

(2011) 10 DEL CK 0103

In the Delhi High Court

Case No : Writ Petition (C) No. 7330 of 2011

Mrs. Jyoti Khanna

APPELLANT

Vs

Registrar Cooperative Societies and Another

RESPONDENT

Date of Decision : 03-10-2011

Acts Referred:

Citation : (2011) 10 DEL CK 0103

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : Nimish Chib, for the Appellant; Abhijit Kakoti, for Rajiv Nanda, ASC for Respondent No. 1 and Sandeep Kumar, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

CM APPL. No. 16629/2011

Allowed subject to all just exceptions.

+ WP(C) No. 7330/2011

1. Rule D.B.

2. Learned Counsels for the Respondents accept notice.

3. At request of Learned Counsel for the parties, the petition is taken up for final disposal at this stage.

4. Late Shri Surender Khanna became a member of Respondent No. 2 society and a share certificate was issued to him on 30.08.1995. He nominated the Petitioner, his daughter-in-law, as the nominee on 15.07.1995. Late Shri Surender Khanna passed away on 29.04.1999.

5. The Petitioner applied for transfer of membership in her name on 24.10.1999 and Respondent No. 2 society processed the case of the Petitioner and issued a fresh share certificate in the name of the Petitioner on 20.10.2002. The name of

the Petitioner was forwarded by the society to the Registrar, Co-operative Societies (for short, "RCS") with all the requisite documents as in the case of other members.

6. It is stated that it is only in the year 2010 that a query was raised by the RCS qua the membership of the Petitioner on the ground that she was not the first blood relation of the deceased as she was the daughter-in-law. The society vide its letter dated 05.07.2010 explained the position to the RCS that Rule 35 of the Delhi Co-operative Societies Rules, 1973 (for short, "the said Rules") framed under the Delhi Co-operative Societies Act, 1972 (for short, "the said Act") was applicable in the case of the Petitioner and as per this Rule there is no such restriction of first blood relation in a nomination to be made by a member provided for under the said Rules.

7. On 19.09.2011, the list of 103 members of Respondent No. 2 society is stated to have been forwarded to DDA for holding draw of lots, while the name of the Petitioner has not been forwarded but has been detained only on the ground that the transfer of membership in the name of the Petitioner is not valid as she is not the first blood relation of the original member. The Petitioner sent a second representation, which was individually made on 21.09.2011, but there has been no response to the same.

8. Learned Counsel for the Petitioner submits that the issue is no more *res integra* in view of the judgment of the Division Bench of this Court in *Mayurdhwaj CGHS Ltd. v. Registrar Co-operative Societies and Ors.* 2009 X AD (DEL) 732, which has considered the relevant provisions of the said Rules and the said Act in this behalf. In para 8 of the judgment, Section 26 of the said Act dealing with transfer of an interest on the death of a member has been reproduced, which provides for a co-operative society to transfer the share or interest of the deceased member to the person nominated in accordance with the Rules made in this behalf and if no person has been nominated, to the heirs or legal representatives of the deceased member. Analyzing this Section, it has been found by the Division Bench that the question of inheritance by the legal heirs would only arise in the absence of a nomination. In so far as nomination of persons is concerned, Rule 35 of the said Rules deals with the same. The conclusion is contained in para 9 of the said judgment, which reads as under:

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.

9. Learned Counsel for the Respondent No. 2 society is ad idem on the aforesaid plea, while Learned Counsel for Respondent No. 1 / RCS states that some time may be given to dispose of the representation dated 21.09.2011.

10. We may notice that since the transfer of membership in favour of the Petitioner took place under the said Act, we examined the case under it. We may also notice that in so far as the Delhi Co-operative Societies Act, 2003 is concerned, the effect of Rule 30 of the Delhi Co-operative Societies Rules, 2007 is that nomination can be made "in first degree blood relation", which appears to be beyond the stipulation contained in Section 78 of that Act. The difference in the two provisions has also been noticed in para 10 of the judgment in Mayurdhwaj CGHS Ltd.'s case (supra). We are, however, not called upon to examine this issue in the present case.

11. We find that in normal circumstances, it may have been appropriate to leave the issue to be decided by the RCS in pursuance to the representation dated 21.09.2011 only with the direction to do so as per the principle laid down in Mayurdhwaj CGHS Ltd.'s case (supra). We are, however, faced with the situation where an earlier representation made by the society on 05.07.2010 has elicited no positive response despite the matter being squarely covered by the judgment of this Court in Mayurdhwaj CGHS Ltd.'s case (supra). In fact, such nature of cases should not be coming to Court since once the principle has been settled, Respondent No. 1 is not entitled to take a decision contrary to the said principle. The decision is not qua a particular member or a society alone, but the relevant Rule itself has been interpreted as aforesaid and it must, thus, uniformly be applied. We direct the RCS to issue necessary instructions to ensure uniform implementation of the principle laid down in Mayurdhwaj CGHS Ltd.'s case (supra) to avoid any unnecessary litigation in courts.

12. In so far as the present case is concerned, the additional factor which persuades us to issue a direction is forwarding of the names of the eligible members to the DDA for holding draw of lots on 19.09.2011. We are informed that the DDA has not fixed the date for draw of lots. We see no reason why the name of the Petitioner should not similarly be forwarded to the DDA so that her name is also included in the same draw of lots.

13. We, thus, direct Respondent No. 1 / RCS to forward the name of the Petitioner to the DDA to be included in the list already sent of members of Respondent No. 2 society so that draw of lots to be held by the DDA would ensure allotment to the Petitioner. The needful be done within 10 days.

14. Rule is made absolute leaving the parties to bear their own costs.

CM APPL. No. 16628/2011

No further directions are called in this application in view of disposal of the writ

petition.

Application stands disposed of.

Dasti to Learned Counsel for the parties.