

(2011) 05 DEL CK 0326

Delhi High Court

Case No: Writ Petition (C) 3127 of 2011

Sh. Sanjay Chiripal

APPELLANT

Vs

Registrar Co-Operative Societies
and Others

RESPONDENT

Date of Decision: May 10, 2011

Acts Referred:

- Delhi Co-operative Societies Rules, 2007 - Rule 22

Hon'ble Judges: Sanjay Kishan Kaul, J; Rajiv Shakdher, J

Bench: Division Bench

Advocate: Neeraj Jain, for the Appellant; None, for the Respondent

Judgement

Rajiv Shakdher, J.

The captioned writ petition is directed against the order dated 28.01.2011 passed by the Financial Commissioner in exercise of his revisionary powers u/s 116 of the Delhi Co-operative Societies Act, 2003 (hereinafter referred to as "DCS Act"). By the impugned order the Financial Commissioner has repelled the challenge laid to the report of the Inquiry Officer (in short "I.O.") dated 15.01.2008 submitted by one D.P. Dwivedi, while conducting proceedings u/s 62 of the DCS Act.

2. It is important to note that the upshot of the impugned order of the Financial Commissioner is that, the I.O. having put, the shortcomings and the deficiencies in the working of Respondent No. 2 (hereinafter referred to as the Society) (as recorded in the inspection report), to the society, he had the authority to seek explanation and record compliance of such defects, shortcomings and deficiencies. The case of misappropriation and mis-utilization of funds not being pressed by the complainants, the Financial Commissioner was of the view that, under the scheme of the DCS Act, remedial action, if any, which was required to be taken by the Managing Committee of the society, could be directed to be taken by the Registrar in exercise of his powers u/s 67 of the DCS Act. In other words, the Registrar continues to be empowered to issue appropriate directions in pursuance of the IO's

report. We would be touching upon this aspect in the course of our judgment. However, despite the aforesaid, the Petitioner seeks to press the writ petition on the following grounds:

(i) that the I.O. acted way beyond his jurisdiction in accepting the explanation given by the society;

(ii) as a necessary corollary to the first submission, it was submitted that the power of censure lay with the Registrar; and (iii) lastly, the impugned order was passed without appreciation of the material on record.

3. Our discussion below will show each of these submissions is untenable. However, before we proceed further it may be necessary to notice a few facts: First and foremost the society in the case had acquired land on a freehold basis, and not at concessional rates. Petitioner before us along with one Ashish Mehra had filed a complaint with the Registrar on 17.01.2007. The complaint alluded to several discrepancies and short-comings of the managing committee in running and managing the affairs of society. Amongst many allegations and alleged violations, the main violation evidently pertained to charging of entry fee and/or fee towards building development fund from persons who became members of the society w.e.f. 14.01.1999. It was alleged that amounts to the tune of nearly Rs. 8,98,500/- was collected on this account from 15 members. There were also allegations that persons who are not members of the society were made office bearers and were also included at times as special invitees, in the meetings, held by the managing committee of the society. There were allegations concerning failure to hold elections as also with regard to the fact that one, G.S. Saini had continued as the president of the society since 1996, while another gentleman, one, Shri Rajiv Gupta had continued as the secretary of the society since 2002. The details with respect to the violations have been set out in annexure AA to the writ petition.

3.1 Based on the aforesaid the Registrar vide order dated 23.02.2007 directed inspection to be carried out in respect of the issues raised in the complaint, in exercise of his powers u/s 61(1) of the DCS Act.

4. Consequently, Inspecting Officer submitted its report dated 04.04.2007. By virtue of the said report, the Inspecting Officer arrived at the following conclusions:

(i) Complaint of Shri Ashish Mehra is justified and he should be allowed refund of entry fees deposited by him (in any form) with the society exceeding Rs. 10,000/-.

(ii) Society has been charging illegal entry fee directly or in the form of Building Development Fund.

(iii) Society is responsible for not executing the order dated 26/10/05 of Addl. RCS to refund back the entry fee.

(iv) Transfer of shares is not taking place unless entry fees is received by the society.

(v) Shri G.S. Saini, President himself has proposed the voluntary donation against all the norms.

(vi) Non-members of the society are being made office bearers in MC of the society and also in the screening sub-committee.

(vii) Non-members of the society are being made special invitees and were attending AGM's of the society.

(viii) In respect of holding elections as per the prescribed norms, the office bearer are being chosen unanimously and Shri Saini has been the President since 1996.

(ix) Members are chosen office bearers of the MC without their personal presence in the AG Ms.

(x) Some of the MC members are not attending three consecutive mandatory meetings of the MC.

(xi) There is ample indication about holding of SGB Ms of 5/11/06 and 5/12/06 fraught with several procedural inconsistencies.

(xii) The society favoured MC members occupying the common space of the society premises unauthorizedly may also be true to a great extent in the absence of any specific rebuttal from the society.

