
(2019) 07 DEL CK 0427

In the Delhi High Court

Case No : Civil Writ Petition No. 12233 Of 2016

Seema Verma

APPELLANT

Vs

East End Cooperative Group Housing Society Ltd And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Delhi Cooperative Societies Rules, 1973 — Rule 24(1)(ii), 24(1)(ii), 24(2)
Delhi Cooperative Societies Act, 2003 — Section 116
Delhi Cooperative Societies Act, 1972 — Section 76(2)
Oaths Act, 1969 — Section 3

Citation : (2019) 07 DEL CK 0427

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : Vishwendra Verma, Akshay Bhardwaj, S.K.Sharma, Vishal Thakre

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

1. The petitioner has preferred the present writ petition to assail the order dated 16.10.2015 passed by the Financial Commissioner, Delhi in Revision Petition preferred by the petitioner being Case No 177/2010. The learned Financial Commissioner has rejected the revision petition preferred by the petitioner, which had been preferred by the petitioner under Section 116 of the Delhi Cooperative Societies Act, 2003 to assail the order dated 16.03.2010 passed by the Registrar of Cooperative Societies. The Registrar of Cooperative Societies vide order dated 16.3.2010 dismissed the appeal preferred by the petitioner under Section 76 (2) of the Delhi Cooperative Societies Act 1972-which he had preferred to assail for the rejection of her membership application by the respondent-society.

2. The case of the petitioner is that the respondent-society issued an advertisement on 18.7.2003 inviting applications to fill up vacancies in the

Respondent No.1- East End Cooperative Group Housing Society Ltd. She submits that she made her application dated 19.7.2003 in response to the said advertisement. It appears that the same was submitted by her with the respondent-society on 20.7.2003. The format in which the said application was made reads as under:-

"I, Smt. Seema Verma wife of Shri Vishwendra Verma hereby apply for admission as Member of the East End Apartments Cooperative Group Housing Society Ltd.

I am not a member of any such society in the Union Territory of Delhi and further I declare that I have no outside debts either Secured or unsecured. Particulars of which are given as under

Loan Amount Interest per annum Name of the party

X X X

I have read the bye laws and I undertake to abide by the same and I further undertake to pay equalization charges such other money required for admission

I request that the Society may kindly allot me one share of Rs.100/- alongwith admission fee of Rs.10/-(ten). I am also nominated my husband Mr. Vishwendra Verma age about 34 years as per the person interest whom I wish to nominate on account of my holding in the Society:

1. Husband"s Name

Vishwendra Verma

2. Date of Birth

03-12-1968

3. Caste and Nationality

Hindu-Indian

4. Permanent Address

20/403 East End Apartment Mayur Vihar Phase-I, Delhi

5. Monthly Income

Rs.14,000/- (approx)

6. Whether domicile in Delhi or not

Yes

I hereby declare that neither I nor my spouse or dependant relations own any other residential plot/flat in the Union Territory of Delhi and further I am not a member of any other similar society in the Union Territory of Delhi.

I hereby opt for category-B flat at Chilla measuring approx. 1252 Sq. ft."

3. The case of the petitioner is that the petitioner had adopted the same format, on the basis of which applications of other applicants were accepted and entertained by the respondent-society. In this regard, she placed reliance on an application made by one Smt. Kusum Bhandari.

4. The respondent-society vide communication dated 11.8.2003 rejected the petitioner's application. The grounds on which the same was rejected were disclosed as follows:

"1. The application was not in the prescribed format.

2. The application was not submitted in the Society office within the stipulated time.

3. No declaration on oath was submitted by you that you are not a member of any other houses building/group housing society having similar objects in the NCT of Delhi.

4. No proof was submitted by you that you have been a resident of the NCT of Delhi for a minimum period of three years.

5. No declaration was submitted by you that you are your husband including any of your dependent relations directly or indirectly do not deal in purchase or sale of houses /flats or land for the construction of houses/flats.

6. No declaration was submitted by you that you shall abide by the regulations of the Society as set out in Annexure "A" to the Byelaws of the Society." (emphasis supplied)

5. Aggrieved by the rejection of her application by the respondent No.1 society, the petitioner preferred her appeal before the Registrar of Co-operative Societies under Section 76(2) of the Delhi Co-operative Societies Act, 1972 which, as aforesaid, came to be dismissed on 16.03.2010 and her revision was also dismissed by the Financial Commissioner on 16.10.2015.

