

(1996) 09 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ Petition No. 3520 of 1989

Prabhat Krishna

APPELLANT

Vs

Lt. Governor

RESPONDENT

Date of Decision : 01-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Co-operative Societies Rules, 1973 — Rule 24

Citation : (1996) 5 AD 63 : (1997) 69 DLT 632(1) : (1996) 39 DRJ 184

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : A.S. Chadha, S. Poddar, Ramesh Chandra, Anand Yadav, Geeta Malhotra and G.N Aggarwal, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) The petitioner Shri Prabhat Krishna ("the petitioner" for short) through the present petition has challenged the order dated October 30, 1989 passed by the Lt. Governor, Delhi (hereinafter referred to as respondent No. I for the sake of brevity). He further wants that a direction be issued to respondent No.3 to enrol him as a member of the Anamika Co-operative Group Housing Society Ltd., D-2/3, 14, Rajpur Road, Delhi (hereinafter referred to as the Society for the sake of convenience) over and above the respondents No. 4 to 7 w.e.f. July 4, 1988 with all benefits and privileges which were available to him on the said date.

(2) In short, the case of the petitioner is that the petitioner herein applied on a plain paper for being enrolled as a member of the Society on July 28, 1988 as is manifest from the endorsement on the application. Respondent No.3 asked the petitioner vide letter dated August 1, 1988 to move an application on the prescribed form. Subsequently through letter dated August 16, 1988 the petitioner was apprised of the fact that the question of membership would be decided by draw of lots on September 4, 1988 at 10.00 a.m. and they would be

required to deposit a specified amount with the Society. The petitioner thereupon deputed his sister Dr. Madhur Kudesia to represent him at the time of the draw of lots of the membership of the Society. Out of the 17 eligible applicants the petitioner was declared successful and his name was shown in the list at Sr. No.1. The sister of the petitioner was further informed on the said date that a sum of Rs. 27,533.42 was to be deposited by the petitioner within three days with the respondent No.3 by September 7,1988 at 8.00 a.m. Since the petitioner was posted at Lucknow on the said date as an Executive Engineer with the Ministry of Surface Transport, Government of India, he was informed by his sister at Lucknow to make arrangement for the deposit of the said amount. He arranged the said amount and rushed to Delhi on September 7,1988 with a bank draft for Rs.27,000.00 dated September 6,1988 in favor of respondent No.3 payable at State Bank of India, Delhi. The petitioner was having besides the said draft a sum of Rs. 533.75 in cash to pay to the Society. The petitioner along with his sister Dr. Madhur Kudesia who was putting up at the second floor which is just below the office of the Society approached the Secretary of the Society, Dr. V.K. Gupta, at 8.00 a.m. Dr.Gupta informed the petitioner that since he was going to the hospital at that time he would meet him in the evening and accept the draft. Consequently on hearing the same the petitioner left for his office. The petitioner returned from his office at 7.00 p.m. and approached again Dr. V.K.Gupta along with his sister in the office of the Society and tendered the draft. Dr. Gupta did not accept the said draft and put off the matter on the pretext that the same should be accompanied by an affidavit .The proforma of the affidavit was made available to the petitioner only at 7.00 p.m. on September 7,1988. The petitioner on September 8,1988 got the affidavit prepared and attested and thereafter tendered the same over again with the bank draft. However, Dr.V.K.Gupta again declined to accept the bank draft on the ground that-his case would be referred to the Executive Committee of the Society on September 9,1988 and the petitioner can put forward his case over there. The petitioner appeared before the Executive Committee on the aforesaid date. The Executive Committee rejected the case of the petitioner on the ground that no payment was made. The said action on the part of the Executive Committee and that of the Secretary was mala fide and motivated and pre-planned as they wanted to allot the membership of the Society to certain other persons namely, respondents Nos. 4 and 5.

