

(1991) 01 DEL CK 0060

In the Delhi High Court

Case No : Civil Writ Appeal No. 3106 of 1989

Daya Wanti Dasuja

APPELLANT

Vs

Registrar, Cooperative Societies and Another

RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 47 DLT 223

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : S.K. Kaul, Ravi Gupta and K.L. Budhiraja, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) Rule D.B.

(2) In this petition the prayer is that the letter terminating the membership of the membership of the petitioner by respondent No. 2 and the rejection of the representation by respondent No. 2 should be quashed.

(3) The husband of the petitioner, namely, Shri Shiv Dayal Dasuja, is stated to have been a member of respdt. No. 2 which is a house building society. The husband of the petitioner died in 1965. The petitioner was the nominee with the respondent Society and after her husband's death, had been paying to respondent No. 2 various sums of money, totalling Rs. 7.283.00. In proof thereof, the petitioner has annexed with the petition a receipt of July 1977 for an amount of Rs. 3.700.00 and thereafter a demand was received vide notice dated 4/08/1985 and a sum of Rs. 3,500.00 was paid by the petitioner in that month itself,

(4) Suddenly, according to the petitioner, a cheque of Rs. 7.283.00 was received by her in August, 1985. The petitioner thereafter went to the office of respondent No. 2 where she received a letter dated 20/08/1985 in which it is stated that the

petitioner had not paid a sum of Rs. 17.00, being the balance of the share value, and Therefore, her primary membership was terminated. The case of the petitioner is that no demand had ever been raised and, in fact, vide cheque dated 8/03/1983 she was given a refund of Rs. 20.00 and even if it is to be assumed that there was an amount of Rs. 17.00 outstanding, then the same should have been adjusted against the sum of Rs. 20.00. According to the petitioner, the cheques received by her for Rs. 7,283.00 and Rs. 20.00 were never encashed by her. The petitioner is stated to have made a representation to the Registrar of Co-operative Societies, respondent No. 1 but got no redress. After approaching the Delhi High Court Legal Aid and Advice Board, the present petition has been filed.

(5) In the reply affidavit filed on behalf of respondent No. 2, it is contended that the dispute had been referred u/s 60 of the Delhi Cooperative Societies Act, 1972 and the claim was dismissed in default as no one appeared. No reply has been filed in detail controverting the various other allegations contained in the writ petition.

(6) In the rejoinder it has been contended by the petitioner that she had approached one Mr. S.R. Ahuja, Advocate to represent her case but there after she did not hear from him. No application was filed by her or under her signatures.

(7) We find that respondent No. 2 has placed on record a photo copy of the application dated 19/09/1985 stated to have been filed on behalf of the petitioner. However, the said application does not bear her signatures. In fact, the said application does not bear the signatures of the advocate, Shri S.R. Ahuja also. Respondent No. 2 has also filed an order dated 19/02/1986 whereby the claim of the petitioner was dismissed by the Joint Registrar (Arbitration) on account of her non-appearance.

(8) Under the circumstances we are inclined to accept the version of the petitioner that she was not aware of any petition having been filed for arbitration or we see no reason as to why the petitioner would not have pursued her case if she knew that it had been initiated by her lawyer. In any case the claim, if any, having been dismissed in default, cannot be a reason for not exercising the jurisdiction by us under Article 226 of the Constitution especially in view of the fact that the interference in the present case is called for.

(9) As already noted, the petitioner was admittedly a member of respondent No. 2 Society after her husband's death. The only reason for terminating her membership is that she did not pay Rs. 17.00. It is alleged that this sum of Rs. 17.00 was called for by an insertion in the newspaper. According to the petitioner, she is an illiterate lady and she was not aware that she had to pay Rs. 17.00. In our opinion for the alleged non-payment of the paltry sum of Rs. 17.00 the membership of the petitioner should not have been terminated especially when she has paid all the other amounts which were claimed by the Society amounting to Rs. 7,283.00. That apart, as already noticed earlier, in

1983 a refund of Rs. 20.00 was sent to the petitioner. The claim of Rs. 17.00 is stated to have been raised in the year 1980. If the amount of Rs. 20.00 was due to the petitioner, there is no reason that the same should not have been adjusted by the Society itself against its claim of Rs. 17.00. In our opinion, on the facts and circumstances of this case the action of the respondents in terminating the membership of the Society was wholly unjustified and uncalled for .

(10) For the aforesaid reasons, we allow this writ petition and issue a writ of mandamus quashing the letter dated 20/08/1985 and any resolution which might have been passed by the respondent Society expelling the petitioner, and further issue a writ of certiorari quashing the order dated 19/02/1986 passed by the Joint Registrar (Arbitration). We further issue a writ of mandamus to respondent No. 2 to restore the membership of the petitioner immediately.

(11) The petitioner will be entitled to allotment and possession of plot of land to her on the same terms and conditions on which plots have been allotted to similarly placed other members of the respondent Society and the allotment should be made to the petitioner on the basis of her original membership and seniority. Allotment should be made by respondent No. 2 Society in favor of the petitioner within one month from today. A copy of this judgment be given duly to the Counsel for the petitioner.