(xiii) The allegation regarding misappropriation and misutilization of fund could not be substantiated as these were generalized in nature in the original complaint filed by Shri Sanjay Chiripal as summarized in the order for inspection dated 22/2/2007.

(xiv) A list filed by the society (and confronted with the complainant) is being enclosed herewith which shows collection of transfer fee in the form of Building Development Fund by the society from its new members w.e.f. 14.12.99.

5. On receiving the report, the Registrar vide order dated 26.09.2007, in exercise of his powers u/s 62 of the DCS Act, appointed an I.O. The I.O. enquired into the affairs of society in the background of the observations made in the inspection report. Particular emphasis was laid on the fourteen (14) violations listed out in the concluding portion of the inspection report. These have been extracted in paragraph 4 hereinabove.

5.1 Continuing with the narrative, after a detailed inquiry (in respect of the co-complainant Ashish Mehra), the I.O. noted that both, in view of the directions issued by the Registrar, from time to time and the judgments of the courts on this issue deprecating this practice; that no entry fee could be charged from new members who had purchased flats in the society. The I.O. thus observed that he found no merit in the argument made by the society in not refunding the amount charged on this account. The I.O. was further of view that since the amounts had been refunded in the case of another member, i.e., one Mr Moda albeit on the

directions of the District Forum under the Consumer Protection Act, the society would be required to refund the excess amount also qua the said complainant, i.e., Ashish Mehra. In so far as the Petitioner was concerned after discussing the matter at length the I.O. concluded as follows:

Based on the above discussions, it is clear that society has been charging money in the name of development charges which does not have support of any order. Instead it is charging money in violation of various Registrar Cooperative Societies and court orders. However, no findings on the payments made by Sh. Sanjay Chiripal can be made at this stage because the matter is sub-judice in State Commission.

(emphasis is ours)

5.2 We had asked the learned Counsel for the Petitioner as to whether he had been refunded the amount collected in the form of entry fee and/or building development charges. The learned Counsel for the Petitioner, on instructions of his client present in court informed us that he had collected the amount. In respect of other persons from whom this amount had been collected, the society seems to have taken the position that these were voluntary donations and in any event the complainants could not make a grievance qua the others. The I.O., however, came to the conclusion that the complainant had been able to establish that the society was not transferring shares without charging money and that the said amount may have been collected in another form, under a different name and perhaps not as entry fee.

5.3 This is an aspect, according to us, the Registrar would direct his attention to and pass appropriate orders if, persons similarly placed claim refund of monies which the society was not permitted to collect; though after complying with the due provisions of the DCS Act.

5.4 To us what was of graver concern was the observation of the I.O. that the society had pleaded before him that till 2005-06 the father of one of the complainant's was the executive member and he supported the decision of the society to collect amounts from new members in the form of voluntary donation towards building development fund. The learned Counsel for the Petitioner informed us that the Petitioner was not the complainant. A close look at paragraph 4 of the writ petition seems to suggest perhaps the intention was to file the present writ petition in the name of the other complainant and not Shri Sanjay Chiripal. As to what prevailed with the complainants to make the switch is not known. Though it does leave us with an impression that no one was complaining about the functioning of the society while they were part of the Managing Committee. The complaints were lodged only in 2007.

5.5 The society's rationale on the other hand was that since the building was old, built in 1968, it required funds for its up-keep. The charges were paid voluntarily. Be

that as it may, as indicated above by us, the Registrar will take, as he should, proper measures in this regard in facilitating refunds.

5.6 The other major violation allegedly committed as per the Petitioner was that not only were the non-members made office bearers of the society but were also asked to participate as special invitees both at the meetings of the managing committee as well as at Annual General Meeting (AGM). The I.O. noted the stand of the society that, the said persons were included as office bearers or as invitees in place of those original members who due to old age and infirmity were unable to participate in the affairs of the society. The purpose being to provide effective representation to such members through their progeny. It was the society's stand that this was permissible under of the Delhi Cooperative Societies Rules, 2007 (in short, the DCS Rules). The I.O. also noticed the society's stand that, as soon as the irregularity was brought to its notice, the said members resigned and hence no cause of action survived. The I.O., in view of the remedial action taken by the society, did not precipitate the matter any further.

5.7 On the aspect of the same person being elected as the president since 1996 the I.O. made note of the following submissions made by the society:

In reply to these paras society has stated that it is a matter of record that there is no contest in the election since 1996. Nobody can be compelled to contest the election and unanimous election shows that the Managing Committee enjoys mandate of all the members which is being taken by the complainant otherwise as he is habitual of negative thinking. Similarly it has contended that the finding is misconceived and contrary to law. The election of the MC for the post of Treasurer and Secretary is done by majority vote of the MC members present and voting and there is no bar for electing a person who is not present. Regarding some members of the MC not attending three consecutive meetings due to sufficient cause, society stated that and they had informed the MC of the reasons for their non-attendance for some of the meetings.