(3) The petitioner being aggrieved with the same approached the Registrar, Co-operative Societies with representations (vide Annexures 7 & 8). The Registrar accepted the said representation and issued directions to respondent No.3 that the petitioner be allotted membership and the afore-mentioned draft be accepted (vide Annexures 9 & 10). The petitioner thereafter sent the draft and the said affidavit by registered A.D. post to respondent No.3, but to no avail as the respondent No.3 refused to accept the same (vide Annexures 11.1 to 11.3). Having seen no alternative the petitioner preferred an appeal before the Registrar on March 28,1989. The said appeal was accepted vide order dated July

9,1989 passed by the Registrar. The respondent No.3 were directed to enrol the petitioner as a member of the Society and to allow him reasonable time for depositing the admission fee and the share money (vide Annexures 12 & 13).

(4) The respondent No.3 challenged the said order passed by the Registrar through a revision petition dated August 22,1989. The respondent No.1 allowed the revision petition and set aside the order passed by the Registrar with a direction to respondent No.3 that the name of the petitioner be kept on the waiting list and he be accommodated in the first available vacancy. The "said order of the respondent No.1 is illegal, invalid and without jurisdiction .During the pendency of the appeal before the Registrar two vacancies arose for membership of the Society. The same were filled up hurriedly without complying with the rules and regulations by respondent No.3 by admitting respondents Nos. 6 and 7 as members thereof. Again a vacancy occurred in the Society on account of the resignation of Dr. Indira Yadav on October 30,1989. However, even then the petitioner was not admitted as a member of the Society and the same was proposed to be filled up by Dr. Rajendra Sharma, respondent No.8. It was in the above circumstances that the petitioner has now knocked at the doors of this Court through the present writ petition.

(5) Respondents Nos. 3 to 8 have put in contest, inter alia, on the following grounds. According to them, the present writ petition is not maintainable. The petitioner was never enrolled as a member of the Society since the matter with regard to the membership of the Society was placed before the General Body of the Society. The Society rejected the application of the petitioner. No person can be thrust upon a co-operative society as a member against the will and wishes of the General Body of the Society. The petitioner never moved any application before the Society on the prescribed form. In fact, he moved an application on a plain paper: A wrong address was mentioned on the said application i.e. B-221, Saraswati Vihar, New Delhi whereas the petitioner was residing at Lucknow. The petitioner was requested a number of times to move an application on the prescribed form vide letters dated August 16,1988 and August 17,1988 (Annexures R3 and R4). There was no application before the Society on the prescribed form till September 4,1988 i.e. the date of draw of lots. Dr. Madhur Kudesia, sister of the petitioner, was present at the time of the draw of lots. It was brought to her notice that there was no application on the prescribed form moved by the petitioner. She thereupon went to her flat which was just below the office of the Society and brought an application on a printed form. Little Realizing that a fraud was being practiced the name of the petitioner was included in the draw of lots. The said application on the alleged prescribed form does not even bear the signatures of the petitioner. The petitioner is thus taking advantage of the said mis-representation and fraud practiced on the Society. The petitioner is not at all interested in the membership of the Society inasmuch as he is not ready to pay any thing. He is just interested in the allotment of a flat and to earn premium thereon. Respondent No.3 repeatedly informed the petitioner by different letters, including the letter dated January 18,1989 (Annexure R-6) that

if he was interested in the membership of the Society he should apply on the prescribed form and should arrange for the money. The petitioner did not move any application in response to the said letter. The petitioner was again informed through the letter dated October 21,1989 that a vacancy had occurred in the Society on account of the resignation of Dr. Indira Yadav (vide Annexure R-7). The petitioner even did not avail of the said opportunity and did not come forward to move the application on the prescribed form and to deposit the required amount. The interlocutory orders passed by the Registrar directing the Society to admit the petitioner as a member of the Society, alluded to above, are illegal and invalid. The impugned order passed in appeal by the Registrar against the Society is also illegal and invalid inasmuch as the application of the petitioner for being enrolled was moved on July 28,1988 and the appeal was filed on March 28,1989, hence the same was barred by time. The order dated July 7,1989 passed by the Registrar was void and illegal and without jurisdiction. The petition is false and frivolous and is thus liable to be dismissed.

