

(1998) 07 DEL CK 0094
In the Delhi High Court
Case No : Civil Writ No. 3326 of 1982

Mahender Kumar Jain

APPELLANT

Vs

Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 25, 25(1), 25(4)

Citation : (1998) 46 DRJ 842

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

Bench : Single Bench

Advocate : Arun Mohan and Vaishalee Mehra, for the Appellant; Sanjay Poddar, for the Respondent

Judgement

Vijender Jain, J.—By this writ petition the petitioner challenges quashing of the impugned order dated 19.8.1982, whereby the order passed by the Joint Registrar inter alia stating that the membership of the petitioner could not be cleared as the petitioner was dealing in the business of purchase and sale of immovable property in the Union Territory of Delhi. Further prayer has been made to issue appropriate direction to the respondent to consider the case of the petitioner by respondent No.2 society. Vide order dated . 4.12.1982 a plot of 200 sq. yards was reserved for the petitioner. The petitioner died during the pendency of the writ petition on 20.11.1985. The legal heirs of the petitioners were brought on record vide order dated 3.4.1986. Affidavits have been filed by the L.Rs. to the effect that son of the petitioner Pradip Jain was entitled for the plot in question, if ultimately, the petitioner succeeds in the writ petition. Affidavits to that effect have been filed by Smt. hanti Rani Jain (widow of the petitioner), Shri Subhash Chand Jain (son), Shri Rishi Kumar Jain (son), Shri Pawan Kumar Jain (son), Shri Pradeep Kumar Jain (son), Shri Sanjeev Jain (son), Smt. Kamal Jain (daughter), and Smt. Veena Jain (daughter). The affidavit of Shri Pradeep Kumar Jain is also on record Shri Pradeep Kumar Jain, in his affidavit deposed in paragraphs 3, 5, 6 and 7 as under:

3. "I, or my wife, or my minor children do not own a house or flat or plot (except the plot in suit) anywhere, either in Delhi or outside. Similarly myself or my wife or any of my children are not members of any Housing society in Delhi.

5. I earn my livelihood by running a retail shop of selling cloth at New Delhi South Extension Part-II Market, which I have been doing since 1980. . 6. That since 1951 my father was only carrying on the profession of a Real Estate Agent. He only got commission for bringing together a buyer and a seller. He was not a seller/purchaser of properties. He did not do any construction or development work.

7. I do not deal in purchase or sale of immovable properties either as principal or as agent in the Union Territory of Delhi. I also undertake not to do so in future."

2. Mr. Arun Mohan learned counsel for the petitioner has contended that the petitioner never incurred disqualification under Rule 25 (1) (c) (ii) of the Societies Rules and the said Rule cannot be invoked in respect of the petitioner, who had been enrolled as a member in the year 1966. Learned counsel for the petitioner further argued that in any event of the matter a person, who brings two parties together for a transaction is only acting as an agent in relation of the property and cannot be termed as a "dealer" in terms of the aforesaid Rule. Learned counsel contended that any other interpretation if given to the said Rule, the Rule would be arbitrary, discriminatory and capricious. Another argument, which has been advanced by the learned counsel for the petitioner, was that mandate of Sub-rule 4 of Rule 25 was not followed by the respondent in as much as neither any opportunity of being heard was afforded to the petitioner, nor the decision taken to disqualify the petitioner was sent for the approval of the Registrar as contemplated under Sub-rule 4 of Rule 25 of the Rules. It has been further contended before this court by the learned counsel for the petitioner that there was neither any evidence on record of the respondent nor even a single sale deed to show that petitioner has either purchased or sold for himself or has sold/purchased as an agent of someone to demonstrate that the petitioner was dealing in the sale and purchase of the property and in the absence of any material on record, disqualification of the membership of the petitioner was unwarranted and illegal.