5.8 After recording the stand of the society the I.O. concluded as follows:

In any case this a merely a technical irregularity which is fully cured by the provisions contained in Section 39 of the DCS Act, 2003. Moreover, there is no such instance in case of the present Managing Committee and as such no cause of action subsists as on date.

(emphasis is ours)

5.9 As regards the issue of procedural irregularity in holding Special General Body Meeting (in short, SGBM) which pertained to a vintage date of 05.11.2006 and 05.12.2006; the I.O. after recording the stand of the complainant that the Managing Committee had no powers to convene a SGBM on its own, observed that the society had accepted these issues directly and/or indirectly. Since remedial action had been

taken by the society, the I.O. further observed that no malafides could be attributed to the society on this account.

6. On the issue of unauthorized encroachment by members of the society qua common spaces, the society's stand that it had taken action against all persons, who had encroached upon common spaces was recorded. The society had also brought to the notice of I.O. the factum of a civil suit being instituted by the writ Petitioner on this very issue, which was evidently pending adjudication at the relevant point in time. The society denied that at that point in time members of the Managing Committee were occupying common spaces. He also took notice of the fact that the society had alleged that the writ Petitioner himself was guilty of unauthorized encroachment of common space. The I.O. thus observed that it was imperative on the part of the society to remove unauthorized encroachment without discrimination, and that it should take up the matter with the competent authority for removal of such encroachments within the precincts of the society.

6.1 Qua the issue of misappropriation of funds the I.O. reached the following conclusion:

As regards misappropriation and mis-utilization of the funds by the society, the Inspecting Officer has not substantiated any of the allegation and even before the undersigned, Sh. Sandeep Kumar Advocate did not press any point on this issue. In view of the above, there is no need to inquire into this issue and it therefore seems that financial aspects of society is being managed properly and as per rules/regulations.

(emphasis is ours)

7. With the aforesaid background, in the operative portion, the I.O. made the following observations:

In nutshell inquiry reveals that most of the allegations leveled against the society has been admitted by it directly or indirectly and society has tried to justify its actions. The complainant, except for refund of money to Sh. Ashish Mehra has not been able to prove its points. There are two issues which are subjudice therefore no finding have been made on it. The various technicalities enumerated by complainant as illegality committed by society has since been rectified by the society or remedial measures has been taken and there is no cause of action on these points now. The society though has erred in not strictly following the DCS Act, Rules and its byelaws but it has been able to function within the financial norms as the allegations regarding misappropriation or mis-utilization of funds has not been pressed by the complainants as there does not exist any.

8. On the perusal of the report of the I.O. and the impugned order passed by the Financial Commissioner it is quite clear that the Registrar would have to take remedial action in respect of matters which are outstanding. According to us

broadly these are:

(i) Matters pertaining to refund of monies, which were collected in the form of entry fee or building development charges or under any other nomenclature. Refund will have to be made even to those who had not instituted a complaint in that regard.

(ii) Clearance of encroachment in the common spaces within the precincts of the society. Any measure taken in this respect by the Registrar would necessarily include all encroachers, including the writ Petitioner, if it is so found, by the Registrar. In this regard since there is a mention of a pending civil suit, the Registrar will take measures for obtaining appropriate orders from the court concerned, in the event, there are any interim order in favour of the writ Petitioner. We may note that no such interim has been brought to our notice by the writ Petitioner.

(iii) The Registrar shall take steps with regard to all other statutory compliances, to which due adherence is required of the society.

9. Before concluding we must observe that the Financial Commissioner has correctly appreciated the scheme of the Act which, in our view, would require the I.O. to ascertain from the society in the course of his inquiry, if issues, in respect of which the complaint(s) were made, remained outstanding on the date on which he conducted an inquiry. His efforts in that regard would necessarily be a subject matter of the I.O.'s report. Therefore, we repel the contention of the Petitioner that the I.O. exceeded his jurisdiction in bringing on record, the remedial measures taken by the society in respect of the infractions brought to the notice of the Registrar by the complainants.

10. On hearing the learned Counsel for the Petitioner and perusing the papers, we are quite convinced that the present writ petition is the product and, a consequence of petty personality clashes between those who run and manage the society and those who are either out of it or want to be part of it. The fact remains that the I.O. has not found any financial irregularity in the conduct of the affairs of the society by the managing committee. As a matter of fact the complainant has given up that allegation, as noticed by the I.O. The only exception was with regard to the collection of monies; towards what the society termed as building development charges/ entry fee. The society's rationale, as noticed hereinabove by us, was that, since the society was old, funds were required for its up-keep. Since such collection of funds has been found to be against the provisions of law, quite rightly the society has been called upon to refund the monies to the complainant. As noticed by us above, this direction will enure to the benefit of all members who are similarly placed.

11. Taking into account the above we are of the view that no purpose would be served in burdening this Court with supervision of the affairs of the society, in respect of those aspects which the Registrar is fully empowered to deal with, by allowing the present proceedings to continue. Time, energy and precious funds of

the society could be better spent to manage the affairs of the society. The writ petition is accordingly disposed of with aforesaid directions.