(6) The grievance of the petitioner as is manifest from the facts Canvassed above and which has been raised by the learned counsel for the petitioner Mr. Amit Chadha during the course of his arguments is that the petitioner was declared successful in the draw of lots which was held on September 4,1988 (Annexure 3) for the membership of the Society and his name finds a mention at Sr. No. 1 of the list prepared after the draw of lots. While the persons whose names were below the name of the petitioner i.e. Shri R.K.Khanna and Dr. Kiran Kumar, whose names appear at Sr. Nos. 3 and 4 respectively, were enrolled as members of the Socety, yet the petitioner without any reason and rhyme was not granted the membership of the Society. The petitioner, according to the learned counsel, made every possible effort to deposit the amount as per the demand of the Society, yet the Society did not accept the amount i.e. the draft of Rs. 27,000.00 (vide Annexures 5;22 and 23).

(7) Learned counsel for the respondents Messrs Ramesh Chandra, Senior Advocate, and G.N.Aggarwal, on the other hand, have contended that the petitioner never wanted to become a member of the Society. In fact, he never moved any application before the Society on the prescribed form as per the requirement of Rule 24 of the Delhi Co-operative Societies Rules, 1973. If this is so, the learned counsel urged, there was no question of accepting any amount from him in connection therewith or towards the cost of the flat.

(8) Since the fate of the present writ petition hinges on an interpretation of Rule 24 which deals with the conditions to be complied with for admission to membership, the provisions of the said rules can be adverted to with profit. It is in the following words:-

"NO person shall be admitted as a member of a co-operative society unless:- (i) he has applied in writing in the form laid down by the co-operative society or in the form specified by the Registrar, if any, for membership along with a declaration on oath that he is not a member of any other co-operative society

having similar objects; (ii) his application is approved by the committee of the co-operative society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body may in pursuance of the powers conferred on it in that behalf from time to time pass..... (iii) he has fulfilled all other conditions laid down in the Act, the Rules and the Bye-laws."

RULE 25 deals with the disqualification for membership. Rule 25(c) provides that a person would be disqualified from membership in case (i) he owns a residential house or a plot of land for the construction of a residential house in any of the approved or un-approved 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 provided that disqualification as laid down in sub-rule (1)(c)(1) shall not be applicable in case of persons who are only co-sharers of joint ancestral properties in congested localities (slum areas) whose share is less than 65.72 sq.meters (80sq.yards) of land; (ii) he deals in purchase or sale of immovable properties either as principal or as agent in the Union Territory of Delhi; or (iii) he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar. (2)..... (3)..... (4).....".

(9) It is abundantly clear from the relevant provisions of law referred to above that whosoever wants to become a member of a housing society he has to:

(A) apply on the form prescribed by the co-operative society; (b) in case there is no such prescribed form in that eventuality he will have to apply in the form specified by the Registrar, if any; and (c) the said application must be supported with a declaration on oath that he is not a member of any other co-operative society having similar objects.

(10) His application for enrolment as a member of the co-operative society must be approved by the Committee of the Co-operative Society in that behalf and the same would be subject to the resolution passed by the General Body.

(11) Furthermore, he must have fulfilled all other conditions laid down in the Act, Rules and the Bye-laws.

(12) Let us now examine as to whether the petitioner has fulfilled all the above requirements as per the relevant rules enumerated above.

(13) Admittedly, the petitioner has not placed any thing on record to show and prove that he ever applied on a prescribed form issued by the Society. This is not the case of the petitioner that the Society does not have any prescribed form for the enrolment of the members. In fact, the case of the petitioner is that he initially applied for becoming a member on a plain paper which application was received in the office of the Society on July 28, 1988 (vide Annexure R-1). Thereafter the petitioner also filled up the prescribed form for securing the membership of the society. Curiously enough the petitioner for the best reasons known to him has not placed any thing on record to substantiate his contention

