

(1999) 07 DEL CK 0066
In the Delhi High Court
Case No : CW No. 3853/97

Kanwar Chand Saboo

APPELLANT

Vs

Prem Kutir Co-op. Group Housing Society Ltd.

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Citation : (1999) 4 AD 833 : AIR 1999 Delhi 353 : (1999) 80 DLT 521 : (1999) 50 DRJ 471 : (1999) 3 RCR(Civil) 681

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Miss Pinky Anand and Miss Geeta Luthra, for the Appellant; Mr. Ramesh Chandra, Mr. Sanjay Poddar and Miss Geeta Malhotra, for the Respondent

Judgement

Cyriac Joseph, J.—The petitioner was a member of respondent No. 1 - Prem Kutir Co-operative Group Housing Society Limited. He challenges the order dated 15.4.1994 passed by respondents No. 2 - the Registrar Co-operative Societies - in exercise of his powers under Rule 25(4) of the Delhi Co-operative Societies Rules, 1973 (hereinafter referred to as "the Rules") holding that the petitioner is disqualified to be a member of respondent No. 1 society and that the petitioner's membership of the said society has ceased.

2. The petitioner was a member of respondent No. 1 society. His membership number was 58. It was brought to the notice of the second respondent that the petitioner owned a residential house bearing No. 148, Block-A, Sector-2, Rohini, Delhi and thereby incurred a disqualification under Rule 25(1)(c) of the Rules. Thereupon respondent No. 2 issued a show cause notice dated 15.2.1994 calling upon the petitioner to show cause as to why his membership of respondent No. 1 society should not be declared to have ceased. The petitioner was also offered a personal hearing by respondent No. 2. In response to the said show cause notice the petitioner stated before respondent No. 2 that he had resigned from respondent No. 1 society in 1982. In support of his claim that he had resigned from the society the petitioner filed the photocopy of a letter of resignation

addressed to the Secretary of the society stating that he was not able to continue as member of the Society due to domestic circumstances and was Therefore submitting his resignation. The said letter was undated. Though the Secretary of the society was stated to have signed on the resignation letter as token of receipt, the signature of the Secretary did not bear any date and there was no stamp of the society. The Secretary of the society who was present before the Registrar expressed his inability to identify the signatory. The Secretary of the society Shri Pradeep Jhunjunwala produced the Personal Ledger of the members as well as copy of the proceedings of the Special General Body Meeting of the Society held on 18.4.1993 for election of the office bearers. In the Personal Ledger of the petitioner a sum of Rs. 99,083/- stood in his credit as on 31-3-1992. There were credit entries of different amounts on different dates starting from 15.12.1979 to 31.3.1983. On the debit side there was only one entry of Rs. 17/- on 31.3.1992 towards the interest for December 1991. There was no debit entry of any amount refunded to the petitioner. From the proceedings of the Special General Body Meeting held on 18.4.1993 the Registrar found that the petitioner had attended the said meeting and that his name appeared at Serial No. 1 of the persons who attended the meeting. It also bore his signature. He was also elected member of the Managing Committee. The Secretary of the society stated before the Registrar that the petitioner had never resigned from the society as alleged by him and that he had been elected President of the society in two elections held before 18.4.1993. In view of the above facts and circumstances the Registrar rejected the contention of the petitioner that he had resigned from the society in 1982 and held that the petitioner was disqualified to be a member of respondent No. 1 society.

3. In this writ petition also the petitioner has stated that he had resigned from the society in the year 1982. However, there is no material to prove that the petitioner had actually resigned from the membership of the society in 1982. Even the facts admitted by the petitioner establish that the petitioner continued as member of the society even after 1982. Hence I do not find any reason to disagree with the finding of the Registrar that the petitioner had not resigned from the membership of the society in 1982 as claimed by him and that he continued to be a member of the society even after 1982.

