

(2000) 08 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 416 of 1995

Baij Nath Singh

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Co-operative Societies Rules, 1973 — Rule 25

Citation : (2000) 57 DRJ 45

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. Arvind Nigam, for the Appellant; Mr. Ramesh Chandra, Senior Advocate, Mr. Manish, Ms. Shalini Verma and Mr. Anil Kumar, for the Respondent

Judgement

Vijender Jain, J.—Aggrieved by the order passed by the Financial Commissioner, the petitioner has filed the present writ petition, inter alia, challenging the order of the Financial Commissioner as well as Registrar, Cooperative Societies holding petitioner not entitled to become member of the respondent no.6/Society in terms of the bye-law of the Society as well as under Rule 25 of the Delhi Cooperative Societies Rules, 1973.

2. Mr. Nigam, learned counsel for the petitioner has contended that the bye-laws of the Society which prescribes a prohibition cannot be made applicable in the case of the petitioner. By-law 5 (e) which is relevant to decide the controversy between the parties is as follows:

"5(e). He or his wife (she or her husband), in case of a woman or any of his/her dependent does not own a dwelling house or plot for building a house in Delhi, New Delhi, Dehi Cantonment."

3. He says that owning of an un partitioned common area measuring 38 sq. yards in a Village Lal Dora abadi would not be hit by the plain language of bye-law 5 of the Society. He has further contended that house which is an ancestral

house in which the petitioner has got a share is in a Lal Dora village abadi and would squarely fall within the meaning of "congested locality". He has further contended that his case is squarely covered by a decision of this Court in CWP No. 3150/85 entitled Navjivan Cooperative House Building Society Ltd. Vs. Delhi Cooperative Tribunal, Delhi & Others decided on 10.7.1987 where a similar question arose with regard to the interpretation of Rule 25 of the Cooperative Societies Rules.:

"(29) It is not asserted by the petitioner Society or the Registrar of Cooperative Societies that House No.145, Savitri Nagar, New Delhi is in a colony approved by the Corporation. It is also not asserted by the petitioner Society or the Registrar that House No.145, Savitri Nagar, New Delhi is in an unapproved colony in the Union Territory in Delhi. What is urged by the Registrar, Cooperative Societies is that the decision taken by the Registrar in the matter of Rule 25 has to be that of the Registrar Cooperative Societies alone, and that no person or body can interfere or determine whether a particular residential house or a plot of land is such that disqualification is incurred by the person who holds it. I do not agree. The Registrar is bound by a decision of a civil court given in a case which the court had jurisdiction to decide. The authorities under the Delhi Cooperative Societies Act, 1972 cannot be permitted to ignore decision of civil courts. Annexure R-10 dated 4.2.1984 written by the Delhi Development Authority to the Registrar of Cooperative Societies shows that, in any case the premises No.145, Savitri Nagar, New Delhi is not in an authorised or unauthorised colony. The land, it says, is in "Lal dora" residential area of village Sheikh Sarai, and is also subject matter of "earmarked" acquisition since 7.1.1969...."

4. On the other hand, Mr. Chandra, learned senior counsel for the respondent/Society has contended that even after amendment to Rule 25 amended proviso would not f the bye-laws of the Society i.e. bye-law 5. Learned counsel for the respondent no.6/Society has contended that Rule is not in derogation of the bye-laws of the Society but was to supplement the bye-laws. Another contention which has been raised by learned counsel for the respondent is that the amendment to the Rule came on 24.5.1982 and, Therefore, that will not help the case of the petitioner as petitioner became a member in the year 1980. He has further contended that even according to the amended rule, the house of the person according to the amended proviso has to be in a slum area. The case of the petitioner does not fall in that area as his house is not in a slum area. Lastly, Mr. Chandra has contended that even if one had a look at sub-rule 3 of rule 24, the petitioner has to fulfill the bye-laws of the society and he cannot be a member in contravention of any bye-law of the Society. In support of his contention, learned counsel for the respondent has relied upon a Division Bench judgment of Patna High Court in the case of Postal Cooperative House Construction Society Ltd. Vs. The Registrar and Another 1972 (8) CLJ 271.

5. I have given my careful consideration to the arguments advanced by learned counsel for both the parties. Against the judgment rendered in Navjiwan's case

(supra) no appeal was filed by the Registrar, Cooperative Societies against the interpretation of Rule 25. I rely on the said judgment. It has to be borne in mind that when the Cooperative Societies Act was enacted, the legislative intention on account of pressure on land in Delhi was to allot land to the cooperative societies, so that they could give individual plots to the members of that society. Now instead of plots, the Cooperative Housing Societies are being allotted land by the superior Lesser for onward allotment to its members of flats. The whole idea was that those persons who do not have any residential accommodation in Delhi should be benefited by this legislation. It was a social welfare legislation to give shelter to the residents of Delhi. Clause (5) in the bye-laws of the Society whereby if a person or his/her spouse owns a welling house or plot for building a house in Delhi, New Delhi or Delhi Cantonment could not have become a member of the Society has manifested the same aspirations. Rule 25 of the Cooperative Societies Rule is also to the same effect. It was enacted in order to prevent persons who had some residential accommodation in Delhi so that those who do not have any residential accommodation could be given some plots or flats. It could not have been the legislative intention to debar people who are having small holdings like the petitioner. Petitioner from his ancestral house has got a share of 38 sq. yds. in Lal Dora, i.e. a village abadi. Rule or bye-laws cannot be interpreted so as to prohibit such class of petitioner from acquiring membership of the Society for allotment of a plot. Therefore, the submission of the learned counsel for the respondent that because it is not a notified slum area although the fact that the residential house of the petitioner is in Lal Dora is not denied, is too far fetched an argument. One has to go to the reasons for bringing on the statute book Rule 25. It is not mere technicalities that word Lal Dora has not been mentioned in the rule, Therefore, no benefit can be given to petitioner although the house may be in a congested locality which may be otherwise a slum but the said person shall stand disqualified in terms of Rule 25, this approach is totally unwarranted in law. Reliance placed by counsel for the respondent on Postal Cooperative House Construction Society Ltd. (supra), I am afraid, is of no help to the case of the respondent society. In that case there was inherent bar for becoming a member of the society if a person was not a postal employee or was not his legal heir. That case was decided on account of the inherent bar to membership as society was formed especially for postal employees. Therefore, I do not find any force in the arguments of the learned counsel for the respondent. I set aside the impugned order and allow the writ petition. Rule is made absolute. I declare the petitioner to be a member of the society and, Therefore, petitioner is entitled to all the consequential benefits of being a member of the Society.

6. Writ petition is allowed.