

(2003) 02 DEL CK 0124
In the Delhi High Court
Case No : CWP No. 304 of 1989

P.L. Gupta and Another

APPELLANT

Vs

The Registrar Co-op. Societies and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Citation : (2003) 2 AD 249 : AIR 2003 Delhi 340 : (2003) 103 DLT 14 : (2003) 67 DRJ 245

Hon'ble Judges : V.K. Jain, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Rakesh Munjal and Thampi Mathur, for the Appellant; Nemo, for the Respondent

Judgement

Vijender Jain, J.—Mr. Munjal has contended that respondent Nos.3, 4 & 5 were ineligible for allotment of plot of land in the respondent No.2 society. The first submission of learned counsel for the petitioners is that in terms of bye-laws of the society, respondent Nos.3, 4 & 5 had incurred disqualification. Bye-law 5(i) (a) of the society is to the following effect:-

" A person is eligible to become member of the society provided he is a CSIR employee."

2. It was contended before us that respondent Nos.3, 4 & 5 were the employees of the CSIR, however, their shares could be transferred to those who were CSIR employees and respondent Nos.6 to 9 were not the employees of CSIR. Respondent Nos.6 & 7 are the sons of respondent Nos.3 & 4 and respondent Nos.8 & 9 are the sons of respondent No.5. In this connection reliance has been placed on bye-law 8(viii):-

"A member or the nominee or successor of an ex-member may transfer his shares to another member or applicant qualified under bye-law (5) and approved by the committee or to a share transfer fund."

3. Yet another contention has been raised by Mr. Munjal that even otherwise respondent No.3-K.N. Johri acquired Flat No.37 (SFS), Hauz Khas, New Delhi on 11.11.1982. The specific draw of flat by DDA was held on 20.9.1982 and allotment was confirmed on 11.11.1982, whereas said Shri K.N. Johri made a request for transfer of membership in favor of Sanjiv Johri (respondent No.6) only on 30.12.1982. That means when a flat was allotted in favor of Shri K.N. Johri by the DDA, he had requested respondent No.2 for transfer of membership in favor of his son (respondent No.6). Therefore, at the time when the application for transfer had been made, Shri K.N. Johri stood disqualified to be member in terms of Rule 25 of the Co-operative Society Rules.

4. Similarly, respondent No.4 was allotted Flat No.322 (SFS), Hauz Khas, New Delhi. The allotment was confirmed on 5.11.1982 by the DDA and he also made a request for transfer of his membership in favor of his son (respondent No.7) on 11.12.1982. Therefore, respondent No.4 stood disqualified to become a member of the society in terms of Rule 25 of the Rules.

5. Similarly, in the case of respondent No.5 specific Flat No.A-20 (SFS), Hauz Khas, New Delhi, draw of plot was held on 31.12.1984 and allotment was confirmed on 22.5.1985. The request for transfer of membership in favor of the sons of respondent No.5 (respondent Nos.7 & 8) was made on 2.1.1981.

6. It was contended before us by Mr. Munjal that although the request made earlier for transfer of membership in favor of respondent Nos.8 & 9 was prior in time but same could not have been entertained by the society in view of specific Bar of bye-law 8(viii), respondent Nos.8 & 9 were not the employees of the CSIR and could not become the member of the society. Alternatively it was contended that once the respondent No.5 has applied for allotment of DDA flat, respondent No.5 incurred disqualification. In support of his contention learned counsel for the petitioners has cited Daulat Ram Mehnidratra vs. Lt. Governor of Delhi & Ors., 1983 (4) 66, a Full Bench judgment of this Court.

7. Nobody has put in appearance on behalf of the respondents. It seems that the petitioners in the first instance approached the Registrar Co-operative Societies (respondent No.1), inter alias praying that respondents 3, 4 & 5 be declared disqualified from being members of the society. Respondent No.2 passed the impugned order on 19.1.1988 on the plea that as possession of the DDA flat was taken after their membership with the society was transferred in favor of their respective sons, Therefore, the respondents have not incurred any disqualification.

8. Aggrieved by the said order of the Registrar Co-operative Societies, the petitioners preferred an appeal before the presiding officer of the Delhi Cooperative Tribunal, who also dismissed the appeal of the petitioners on the ground that no appeal would lie from order passed by the Registrar under Rule 25 of the Delhi Cooperative Society Rules. The said order was passed on 25.11.1988.

9. Pursuant to the order passed by the Cooperative Tribunal, the petitioners filed the present writ petition in the year 1989. Counter has been filed on behalf of respondent No.1 (Registrar Cooperative Societies). Same stand has been taken by the Registrar of the Society as has been impugned in the writ petition. Respondent Nos.8 & 9 have not filed any counter affidavit. Respondent Nos.4 to 7 in their counter affidavit has also justified the order passed by respondent No.1.

10. We have heard counsel for the petitioners and perused through the record. The object of cooperative society is not to earn profits, but to enable the members to improve their economic conditions by helping them in their pursuits. Thus the cooperative society obtains land at the concessional rate from the State and built houses on plots and if in the bye-laws they put limitation that only members who have been the employees of a particular organisation and those who are in real need of houses would be permitted to become members and to take the benefit of land allotment, no fault can be found to such stipulation. Reliance was placed by learned counsel for the petitioners on a Full Bench judgment of this Court in Daulat Ram Mehnidratta vs. Lt. Governor of Delhi & Ors. case (supra) where a challenge was made to Rule 25 on ground of its retrospective effect. The Full Bench held Rule 25(2)(3) to be intra vires. Therefore, we may not go into that argument of the learned counsel for the petitioners in respect to disqualification incurred by respondent No.5, as transfer of membership by the respondent No.2 in favor of two sons of respondent No.5 i.e. respondent Nos.8 & 9 could not have been made in view of specific Bar placed by bye-law 5 read with bye-law 8(viii) of the society. We further hold that in case of respondent Nos. 3 & 4 the disqualification incurred by respondent No.3 & 4 is on both the grounds i.e. the Bar as provided in Rule 25(2) as well as the specific Bar to become member as contemplated under bye-law 5 and bye-law 8(viii). In view of the plain language of bye-law 5(i)(a) of the society read with bye-law 8(viii), we hold that the respondents 4 to 9 stood disqualified. Respondent No.1 overlooked the fact that the allotment of flat in favor of respondent Nos.3 and 4 was prior to the date of their application for transfer and when specific flat has been allotted in favor of respondent No.3 & 4, application filed by the said respondents for transfer of their membership in favor of their respective sons could not have been entertained as they already incurred disqualification.

11. Judging it from any angle the order of respondent No.1 cannot be sustained in the eyes of law. The same is hereby set aside. We have been told that a waiting list is maintained by respondent No.2 society. Petitioners name exist in the said waiting list at Serial Nos.13 & 14. We issue direction to respondent Nos.1 & 2 to allot the plot of land to the petitioners in accordance with the said waiting list as well as the rules and regulations of the society. With these directions the writ petition stands disposed of.