

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No 174/2015

Revision Petition under section
116 of Delhi Cooperative
Societies Act, 2003

In the matter of :

- 1. The Home Living Cooperative
Group Housing Society Ltd.
Sector 9, Plot 14, Dwarka,
New Delhi-110075.
(Through its Secretary, Shri Azad Singh)**
- 2. Shri Naeem Ahmad
Treasurer
The Home Living Cooperative
Group Housing Society Ltd.
Sector 9, Plot 14, Dwarka,
New Delhi-110075.**
- 3. Shri A. C. Bhargava
S/o Late Shri P. C. Bhargava
The Home Living Cooperative
Group Housing Society Ltd.
Sector 9, Plot 14, Dwarka,
New Delhi-110075.**

.....Petitioners

Versus

- 1. The Registrar, Cooperative Societies,
Parliament Street, New Delhi.**
- 2. Dr. V. K. Aggarwal
Administrator,
232, Prabhavi Apartments,
Plot No.29, Sector 10
Dwarka, New Delhi-110075.**
- 3. Shri A. P. Jain,
Grade I (Retd.)
WZ-780, Near Shiv Mandir,
Palam, New Delhi-110045.**

.....Respondents

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 09.07.2015

1. This order will dispose of the revision petition under Section 116 of the Delhi Cooperative Societies Act, 2003 (hereinafter called the DCS Act) filed by the Petitioners, against the order dated 10.04.2015 vide which Assistant Registrar conveyed that as the term of Managing Committee (hereinafter called the MC) of the society had expired in first week of February, 2015 and since the society failed to conduct the election to the MC of the Society, the competent Authority has appointed an Administrator and a Returning Officer under Section 35 of DCS Act, 2003

to manage day to day affairs of the society and for conduct of fresh elections to the MC of the Society within the stipulated period of 90 days from the date of issue of this order.

2. The Society in its revision petition submitted that RCS did not respond to the repeated requests of the Society made vide letter dated 29.09.2014 followed by reminders dated 10.11.2014 and 16.03.2015 requesting for appointment of a Returning Officer to conduct the fresh elections of the MC of the society which were due in February, 2015. The petitioner states that the election of the Society was last conducted on 05.02.2012 and accordingly after 3 years fresh elections were due on 04.02.2015.

3. Society in the petition further submitted that provisions of Section 35(5) of the DCS Act 2003 come into play only in case of failure of MC to arrange for election of the new MC before expiry of its term whereas in the present case committee had written letters dated 29.09.2014, 10.11.2014 and 16.03.2014 to RCS for appointment of a Returning Officer to conduct the elections.

4. RCS in its reply to the revision petition submitted that –

i. The petition has been filed through a unauthorized person who is no more the office bearer of the society, hence the same deserves to be dismissed.

ii. As per records, the last election of the society was conducted in the year 2006. The term of a MC as defined under Section 35 of the DCS Act, 2003 is three years and thus the term of the MC expired in the year 2009 and thereafter no election of the MC has been held since 2009 and election to the Society were to be conducted as per Rule 53 of the DCS Rules, 2007.

iii. The MC failed to comply with the provision of Rule 53 read with Schedule II of DCS Rules, 2007 as no resolution passed by the General Body was submitted to the office of RCS with a request for conduct of election in 2009.

iv. Petitioner has not placed any document on record whereby it could be said that it has complied with the above provisions of law while conducting the elections in the year 2009. Since the term expired in the year 2009, therefore, the RCS appointed an Administrator for conducting election in a fair manner. As of date,

there is no legally constituted MC in the society and the letters dated 29.09.2014, 10.11.2014 and 16.03.2014 are of no consequences.

v. As per records, the last election was held in 2006 as per Schedule-II. The election conducted by the society without following the DCS Act and Rules is a nullity in eyes of law and cannot be recognized by the office of RCS.

5. Subsequently Assistant Registrar vide corrigendum dated 03.06.2015 rectified the order dated 10.4.2015 that "the Managing Committee had expired in the first week of February, 2015" may be read as "the Managing Committee had expired in the first week of February, 2009".

