

(2008) 07 DEL CK 0094

In the Delhi High Court

Case No : Writ Petition (C) No. 1181 of 2007 and CM No. 2082 of 2007

Aakash Jindal

APPELLANT

Vs

The Registrar Co-op Societies and Another

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 80

Citation : (2008) 152 DLT 562 : (2008) 106 DRJ 126

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Sumit Bansal, for the Appellant; Sujata Kashyap, for Respondent No. 1, Sanjay Mann, for Administrator, P.K. Khanna and Shaju Francis for R.K. Kohli, Ex-President and Ex-Secretary of the Society, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner, by this writ petition, seeks quashing of the order dated 19.12.2006 passed by the Financial Commissioner in the revision petition u/s 80 of the Delhi Cooperative Societies Act, 1972 and order dated 11.3.2002 passed by the Registrar, Cooperative Societies, Delhi. Petitioner also seeks a direction to the Society to transfer the interest of membership of Smt. Devki Devi in favour of the petitioner in the Society and consequently allot a flat to him.

2. Petitioner claims to be the grandson of late Smt. Devki Devi, a member of respondent No. 2-Society. Petitioner's father, Dr. S.K. Jindal had also at one stage staked his claim for devolution of the membership of Smt. Janki Devi on him. The facts relevant for purposes of the present petition may be briefly noted :

It is the petitioner's case that Smt. Devki Devi was a member of respondent-Saraswati Cooperative Group Housing Society vide membership No. 27. A share certificate No. 19 dated 30th January, 1991 had been issued in her favor. Smt. Devki Devi expired on 3rd February, 1994. Petitioner claims that he was a nominee of Smt. Devki Devi. An amount of Rs. 4.07 lakhs stood deposited with

the Society in respect of the membership and towards the purchase of the flat by Smt. Devki Devi. The society disputed the locus of the petitioner and did not recognize him as the nominee. The petitioner applied for transfer of the interest of Smt. Devki Devi and membership in his favour on 12.01.2000. As the Society did not act, the petitioner made request before the Registrar, Cooperative Societies. The Registrar has declined the same vide his order of 11.03.2002. Petitioner challenged the same before the Financial Commissioner in revision. The same was also rejected vide impugned order dated 19.12.2006. It may also be noted that Dr. S.K. Jindal, father of the petitioner had also filed an application for transfer of membership in his favour. However, in due course, the petitioner and his father had stated that there was no dispute between them and the latter gave no objection to the transfer of membership in favour of the petitioner who is alleged to be the nominee of Smt.Devki Devi.

3. Let us now consider the reasons of the Society for declining to transfer the membership. It is claimed that Smt.Devki Devi vide her resignation letter dated 6.4.1992 had resigned from the membership of the Society and the membership subscription of Rs. 100/- was refunded to her on 16.5.1992. The Administrator has produced on record the resignation letter dated 6.4.1992 and the receipt dated 16.5.1992. The Society also contends that the petitioner has no locus as there is no nomination on record in his favour by Smt.Devki Devi. Further petitioner also does not fall in class I heir especially when his father and uncles are alive.

4. Mr. Sumit Bansal on behalf of the petitioner vehemently urged before us that the resignation letter dated 6.4.1992 was a forged one and was part of the fraud of the erstwhile Secretary and President of the Society who deprived the bona fide members by admitting their own relations as members and thereby committed fraud and cheated the Society.

5. Mr. Shaju Francis appearing on behalf of Raj Kumar Kohli, Ex-President of society submits that none of the family members of Raj Kumar Kohli are members of the Society.

6. We have perused the original record as produced by the Administrator Sh. P.K. Khanna including the alleged resignation letter dated 6.4.1992 and original application form dated 9.8.1982. There are, however, several factors which negate the factor of resignation on 6.4.1992. Mr. Sumit Bansal has sought to place reliance on handwriting expert's opinion on record in support of his contention that the signatures on aforesaid two alleged documents were not genuine. Even if we were to ignore the said report, the two other factors which appeal to us are that after the alleged resignation of Smt.Devki Devi on 6.4.1992, the Society kept on receiving amounts and had been issuing receipts in her favour till 1996 and a total sum of Rs. 4.07 lakhs stood to her credit and this fact is duly corroborated by the entries in the balance sheet. Learned Counsel for the petitioner during the course of arguments has also pointed out that the membership certificate issued to her was in the year 1991 and in fact, it

was in the year 1991 that Smt.Devki Devi had been enrolled as a member in place of Ms.Sheeba Saini. This apart, the Society itself on 20th February, 1998 had issued a certificate certifying that Smt. Devki Devi was a member of the Society and had deposited Rs. 4.07 lakhs. This certification is issued as late as on 20th February, 1998. If indeed the resignation had come into effect on 6.4.1992, there was no occasion to issue such a certificate or to accept Rs. 4.07 lakhs from the said person.

7. Learned Counsel for petitioner, Mr. Sumit Bansal during the course of arguments, has submitted that late Smt. Devki Devi had become a member in lieu of Ms. Sheeba Saini and the amount lying to her credit in the record of the Society was transferred to Smt. Devki Devi's account. Smt. Devki Devi had directly paid the amount to Smt. Sheeba Saini. This fact is sought to be corroborated by a letter written by the Secretary of the Society which has been tendered in Court and the same has been taken on record.

8. From the foregoing narration of events and discussion we are, prima facie, satisfied that the case of petitioner's grandmother having tendered her resignation on 6.4.1992 is not made out and is not sustainable. Accordingly, we set aside the orders dated 19.12.2006 and 11.3.2002. Once a resignation is not found to be a genuine one, the question of the appeal being barred by limitation would also not arise as the limitation would only commence from the date the request for transfer was declined and not from the original date of resignation. We may, however, note at this stage that while we set aside the impugned orders, we are not expressing any opinion on the petitioner being the legal heir or nominee entitled to inherit the membership of Smt. Devki Devi. Petitioner would be at liberty to move before the Registrar, Cooperative Society about his entitlement to the membership of Smt. Devki Devi in accordance with law. The allotment of the last flat shall be subject to the outcome of the decision of the Registrar, Cooperative Societies on the application of petitioner for transfer of membership as is mentioned above. Learned Counsel for petitioner submits that petitioner would be moving necessary application within a month. The Registrar, Cooperative Societies shall make every endeavor to dispose of the same as early as possible.

9. The writ petition is allowed with the aforesaid observations. The question of initiating proceedings and further inquiry against the office bearers of the Society would be considered in the pending writ petition No. 4491/2004. For this purpose even though this writ petition stands disposed of, let the file of this writ petition be tagged along with case file of WP(C) No. 4491/2004.