

(2012) 01 AHC CK 0771**Allahabad High Court****Case No:** Misc. Bench No. 389 of 2012

Krishankar Tripathi

APPELLANT

Vs

State of U P Thr. Prin. Secy.

RESPONDENT

Cooperative U P Shashan Civil

Date of Decision: Jan. 13, 2012**Hon'ble Judges:** Devi Prasad Singh, J; Devendra Kumar Arora, J**Bench:** Division Bench**Advocate:** Zianuddin Mohd. Siddiqui, for the Appellant; C.S.C ., for the Respondent**Final Decision:** Dismissed**Judgement**

1. Learned Chief Standing Counsel has accepted notice on behalf of opposite parties no. 1 and 3 while notice on behalf of opposite party nos. 2 and 4 has been accepted by Shri Mahesh Chandra and notice on behalf of opposite parties no. 6,7,9 and 10 has been accepted by Shri Rakesh Srivastava and notice on behalf of opposite parties no. 11 and 12 has been accepted by Shri Bagesh Shukla. Issue notice to the opposite parties no. 5 and 8. Apart from regular mode of service, the petitioner may also serve the opposite parties no. 5 and 8 outside the court for which office is directed to issue Dasti summons.

2. The question involved in the instant writ petition relates to the election of housing society. It is admitted at bar that the election was held on 27.2.2011. Thereafter, three members had resigned. The Registrar has nominated two persons who were impugned before this Court in Writ Petition No. 9602 (MB) of 2011, which was stayed by the division bench on 27.9.2011 with liberty to proceed with the election process.

3. Shri Umesh Chandra, learned Senior Counsel appearing on behalf of the petitioner submits that once keeping in view the admitted fact that the election was held on 27.2.2012 and out of seven elected members of the committee of management three resigned, one post was unfilled then only option to the respondents is to fill up the vacancy in accordance with the Rules. No fresh election

could have been held by the authorities in violation of statutory provision contained in Rule 450 of the Co-operative Societies Rules. Attention has been invited to Rule 430 of the Rules, which provides that if the number of elected members after election is found to be less than the quorum prescribed, the election shall be held for the vacant seats as early as possible. *Prima facie*, from the perusal of statutory provision, it appears that no fresh election could have been held till the expiry of the period.

4. A preliminary objection has been raised by Shri Rakesh Bajpayee, learned Additional Chief Standing Counsel that the remedy is available to the petitioner to challenge the election process under Rule 444 (C) of the said Rules through election petition. Argument of Shri Rakesh Bajpayee may carry weight in case the election would have been held in lawful manner within four corner of statutory provision.

5. *Prima facie*, we feel that it was incumbent on the authorities concerned to fill up the vacancies in accordance to Rules 450 and 430 of the said Rules. No fresh election could have been held to fill up the vacancy of the committee of management depriving the election members to discharge their obligation in pursuance to election held on 27.2.2011.

6. *Prima facie*, it appears that the entire action of the respondents holding fresh election suffers from vice of arbitrariness and jurisdictional error. In view of above, we are not inclined to dismiss the writ petition on account of availability of alternative remedy.

7. Admit.

8. Let counter affidavit be filed within a period of four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

9. List immediately thereafter along with Writ Petition No. 9602 (MB) of 2011 and Writ Petition No. 10887 (MB) of 2011. The petition may be heard finally on the next date of listing peremptorily. The now committee of the management shall discharge its obligation subject to further order of this Court only routine work and no policy decision shall be taken and the property of the society shall not be alienated in any manner whatsoever, till the next date of listing.