6. Society has filed rejoinder to the reply filed by the RCS and emphasized the judgement of Hon'ble High Court of Delhi in the case No.WP(C) 2589/2010 in which Court held that *"there is no occasion to appoint the administrator in such a situation where all that is required to be done, has been done by the Society"*. Society further submitted the following points in its submission :

i. that the alleged Corrigendum dated 03.06.2015 is without jurisdiction and contrary to the record. The same has been issued to overreach the proceedings pending before this Hon'ble Court and it tantamounts to contempt of Court.

ii. RCS has failed to explain as to why if the tenure of the MC of the Petitioner Society had expired in February, 2009, did the RCS wait for a period of six years to initiate action against the Petitioner Society, in spite of being aware of the elections which were conducted in the years 2009 and 2012.

iii. Copies of the Annual Returns were duly sent to the RCS since 2009. Further, audit of the Petitioner Society had also been conducted by the Auditors appointed by RCS under section 79 of the Act, from 2009 and the Audit Report also clearly states the date of elections i.e. 15th February, 2009 and 05th February, 2012.

iv. When the elections were held in the year 2006, Respondent No.1 had of its own vide its letter dated 20.12.2005 appointed a Returning Officer to conduct the elections. No such Returning Officer was appointed by the Respondent No.1 for the elections held

in 2009 and 2012. It is denied that the elections held by the society in 2009 is illegal and not recognized by law or that there is no legally constituted MC and that the order of the Registrar needs to be sustained as alleged.

v. It is denied that the last election was held in year 2006 or that there is no validly constituted MC in the Society after 2009 or that the Petitioner No.2 and No.3 are not the office bearers of the Society as alleged.

7. During the proceeding on 16.06.2015 Counsel for RCS submitted that:

"It is an admitted fact that since draw of lot has not been conducted in this society, the provision of Section 35 (i) of the DCS Act, 2003 will be applicable i.e. the Registrar has to appoint a Returning Officer for conduct of election. However, the Committee of the Cooperative Society has to meet at least 60 clear days in advance of the date of expiration of its terms and by resolution determine the date, time and place for convening a General Body Meeting for conduct of election of its successor committee."

Counsel for RCS further submitted that "a copy of this resolution should have been submitted to the RCS alongwith a request for appointment of a Returning Officer for conducting the election. But in this case no such resolution was submitted which is a mandatory requirement. He also states that mere filing of returns does not, in any way, condone the misconduct of the society for not having informed the RCS as per rule 53 Schedule II of the DCS Rules."

8. Counsel for RCS on 02.07.2015 also submitted that while the dispatch no. of the letter dated 21.02.2012 exists, the letter is not discussed in the file and is also not part of any record of the RCS. Regarding letters of the Society dated 29.09.2014 and subsequent reminders dated 10.11.2014 and 16.03.2015, the Counsel for R-1 states that these letters are irrelevant since the elections conducted by the Society itself in the year 2009 are null and void.

9. I have considered all the facts and the circumstances placed on record and heard both the parties. It is admitted fact that the draw of lots of flat has not been conducted by the DDA till date. Since the draw of lots has not been completed, therefore, elections of MC were to be conducted as per section 35 of DCS Act, 2003 and rule 53, Schedule II of DCS Rules, 2007. Wherever draw of lots has not been conducted as per Section 77 of the Act, election of MC has to be conducted by the Returning Officer appointed by the RCS under Section 35 of DCS Act, 2003, after receiving the "Resolution" along with a request for appointment of Returning Officer

for conducting the election of the MC. The society in its reply has submitted that RCS did not appoint any Returning Officer for conducting the election held in 2009 and 2012.

10. The Society cited the judgment passed in the W.P. (C) No. 2589/2010 wherein High Court quashed the order for appointment of Administrator. In this case, Hon'ble High Court of Delhi observed that election process was thwarted by the Returning Officer himself and quashed the order for appointment of administrator, whereas in the present case, in the years 2009 and 2012 MC itself failed to make necessary arrangement for conducting the election as per law. Therefore, observation given by the Hon'ble High Court of Delhi is not applicable in the present case.

11. Society tried to convince the Court by citing submission of audit report since 2009 that RCS office was very much aware of election held in 2009 and 2012, therefore, society cannot be held guilty for not having legally valid MC. I do not agree with this averment of the Society. Section 35(3) of DCS Act clearly specifies that the term of MC is three years and upon expiry of term, there must be a legally elected successor committee. In absence of election of MC conducted by the Returning Officer, appointed as per the provisions of law, there is no "legally elected successor committee". I do not find any infirmity in the order of Assistant Registrar dated 10.04.2015 for appointing the Administrator and Returning Officer to manage day to day affairs of the Society and conducting fresh election of MC.

12. Accordingly, the petition is dismissed *in limine*.

13. Pronounced in the open Court on 09.07.2015.

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(NAINI JAYASEELAN)
Financial Commissioner, Delhi