that he ever applied on the prescribed form despite repeated reminders, issued by the Society to the petitioner that he should do so at the earliest. In this connection, reference can be made to the letters dated August 1, 1988 (Annexure R-2) from Dr. V.K. Gupta to the petitioner. The petitioner was requested through the said letter that as per rules and bye-laws he has to apply on a prescribed form without which his request to become a member cannot be considered by the Society. Then there is another letter through which the petitioner was again reminded that he has so far not submitted his application on the prescribed form in the absence of which his name cannot be included in the draw of lots (vide Annexure R-4). The most important letter in connection with the enrolment for the membership is a letter dated January 18, 1989 (Annexure R-6) where through the petitioner was apprised of the fact that two vacancies were likely to occur and to be filled up very shortly and in case he was really interested in the membership of the Society he must apply on the prescribed form and arrange for the money. All the above said entreaties, requests and implorations fell flat on the deaf ears and the petitioner did not take any notice of the same. It has already been observed above that the petitioner has admitted in para 3 of his petition that in fact he did apply on the prescribed form. However, a copy of the said application has not been placed on the record on the ground that no copy was kept and the same is in the record of the Society. Respondent No. 3 has filed a copy of the said application (vide Annexure R-5). A close scrutiny of the same reveals that in the column the name of the applicant it bears the name of the petitioner. However, the signatures at the bottom of the said application are not very much legible and decipherable. It is purported to have been signed by some Jain. The petitioner has denied that he ever moved any such application. The upshot of the above discussion is that the petitioner did not fulfill the mandatory requirement of moving an application on the prescribed form.

(14) The entire case of the petitioner is based on the application dated July 28, 1988 (Annexure R-1) which was moved by him on a plain paper. Admittedly, the said application was not supported at that time by an affidavit as required under Rule 24(i) to the effect that he is not a member of any other society having similar objects. Learned counsel for the petitioner, however, argued that an affidavit in fact was filed. He has in this connection led me through an affidavit dated September 8, 1988. It is thus evident from above that the said affidavit is of no avail to the petitioner inasmuch as the same was filed after 12 days of the presentation of the said application.

(15) The other requirement as per rule 24(ii) is that the application of the petitioner must have been approved by a Committee of the co-operative society. Admittedly this is not the case of the petitioner that his name was ever approved by any Committee of the Society. On the other hand, there is evidence to the contrary that the name of the petitioner was never approved by the Committee of the Society. In fact, his request for enrolment as a member of the Society was rejected vide resolution of the General Body Meeting held on October 9, 1988.

(16) There is another aspect of the matter. The petitioner surprisingly enough has not given any date on his application (vide Annexure R-1). It is true that there is an endorsement on the bottom of the said application that the same was received in the office of the Society on July 28,1988. However, even then I feel that the date was a very important factor. It casts a suspicion with regard to the case of the petitioner.

(17) There is yet another side of the picture. The petitioner in the said application has shown his address as B-221, Saraswati Vihar, New Delhi. Admittedly, the date on which the said application was moved the petitioner was posted at Lucknow and was residing over there as is evident from para 1 of the writ petition. He was transferred from there in the month of July 1989. Thus the petitioner has obviously furnished an incorrect address while moving the said application. In view of the above the petitioner was at no stage admitted to the membership of the Society.

(18) I am supported in my above view by the observations of their Lordships of the Supreme Court as reported in Raj Rani and Others Vs. Delhi Administration and Others, . Faced with a similar situation the Hon"ble Supreme Court observed (vide para 33) of the said judgment ".... An important feature in rule 30 is the date of receipt of application for membership. Because the application is to be dealt with within one month. Rule 30(4) provides that the person whose membership has been approved by the Managing Committee of a co-operative society shall deposit the membership fee and the amount of the qualifying shares necessary to become a member within 14 days of the passing of the resolution of the Managing Committee approving the membership of the person concerned.

.....BYE-LAW5 inter alia, provides that every person seeking membership of the society shall sign a declaration to the effect that he or his wife (she or her husband) or any of his/her dependents does not own a dwelling house or plot in Delhi and that he/she is not a member of any other co-operating house building society.

.....OUT of those 39 person 20 applications did not bear any date. The date of an application, the prescription of time for deposit of the membership fee and the amount of qualifying share and the filing of the requisite declaration are formalities which could not be dis-regarded. The Chairman rightly came to the conclusion that out of 39 persons except N.K. Mukherjee the other 38 were not legally admitted to the membership and, Therefore, they could not be treated as members."

