

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 08.07.2010

+ WP (C) No.4109/1994

SHAM KISHORE ...PETITIONER

Through: Mr.Sudhir Nandrajog Sr. Advocate with
Mr.Vikram Nandrajog, Advocate.

Versus

REGISTRAR COOPERATIVE SOCIETIES & ORS. ...RESPONDENTS

Through: None for R-1/RCS.
Mr.Mukesh Gupta, Recovery Officer of R-2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

SANJAY KISHAN KAUL, J. (Oral)

1. The petition relates to the challenge laid by the petitioner to Rule 16 of the Delhi Cooperative Societies Rules, 1973 ('the said Rules' for short), which has since been repealed, and the notice issued to the petitioner dated 28.12.1993 by the Registrar Cooperative Societies ('RCS' for short) purporting

to exercise powers under Rule 16(2) of the said Rules as also quashing of the order dated 07.07.1994 passed in pursuance thereto.

2. The matter was taken up on 05.07.2010 when Mr.Sanjay Poddar, Advocate was present in the court for some other matter who used to appear for RCS. Mr.Poddar indicated that possibly this rule has already been quashed by this Court. However, no reported judgment was available, but in view of the particulars provided by Mr.Poddar, file in respect of WP(C) No.1710/1987 was summoned.
3. Unfortunately, there is none to assist us on behalf of the RCS.
4. From the records, it appears that Civil Writ Petition No. 1710/1987 J.S.Saksena Raj & Ors v. Lieutenant Governor, Delhi and Ors and Civil Writ Petition No.1957/1996 S.C.Saxena & Ors. v. Lieutenant Governor, Delhi and Ors were decided on 15.10.1999. The very Rule 16 of the said Rules was under challenge in the said judgment apart from other issues examined. Surprisingly, this judgment is not reported. Rule 16 of the said Rules is extracted below for convenience of reference:

“16. Manner of Calling Upon Society to make Amendment to Bye-Laws

- 1) If it appears to the Registrar that an amendment of a bye-law of a co-operative society is necessary or desirable in the interest of such co-operative society, he may call upon the co-operative society to make the amendment.

2) The Registrar may by serving a Notice in form 7 call upon a society to make an amendment within a period of sixty days, by convening a general body meeting of the society.

3) After the expiry of the period specified in the notice under sub-rule (2), and if the society fails to make the amendment, the Registrar after giving the co-operative society an opportunity of being heard, may register the amendment and issue to the co-operative society a copy of such amendment certified by him with a certificate signed by him. With effect from the date of registration, the amendment is binding on the cooperative society and its members subject to appeal, if any.

All amendments of the bye-laws relating to the same co-operative society when registered by the Registrar shall be assigned a consecutive number in chronological order and shall be noted in index to the bye-laws to be maintained by the co-operative society in the registration file”.

5. After discussing various submissions, conclusion has been recorded by the Division Bench in the following terms:

“ Taking into account the scheme of the Act relating to the amendment of bye-laws, we are of the view that Section 11(1) of the Act does not provide for the Registrar proposing amendments to the bye-laws or imposing them upon a society. Taking into consideration the objects and purposes of the Act, we are of the view that no rule empowering the Registrar to impose bye-laws upon a society can be framed in purported exercise of powers conferred by Section 97(1) of the Act; no such rule is postulated “to carry out the purposes of this Act”. Accordingly, we reject the contention of learned counsel for the Respondents in this regard and hold that no resort can be had to Section 97(1) of the Act for framing Rule 16.

In view of our discussion above, we hold that Rule 16 does not come within the purview of

Section 97(2)(iv), which confers a particular power, without prejudice to the generality of powers conferred by Section 97(1) of the Act. Rule 16 was not enacted to carry out any of the purposes of the Act. As such, it is also not within the purview of Section 97(1) of the Act. Even otherwise, we are of the opinion that the Act does not postulate the amendment of the bye-laws of a society by a diktat from the Registrar. As such, Rule 16 is ultra vires the provisions of the Act. Rule 12, however, does not deal with the imposition of bye-laws at a post-registration stage and is, therefore, intra vires the provisions of Section 97(1) and Section 97(2)(iv) of the Act.

In view of our finding that Rule 16 is ultra vires the Act, it is not necessary to consider the scope of “statutory interference” as contemplated in Smt.Damyanti Naranga.

In view of our holding Rule 16 ultra vires the Act, the third part of the amended bye-law No.20 thrust upon the Society by the Registrar violates the fundamental right of the Petitioners guaranteed under Article 19(1)(c) of the Constitution. This would, therefore, give them the locus standi to file Civil Writ Petition No.1710 of 1987.”

6. In view of the aforesaid judgment, the writ petition filed by the petitioner is bound to succeed as Rule 16 of the said Rules already stands struck down as *ultra vires* and the impugned order passed in view of the powers conferred under the said Rules thus must also go. The impugned order dated 07.07.1994 is thus accordingly quashed.
7. The Rule is made absolute leaving the parties to bear their own costs.
8. We appreciate the assistance rendered by Mr.Sanjay Poddar, Advocate.

9. A copy of the order be sent to RCS.

SANJAY KISHAN KAUL, J.

JULY 08, 2010
dm

VALMIKI J. MEHTA, J.