Office but society did not follow this direction. As per first proviso of Section 35(1) of DCS Act, 2003, RCS can issue such direction.
- ii) As per Rule 61(3) of DCS Rules, 2007 Managing Committee cannot represent the society after the order dated 20.06.2014, hence present petition filed by the society is not valid.
- iii) Due to interference by the ex-managing committee and forcibly brating the lock of the society office, Administrator has registered an FIR against the members.

8. I have heard both the sides and considered all the facts on record. It is a fact that there was discrepancy in the election held in the year 2011 but due to the late filing of the complaints no action was taken against the managing committee of the Society. However, to avoid any further dispute in the Society and in order to maintain co-operative principles, RCS vide order dated 24.01.2014 advised the Society to held next election by the Returning Officer appointed by the RCS office. It is a fact that Society did not challenge this order. Moreover, there was nothing prejudicial to the Society to conduct the election through the Returning Officer appointed by the RCS office but the Society chose the option to defy the advice of RCS.

9. RCS appointed the administrator u/s 37 of DCS Act vide impugned order dated 20.06.2014. There is nothing on record to suggest that before the appointment of an administrator, the office of RCS has given an opportunity to the managing committee to state its objection required as per Section 37 (1) of the DCS Act, 2003.

10. Considering the above facts, impugned order dated 20.06.2014 is set aside and matter is remanded back to RCS with the direction to consider the matter de-novo after giving an opportunity to the managing committee and considering all the

facts and circumstances and take a decision as per DCS Act and Rules within a period of two months from the pronouncement of this order.

11. Revision Petition is dispose of with the above directions. All the interim orders are vacated. No order as to cost.

12. Pronounced in the open Court on 11.11.2016.

(ANAND PRAKASH)
FINANCIAL COMMISSIONER, DELHI
11th November, 2016.