(19) Learned counsel for the petitioner Mr. Chadha has, however ,argued that the petitioner would be deemed to have become a member of the Society the moment he was declared successful in the draw of lots held on September 4,1988 and his name appeared in the result of the draw at Sr. No. 1 and on the subsequent raising of the demand from the petitioner to deposit the amount. The contention of the learned counsel I feel does not hold any water. It has already

been observed above that the petitioner was never admitted to the membership of the Society. Hence the mere inclusion of his name in the draw of lots for becoming a member of the Society would be of no avail to the petitioner and he cannot take any advantage of the said mistake or inadvertence .

(20) Respondent No.3 in their counter affidavit have fully animadverted on the said aspect of the matter. According to them the sister of the petitioner ,Dr. Madhur Kudesia, is the Head of the Pathology Department, Bara Hindu Rao Hospital, Delhi. She has been residing in a flat just underneath the office of the Secretary of the Society (vide para 4. of the petition). She was present at the time when the draw of lots, was held for the. grant of membership i.e. September 4,1988. Since the petitioner had not yet moved an application on the prescribed form his name could not have been included in the draw of lots. Dr. Madhur Kudesia was thus informed of the said fact. On hearing the same she went to her residence and brought an application on the prescribed form. Since Dr. Madhur Kudesia was known to everyone being a senior doctor and the wife of Dr. V.K.Gupta, Secretary of the Society was working under her (vide para 2 of the counter affidavit filed by respondent No.3) nobody suspected any foul play or fraud. It was in the above circumstances that the name of the petitioner was included in the draw of lots inadvertently and on account of a sheer mistake and hence, the petitioner cannot be allowed to encash the said mistake to his benefit.

(21) It has next been urged for and on behalf of the respondents that the petitioner is not ready and willing to pay any amount to the Society, yet he wants to have a flat in order to have a premium on the said flat. The learned counsel for the respondents in this connection have led this Court through the order dated July 7,1989 (Annexure 13) passed by the Registrar. The concluding lines of the said order are that the Society is directed to enrol the petitioner after allowing him reasonable time for depositing the admission fee and the share money. Curiously enough the petitioner even then did not deposit any money with the Society. What he did was that he remitted a draft of Rs. 110.00 by way of admission fee and share money (vide letter dated July 11,1989 - Annexure 24). Astonishingly the said letter does not bear the signatures of the petitioner. Instead it bears the signatures of Dr. Madhur Kudesia. Admittedly; the petitioner had been transferred to Delhi in June 1989 from Lucknow. Thus he must have been present in Delhi on the date when the letter dated July 11,1989 was sent.

(22) This brings me to the other letters which" the petitioner is alleged to have sent to the respondent No.3 remitting therewith the alleged bank draft for Rs. 27,000.00 . The said letters are letter dated January 2,1989 and February 28,1989. The said letters do not bear the signatures of the petitioner. They are under the signatures of Dr. Madhur Kudesia. The said letters i.e. Annexures 22 and 23 were placed on the file of this Court on April 30,1996 whereas the photo copies of the envelopes containing the said letters alleged to have been received back on account of the refusal from the Society were filed along with the writ petition on December 18,1989. The photo copies of the said envelopes are

Annexures 11.1 to 11.3. Thus if the contention of the petitioner is correct that the said envelopes containing the above said letters were received back then the petitioner must have filed the same in the original position in which they were received back. Strangely enough for the best reasons known to the petitioner the said letters were not filed along with the envelopes as the envelopes did not contain the said letters when the petition was filed on December 18, 1989. The photo copies of the letters were filed after more than six years of the filing of the writ petition.

(23) Furthermore, the case of the petitioner as set up in the petition is that he tendered a bank draft to the tune of Rs. 27,000.00 dated September 6, 1988 and Rs. 533.75 in cash to the Secretary of the Society. Surprisingly enough there is no such mention in any of the letters referred to above. Had there been any grain of truth in the contention of the petitioner, it would have found a mention in the letters. Thus the case of the petitioner is highly redolent of suspicion and doubt.

