

(2009) 11 DEL CK 0052

In the Delhi High Court

Case No : Writ Petition (C) 6807 of 2008

Mayurdhwaj CGHS Ltd.

APPELLANT

Vs

Registrar, Cooperative Societies and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 35, 35(1), 35(6)

Citation : (2009) 11 DEL CK 0052

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : S.K. Kaushik, for the Appellant; Anil Sharma, for Sujata Kashyap and R.S. Tomar, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed by the Mayurdhwaj Co-operative Group Housing Society Limited (hereinafter referred to as "the society"), being aggrieved by the order dated 19.02.2008 passed by the Delhi Cooperative Tribunal in an appeal u/s 112 of the Delhi Co-operative Societies Act, 2003 (hereinafter referred to as "the 2003 Act"), which, in turn, was directed against the order passed by the Registrar of Co-operative Societies on 20.11.2006 under Sections 60 and 61 of the Delhi Co-operative Societies Act, 1972 (hereinafter referred as "the 1972 Act"). By virtue of the order dated 20.11.2006 passed by the Registrar of Co-operative Societies, it was held that the respondent No. 3 (Satish Kumar Gupta) was not entitled to be considered as a member through nomination made by Late Shri Ram Lal Dhamija on the ground that the said respondent No. 3 was neither a blood relative of the said Late Shri Ram Lal Dhamija nor was there any proof of inheritance provided by the said respondent No. 3.

2. The Delhi Co-operative Tribunal set aside the order dated 20.11.2006 passed by the Registrar-Co-operative Societies and directed the petitioner society as well as the Registrar of Co-operative Societies to accept the respondent No. 3 (Satish Kumar Gupta) as a member and to allot him a flat in the society at the earliest

after he completed the formalities, if any. The said Tribunal found that there was no requirement of a nomination being made in favour of a blood relative under the 1972 Act. The Tribunal also found that the society had earlier already accepted the respondent No. 3 as a member and that it was only after a lapse of nine years that the society refused to allot him a flat and, that too, only because the Registrar of Co-operative Societies had not accepted him as a member.

3. We may also note that in the order dated 20.11.2006, the Registrar of Co-operative Societies, while rejecting the respondent No. 3's claim to membership through nomination, also took the view that if the transfer of membership in such circumstances was allowed to be made in favour of the nominee without verifying the documents relating to proof of inheritance or any other legal documents submitted by the nominee, then the sale of flats in the co-operative group housing societies was likely to take place through this "back door channel" without any payment of stamp duty on the transfer of documents as everybody would be able to nominate the purchaser and the nomination could also be changed by any member at any moment during his life time. According to the Registrar of Co-operative Societies, this would give rise to transfers of membership without payment of any stamp duty/ Government fees and which would be exploited by the builders / property dealers in the co-operative group housing sector.

4. We may state straightaway that this is an absurd and illogical conclusion arrived at by the Registrar of Co-operative Societies inasmuch as the nomination only takes effect on the death of the person who nominates. Furthermore, a person dies only once. Therefore, the apprehensions on the part of the Registrar of Co-operative Societies are not only misplaced but are also illogical. The Tribunal, examining this situation, has also rightly disagreed with the said conclusion of the Registrar of Co-operative Societies.

5. The facts of the case are that Late Shri Ram Lal Dhamija was a member in the petitioner society and he had initially paid some money to the society. At the time of enrolment itself, he had indicated the name of the respondent No. 3 (Satish Kumar Gupta) as his nominee. Late Shri Dhamija passed away on 05.01.1989 and immediately thereafter, the respondent No. 3 approached the petitioner society for transferring the membership in his name on the basis of the said nomination. The request was accepted by the society through its resolution dated 28.03.1989 and the society started demanding money for the cost of construction from the respondent No. 3. As and when the demands were made, the respondent No. 3 met the demands of the society. It may be pointed out that the society had also forwarded the name of the respondent No. 3 to the Registrar of Co-operative Societies for inclusion of his name in the draw of lots. Since the Registrar of Cooperative Societies insisted on obtaining certain documents with regard to proof of inheritance and blood relationship and the same were not forthcoming, the Registrar of Co-operative Societies took the stand that the transfer by way of nomination in favour of the respondent No. 3, not being

amongst the first degree of blood relations, could not be made in favour of the respondent No. 3 and, therefore, the respondent No. 3 could not be considered as a member of the society. The Registrar of Co-operative Societies was of the view that the flat could not be allotted to the respondent No. 3 in the said society. Consequently, the petitioner society informed the respondent No. 3 in the year 1999 that he could not be considered as a member and that the Registrar of Co-operative Societies has excluded his name from the list of members for the draw of lots.

6. Thereafter, the petitioner approached the Delhi High Court twice by way of separate writ petitions, details of which need not be gone into at this stage. It is sufficient to note that after the directions given by the High Court, the Registrar of Co-operative Societies considered the matter and passed the impugned order dated 20.11.2006 which was set aside in appeal by the Delhi Co-operative Tribunal by virtue of the impugned order dated 19.02.2008.

7. The only issue that arises for consideration is whether the respondent No. 3 could be regarded as a member of the society for the purposes of allotment of a flat on the nomination being made by Late Shri Ram Lal Dhamija.

8. Section 26 of the 1972 Act dealt with transfer of interest on death of members. The said provision would be applicable in so far as the present case is concerned. Section 26 of the 1972 Act reads as under:

26. Transfer of interest on death of members.-(1) On the death of a member a co-operative society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf , or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or bye-laws:

Provided that.- In the case of a co-operative society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest as ascertained in accordance with the rules or bye-laws.