3. No body has been appearing for respondent No.2 Society. As a matter of fact the respondent-society has recommended the name of the petitioner for allotment of the plot in the list given to the Delhi Development Authority. The said list was sent in the Office of the Registrar Cooperative Society on 1.5.1982. Mr. Poddar, learned counsel for the respondent contended that the petitioner was allotted plot No. 5/30, measuring 200 sq. yards in Sarvpriya Vihar, New Delhi, in the draw of lot held on 28.12.1989. It is contended that the membership of the petitioner was void as it was in contravention of Rule 25 (1) (c) (ii) and as per the bye-laws of the society. Mr. Poddar further contended that in terms of Rule 25 the Cooperative Society Rules, petitioner was a dealer in the sale or purchase of properties.

4. Counsel for the respondent has contended that even though petitioner has neither purchased nor sold the property as Principle or as agent still he was liable to be disqualified in terms of plain language of the aforesaid Rules. He has further contended that the petitioner is not entitled for allotment of any plot as the petitioner stood disqualified right from the inception of his membership.

5. I have given my careful consideration to the arguments advanced by both the parties. It is pertinent to quote order dated 11.12.1992 passed by this Court:-

"There is no specific order as to the disqualification of Shri Mahinder Kumar Jain, petitioner, under Rule 25 (1) (c) (ii) of the Delhi Cooperative Societies Act, nor any adjudication in terms of Sub-rule (4) of Rule 25."

6. The court had observed that Registrar Cooperative Societies has not passed any order in terms of Rule 25 (1) (c) (ii) nor any adjudication has been done by the Registrar in terms of Sub-rule 4 of Rule 25. As a matter of fact, the respondent has proceeded on the basis of a complaint, disqualifying the petitioner without making any independent enquiry. Mr. Poddar, learned counsel for the respondent has contended that the respondent had disqualified the petitioner on account of his own admission, as the petitioner has admitted that he was an agent of the DLF and was a properly dealer. I do not think that was a proper course to disqualify a person, who has acquired a vested right being the member of a Society. What has been intended by Sub-rule 1 (c) (ii) of Rule 25 of the Cooperative Societies Rule is to debar those persons, who were dealing in the property i.e. either as purchaser or seller may be as a Principal or as an agent. The very idea of making such rule was to extend benefit of cooperative movement to those, who do not have a dwelling unit of their own in Delhi, it was plot in question at that time, with the paucity of land in modern times instead of plot it has come to flats. Even if it is assumed that on account of the admission of the petitioner that he was an agent of DLF a duty was cast upon the respondents to have collected some material before taking the step of disqualifying the petitioner. In view of the what has been quoted above i.e. the order dated 11.11.1992, no adjudication by the Registrar in terms of sub Rule 4 of Rule 25 has been done in his case. I do not find any force in the arguments of Mr. Poddar that it was for the petitioner to invoke the jurisdiction of Registrar for adjudication either by filing a reference application in terms of Sub-rule 4 of Rule 25. Sub-rule 4 of Rule 25 makes it obligatory that once an order has been passed under sub Rule 1 of Rule 25, the same shall be referred to the Registrar for decision. The use of word "shall" gives a mandatory character to Sub-rule 4 of Rule 25 if no reference was sent to the Registrar and no adjudication done in this regard merely non-filing of reference either by the Society or by the petitioner will not defeat the right of the petitioner from getting the same adjudicated in terms of Rule 25 (4) of the Rules. It is not the case of the respondents that petitioner was not agitating his grievances after being disqualified by the Joint Registrar in this regard. As a matter of fact, petitioner was relentlessly pleading with the respondent that he was not to be disqualified

from being a member of the Society. As due procedure has not been followed by the respondent neither any opportunity of being heard has been given to the petitioner nor there was any material on record to invoke Rule 25(l)(c)(ii) of the Cooperative Societies Rules. I quash the impugned order dated 19.8.1982. A direction is issued to respondents to allot the petitioner the reserved plot, which was reserved subsequent to the order passed by this court on 21.9.1982, subject to petitioner's fulfilling the necessary and normal conditions for allotment

7. The rule is made absolute. No order as to cost.