(24) The learned counsel for the petitioner has then placed reliance on the directions issued by the Assistant Registrar vide his letters dated December 27, 1983 (Annexure 9) and October 22, 1989 (Annexure 10) where through the Society was directed to enrol the petitioner as a member of the Society. To my mind, the said letters are of no avail to the petitioner as the Assistant Registrar has got no right and power to thrust/foist a person as member of the Society. This is obviously beyond the forte of the Registrar, Co-operative Societies. It is true that the Registrar could have done so while disposing of the appeal of the petitioner. However, admittedly no appeal till then was pending before respondent No.2. Hence no such direction could have been issued. The appeal admittedly was filed as late as on March 28, 1989.

(25) The above view on this point is fortified by the observations of a Single Judge of the Bombay High Court as reported in President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd. Vs. Ramchandra Damodar Umalkar and Others, , " So far as the question of admission of a person as member of the society is concerned, the only power that is entrusted to the Registrar or his delegate is an appellate power u/s 23(2) of the Act. The very fact that the Registrar is constituted the appellate authority to entertain an appeal against a decision of a co-operative society on behalf of a person whose application for membership is rejected postulates that until such an appeal is filed and his jurisdiction is invoked there is no authority in the Registrar to take interest in or cognizance of the matter while it is at the stage of deliberation and decision with the society itself. It is only after an application is disposed of and the society's decision is adverse to the applicant that the applicant can invoke the jurisdiction of the appellate authority. We fail to see under what powers the Assistant Registrar or the Deputy Registrar could send communications like Ex.P-3 or Ex. P4 which was done in this case, and none is shown to us.....".

(26) The other point raised by the learned counsel for the respondents is that the

appeal admittedly as is manifest from "the memo of appeal under Rule 30(3) of the Delhi Co-operative Societies Rules, 1978 was filed on March 28,1989. The application of the petitioner for membership was rejected vide Resolution passed by the General Body on October 9,1988. The said appeal was filed after expiry of a period of 5 months and 19 days whereas under " Rule 30(3) the said appeal could have been- filed within thirty days from the date of the communication of the refusal. No reason, much less a sufficient reason, has been given by the Registrar for entertaining the said appeal after the expiry of the prescribed period of limitation. Thus I agree with the learned counsel for the respondent that the appeal was hopelessly barred by time at the time it was preferred.

(27) Furthermore, a close scrutiny of the memo of appeal reveals that the appeal was not filed by the petitioner. Instead it. was filed by his sister Dr. Madhur Kudesia. Admittedly, the respondent No.3 did not approve the membership of the petitioner. Hence, Dr. Madhur Kudesia was nowhere in the picture and as such was not competent to file the appeal. The appeal was thus liable to be dismissed on the said ground also.

(28) It has then been urged for and on behalf of the petitioner that the petitioner should have been given 14 days time to deposit the necessary amount vide Rule 30(4) of the Delhi Co-operative Society Rules. The said argument is being referred to simply to be rejected in view of my above discussion as I have held that the petitioner never became a member of the Society. Hence, there was no question of allowing him the time to deposit the required amount.

(29) The next contention of the learned counsel for the petitioner that as per the judgment dated October 30,1989 passed by the respondent No.1 the petitioner was to be kept on the waiting list and was to be accommodated in the first available vacancy. The Society failed to comply with the said order. The contention of the learned counsel is devoid of any force. The revision petition was decided on October 30,1989. Immediately on the next date i.e. October 31,1989 the Society informed the petitioner that on account of the resignation of Dr. Indira Yadav a vacancy has arisen in the Society and if he was interested he may apply within 7 days of the said letter on the prescribed form (vide Annexure R-7). Thus, it would be a sheer travesty to allege that the Society did not comply with the said order. In fact, the petitioner did not avail of the said opportunity which was made available to him.

(30) In the abovestated. circumstances I do not see any merit in the present writ petition. The same is accordingly dismissed with costs.