In the case of a co-operative society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and bye-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

No such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be.

A co-operative society shall, subject to the provisions of Section 36 and unless

within six months of the death of member prevented by an order of a competent court, pay to such nominee, heir and legal representative, as the case may be, all other moneys due to the deceased member from the society.

All transfer and payments made by a co-operative society in accordance with the provisions of this Section shall be valid and effectual against any demand made upon the society by any other person.

A reading of the aforesaid provision makes it clear that the co-operative societies may transfer the share or interest of the deceased member to the person nominated in accordance with the rules. It is only if there is no such person nominated that the transfer of the share or interest would be to the legal heirs or legal representatives of the deceased member. In the present case, it is an admitted position that Late Shri Ram Lal Dhamija had nominated the respondent No. 3 (Satish Kumar Gupta) in the nomination form itself. We also note that Late Shri Ram Lal Dhamija was unmarried and he did not have any heir or legal representative. In any event, the question of legal heirs or legal representatives would only arise if there was no nomination made by the said Late Shri Ram Lal Dhamija. Since he had made the nomination, the question does not arise. Rule 35 of the Delhi Cooperative Societies Rules 1973, which are the applicable rules, provides for nomination of persons. The said rule reads as under:

35. Nomination of Persons?

1. For the purpose of transfer of his share or interest under Sub-section (1) of Section 26, a member of a co-operative society may, by a document signed by him or by making a statement in any book kept-for the purpose by the society, nominate any person or persons. Where the nomination is made by a document, such document shall be deposited with the society during the member's life time and where the nomination is made by a statement, such statement shall be signed by the member and attested by one witness.
2. The nomination made under Sub-rule (1) may be revoked or varied by any other nomination made in accordance with that Sub-rule.
3. The record of nomination shall be kept by a co-operative society in such manner as may be laid down in the bye-laws.
4. When a member of a co-operative society nominates more than one person, he shall, as far as practicable, specify-the amount to be paid or transferred to each nominee in terms of whole share and the interest accrued in the Society.
5. The value of the share or interest transferred or paid to a nominee or nominees shall be determined on the basis of the sum actually paid by the member to acquire such share or interest unless the bye-laws provided for calculation on a different basis.
6. (i) Where a member of co-operative society has not made any nomination, the society shall, on the member's death, by a public notice exhibited at the office of

the society invite claims or objections for the proposed transfer of the share or interest of the deceased with the time specified in the notice.

(ii) After taking into consideration the claim or objections received in reply to the notice or otherwise, and after making such inquiries as the committee considers proper in the circumstances prevailing, the committee shall decide as to the person who in its opinion is the heir or the legal representative of the deceased member and proceed to take action u/s 26, subject to any appeal which may be filed to the Registrar by any person claiming the share, or interest of deceased member within 30 days of the decision of the committee. The orders of the Registrar on such appeal shall be final and binding upon all concerned.

7. If the committee refuses to transfer the share or interest of the deceased member to his nominee or his successor-in-interest, or fails to take a decision on the application of such nominee of the successor-in-interest as the case may be, within 30 days of the date of such refusal or the date of such application, a nominee or any person claiming to be a successor-in-interest of the deceased member shall file an appeal to the Registrar, who after hearing the society and the applicant or any other person interested, shall pass such order as he may deem fit and on such condition as he may impose and order made by the Registrar shall be final and binding on all concerned.

9. It would be apparent from the above extract that under Rule 35(1), a member can make a nomination in favour of "any person or persons". There is no restriction on the nominee being a blood relative of the said member making a nomination. Rule 35(6) which requires the issuance of a public notice and invitation of claims and objections in respect of the proposed transfer of share or interest of the deceased would come into operation only where a member of a co-operative society "has not made any nomination". In this case, the nomination had admittedly been made in favour of the respondent No. 3. Therefore, Rule 35(6) would not come into play at all. A conjoint reading of Section 26 of the 1972 Act and Rule 35 of the 1973 Rules makes it clear that there is no restriction on a member nominating anybody as his nominee. In other words, a member could have nominated a person who was not a blood relative.

10. The position under the 2003 Act is, however, somewhat different. Section 28, like Section 26 of the 1972 Act, deals with transfer of the interest on the death of a member. Section 28(1) of the 2003 Act stipulates that on the death of a member, the co-operative society shall transfer the share or interest of the deceased member to the person nominated in accordance with the rules. Rule 91 of the Delhi Co-operative Societies Rules, 2007 clearly stipulates that a member of a co-operative housing society may nominate a person or persons within his / her blood relations to whom, in the event of his death, his right and interest in the co-operative housing society shall be transferred. It also stipulates that joint and more than one nomination within the blood relations shall be permissible. Therefore, the position under the 2003 Act read with the 2007 Rules is somewhat different from the position which obtained under the 1972 Act read with 1973

Rules. Under the 1972 Act and the 1973 Rules, there was no embargo on a member making a nomination in favour of a person who may not have been his or her blood relative. To this extent, the finding of the Tribunal is correct and that of the Registrar of Co-operative Societies is wrong.

11. In view of the foregoing, the writ petition is dismissed and the impugned order dated 19.02.2008 passed by the Delhi Co-operative Tribunal is upheld. The petitioner society and the Registrar of Co-operative Societies are directed to accept the respondent No. 3 as a member and to allot him a flat in the society at the earliest after he completes the formalities and clears all his dues, if any. The learned Counsel for the respondent No. 3 states that all formalities and dues, if any, would be cleared within 15 days. The other formalities be completed by the society and the Registrar of Co-operative Societies within two months thereafter.

With these observations, the writ petition stands disposed of. The parties are left to bear their own costs.