4. In this writ petition the petitioner has admitted that he had booked a flat under Delhi Development Authority in 1982 and that he was allotted the said DDA flat bearing No. 148, Block-A, Sector-2, Rohini, Delhi in 1985. It is also stated that owing to financial circumstances the petitioner was forced to sell the said DDA flat for Rs. 25,000/- through a broker and that the petitioner has no right, interest or title whatsoever in the said DDA flat. However, the petitioner has not stated the date on which the said DDA flat was sold through the broker. At any rate the petitioner has no case that he had sold the flat before the impugned order was passed on 15.4.1994.

5. As per Rule 25(1)(c)(i) of the Rules no person shall be eligible for admission

as a member of a housing society if he owns a residential house or a plot of land for construction of a residential house in any of the approved or unapproved colonies or other localities in the Union Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or freehold basis. As per sub-rule (2) of Rule 25, notwithstanding anything contained in the rules or the bye-laws of the co-operative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred. As per sub-rule (4), if any question as to whether a member has incurred any of the disqualification referred to in sub-rule (1) arises, it shall be referred to the Registrar for decision and his decision shall be final and binding on all concerned.

6. Respondent No.1 society is admittedly a Housing Co-operative Society. While being a member of the said society the petitioner admittedly booked a flat under the DDA in 1982 and he was allotted flat No. 148, Block - A, Sector-2, Rohini, Delhi in 1985. With the allotment of the said flat to the petitioner he became subject to the disqualification specified in sub-rule (1)(c)(i) of Rule 25 of the Rules. Hence in view of the provisions contained in sub-rule(2) of Rule 25 of the Rules of the petitioner shall be deemed to have ceased to be a member of respondent No. 1 society from the date when the disqualification was incurred. As per sub-rule (4) of Rule 25, respondent No. 2 was competent to order that the petitioner ceased to be a member of respondent No. 1 society. Hence the impugned order was passed by the Registrar with competence and jurisdiction and for valid reasons and sufficient grounds. The impugned order was passed in accordance with the provisions contained in Rule 25 of the Rules. The impugned order is not vitiated by any illegality or material irregularity. Though the petitioner has alleged that the impugned order is mala fide, he has not produced any material to substantiate the allegation. Though the petitioner has stated several facts which are irrelevant to the issue involved in this case it is not necessary to deal with them as they are not relevant to the issue.

7. Learned counsel for the petitioner brought to my notice the judgment of the Hon"ble Supreme Court in Jagdish Singh Vs. Lt. Governor Delhi 1997 III AD SC 545 and contended that the petitioner's membership of the first respondent society could not be affected by the later allotment of the DDA flat in his favour. In Jagdish Singh (supra) the Hon"ble Supreme Court was considering the disqualification under Rule 25(1)(c)(iii) of the Rules. As per Rule 25(1)(c)(iii) of the Rules, no person shall be eligible for admission as a member of a Housing Co-operative Society if he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar. The Hon"ble Supreme Court held that by operation of the provision in Rule 25(1)(c)(iii) the membership of the first society would not cease and that the cessation of membership would be only in respect of the second society. In the present case the disqualification incurred by the petitioner was not under Rule 25(1)(c)(iii) but was under Rule 25(1)(c)(i). Hence the above mentioned

judgment of the Hon"ble Supreme Court has no application to the facts of the present case.

8. In the light of the above discussion the petitioner's prayer for quashing the impugned order dated 15.4.1994 is liable to be rejected. His claim for restoration of his membership also cannot be entertained.

9. The petitioner has also prayed for a direction to transfer his membership in the name of his daughter Archana Saboo. First of all any request for transfer of membership of a co-operative society is not to be considered by this Court at the first instance. The request has to be first considered by the authorities concerned in accordance with the rules and bye-laws. Secondly, the petitioner has no membership now to be transferred in the name of his daughter. As per sub-rule (2) of Rule 25 of the Rules the petitioner shall be deemed to have ceased to be a member of the first respondent society from the date on which the disqualification was incurred, that is, from the date on which the DDA flat was allotted in his name. Therefore, the prayer of the petitioner for transfer of his membership in the name of his daughter is also liable to be rejected.

10. Hence there is no merit in this writ petition and it is accordingly dismissed. There will be no order as to costs.