

**(1997) 04 DEL CK 0055**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 1419 of 1996**

R.K. Varshney

APPELLANT

Vs

Financial Commissioner

RESPONDENT

**Date of Decision : 30-04-1997**

**Acts Referred:**

**Citation :** (1997) 4 AD 150 : (1997) 68 DLT 200 : (1997) 42 DRJ 128 : (1997) 4 RCR(Civil) 227

**Hon'ble Judges :** Kripa Shankar Gupta, J;Devinder Gupta, J

**Bench :** Division Bench

**Advocate :** Vipin Sanghi, S. Poddar and Anil Amrit, for the Appellant;

## **Judgement**

(1) In this writ petition challenge is to the order (annexure-L) dated October 17, 1994 passed by respondent No. 1 allowing the revision petition of respondent No. 5 filed u/s 80 of the Delhi Cooperative Societies Act, 1972 against the order (annexure-I) dated December 21, 1993 of respondent No. 2.

(2) In short the petition has been filed alleging that R.C.Sharma-respondent No. 5 was one of the founder member of Pragatisheel Nagrik Cooperative Group Housing Society Ltd. respondent No. 3 and he held the office of President or Secretary of the Society for many years. Respondent No. 5 clandestinely got enrolled his wife Smt. Santosh Sharma as a member of the Society vide membership No. 184 on August 25, 1988. He further enrolled his minor dependent daughter Ms.Radhika Sharma as member of the Society vide membership No. 190 on October 20, 1990. On the petitioner and few other members of the Society having come to know about the enrolling of his wife and the daughter as members by respondent No. 5 in violation of the Rules, respondent No. 5 made his wife and the daughter to resign on January 22, 1992 and April 19, 1993 respectively. It is further alleged that respondent No. 5 by virtue of having enrolled his wife and the daughter as members of the Society became disqualified from continuing as member under rule 25 of Delhi Cooperative Societies Rules, 1973. He was declared to be ceased to be a

member of respondent No. 3-Society by an order dated December 21, 1993 passed by the Registrar Cooperative Societies-respondent No. 2 after taking into consideration the reply submitted by respondent No. 5 to the show-cause notice dated May 3, 1993. Impugned order dated October 17, 1994 passed by respondent No. 1 allowing the revision petition of respondent No. 5 and thereby setting aside the said order dated December 12, 1993 is illegal and is liable to be quashed.

(3) Contention advanced by Shri Vipin Sanghi is two fold - (i) that the order dated October 17, 1994 was passed by respondent No. 1 in exercise of the revisional powers delegated to him under the Delhi (Delegation of Powers) Amendment Act, 1994 but the appointment of respondent No. 1 as an authority, who may exercise the power of the Administrator to hear revision u/s 80 of the Delhi Cooperative Societies Act, 1972, was not notified, and (ii) that respondent No. 1 acted erroneously in coming to the conclusion that the disqualification embodied in rule 25 of the Delhi Cooperative Societies Rules, 1973 applied to the wife and the daughter of respondent No. 5 who were subsequently enrolled and not to respondent No. 5, who is a founder member of respondent No. 3-Society.

(4) Shri Sanghi placed reliance on copy of the Delhi Gazette (Extraordinary) dated April 11, 1994 wherein the Delhi (Delegation of Powers) Amendment Act, 1994, was published for general information after it was passed by the Legislative Assembly and assent thereto was accorded by the Lt.Governor of Delhi on April 8, 1994. By virtue of Section 2 of the Amendment Act, Sub-Section (1-A) was inserted in Section 3 of the Delhi (Delegation of Powers) Amendment Act, 1964 after sub-section 1 as follows:

"(1-A) Any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge by or under the provisions of any enactments mentioned at S.Nos.6 to 11 in column No. 1 of the Schedule may be exercised or discharged also by such other officer or authority as may be specified in this behalf by the Govt. of National Capital Territory of Delhi by Notification in Official Gazette."

(5) Relevant portion of Section 3 of the Amendment Act which amends the Schedule in the principal Act runs thus:-

"In the principal Act in the Schedule after S.No.5, the following Serial numbers and the entries thereof shall be inserted, namely:-

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Name of enactment Provisions vesting powers in Official or authority who may Administrator, also exercise the powers 6.Delhi Cooperative Sections 31(7),76(2) (b)&(c) Financial Commissioner Societies Act,1972 and s. 80,

Evidently, Commissioner-respondent No. 1 has been delegated to be an authority who may exercise the powers of `Administrator" to hear revisions u/s 80 of the Delhi Cooperative Societies Act. As the Amendment Act Along with the amended

Schedule naming the Financial Commissioner to be an official or authority who may also exercise the powers of the Administrator u/s 80 of the Delhi Cooperative Societies Act was published in the Official Gazette, the first contention, referred to above, advanced on behalf of the petitioner is devoid of any merit.

Turning to the second contention, sub-rules (1) & (2) of Rule 25 of the Delhi Cooperative Societies Rules, 1973, which are relevant provide as under:

"(1).No person shall be eligible for admission as a member of a cooperative society if he-

(A)has applied to be adjudicated an insolvent or is an undischarged insolvent; or

(B)has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence;

(C)in the case of membership of a housing society:-

(I)he owns a residential house of a plot of land for the construction of a residential house in any of the approved or unapproved 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 leasehold 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 (80 Sq. 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)Notwithstanding anything contained in the rules or the bye-laws of the co-operative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred."

The Supreme Court in Jagdish Singh Vs Lt. Governor Delhi, 66 (1997) Dlt 320 , had an occasion to interpret the aforementioned sub-rules (1) & (2) of Rule 25 with reference to the deemed cessation of a person, who simultaneously held the membership of two group housing societies. On a combined reading of aforesaid sub-rules (1) & (2) of Rule 25 and also taking note of the observations made in the above decision we find ourselves unable to accept the second contention aforementioned. The view taken by respondent No. 1 in the impugned order that the disqualification as embodied in the said rules only applies to the member(s) subsequently enrolled and not to the original member of the society is the correct and the only view which is possible on true interpretation of sub-rule (2)

of Rule 25. Respondent No. 1 rightly held:-

"It is a fact that the petitioner was the founder member, that his wife and daughter were enrolled subsequently and that both of them have since resigned. It is also an undisputed fact that the disqualification of the petitioner has been held on the ground of enrolling his wife and daughter as members of the respondent-society. On going through Rule 25 of the Rules. I find that it unambiguously lays down that the disqualification for the reasons embodied therein applies to the member(s) subsequently enrolled and not to the original member. In this connection a reference to the circular dated 3.8.88 is also very relevant. On the basis of the provisions of Rule 25 and the circular quoted above, it can hardly be held that the petitioner had incurred any disqualification entailing cessation of his membership. The impugned order, Therefore, is against the spirit of the Rules and also the principles of natural justice. It is liable to be set aside. And I order Accordingly."

(6) Dismissed.