6. Learned counsel for the petitioner submits that the rejection of her application by the respondent society was illegal and the respondent society did not comply with the procedure prescribed in Rule 24(2) of the Delhi Co-operative Societies Rules, 1973, which obligated the society to hold a draw of lots in the presence of the authorized representative of the Registrar, since the number of applications were more than the notified vacancies. He submits that the respondent society, on erroneous grounds, rejected the application of the petitioner and others with a view to favour two others, namely, respondent Nos.2 and 3, who were related to the then Secretary of the respondent society.

7. The petitioner submits that the respondent-society did not follow the prescribed procedure of issuing an advertisement with prominence and with detailed particulars. The respondent-society also did not grant sufficient time to make the application and the particulars of the contact persons and address were not provided. The submission of learned counsel for the petitioner is that the

petitioner was not aware of any prescribed format in which the application for membership had to be made. The petitioner utilized the same format in which another person- who was granted membership by the respondent-society itself, had made her application. The petitioner, in fact, relies upon the averments contained in a revision petition stated to have been preferred by the respondent-society, to submit that the respondent-society had itself pointed out in the said revision petition various lacunas in issuance of the advertisement and in the process of inviting applications.

8. We may, at this stage itself, observe that so far as the lacunas pointed out by the petitioner in the matter of inviting applications to fill up the vacancies in the respondent-society are concerned, the petitioner certainly cannot raise any grievance with regard thereto, for the reason that the petitioner promptly responded to the advertisement and was one of the persons who had applied for membership. Thus, it appears that the petitioner was well aware of the fact that the vacancies were advertised and the applications were invited by the respondent-society. She claims to have made her application in the format in which other existing members had made their applications, and thus the petitioner cannot make a grievance in this respect as well. At the same time, it would be no excuse for the petitioner-to claim that other persons, who had applied similarly, were granted membership. Firstly, full details and particulars in that regard are not placed on record. Secondly, even if it were to be accepted that others were granted membership on the basis of the same format of application, the same would not vest a right in the petitioner. Since there are statutory requirements that the petitioner had to meet, the petitioner cannot avoid the said requirements.

9. From the grounds of rejection, it appears that so far as the first two grounds are concerned, the same may not be valid, inasmuch as, the respondents have also not pointed out any prescribed format for making the application, and they do not dispute the fact that the application had been made by the petitioner in the same format as adopted by Smt. Kusum Bhandari - another member of the society. Since the petitioner had made the application dated 19.7.2003, on 20.7.2003, (which fact is acknowledged by the respondents in its communication dated 11.8.2003), it could not be said that the application was not submitted within the stipulated time. Thus, so far as the first two grounds contained in the letter dated 11.8.2003 are concerned, we agree with the petitioner that they are not valid grounds for rejection of the petitioner's application for membership by the Respondent Society. The problem, however, which arises for the petitioner is with regard to non-compliance of the Rule 24 (1) (i) & (v) of the Delhi Cooperative Societies Rules 1973 which were prevailing at the relevant point of time. The said Rule, in its entirety, reads as under:-

"24. Conditions to be complied with for admission to membership

1. 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, and in the case of nominal, associate or sympathizer member by an officer of the society authorized in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down in the Act, the Rules and the Bye-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trust or a local authority, the application for membership is accompanied by a resolution authorizing it to apply for such membership, and the sanction of the Lt. Governor has been accorded.

(v) In case of a Co-operative Housing Society, he has been a resident of the National Capital territory of Delhi for a minimum period of three years at the time of applying for a membership in such society.]

[2. In case of vacancy in a housing society including group housing society where layout and building plans have been approved by the competent authority, the same shall be filed by the committee by notifying it in leading daily newspaper of Delhi in Hindi and English. In case the number of applications are more than the notified vacancies the membership shall be finalized through draw of lot in the presence of authorized representative of the Registrar.]"

10. From the aforesaid Rule, it would be seen that the Rule is couched in imperative language since it begins with the words "No person shall be admitted as a member of a co-operative society unless: ...". Clause (i) in clear terms states that the person has to apply in writing in the form laid down by the cooperative 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 cooperative society having similar objects:"

11. The application form submitted by the petitioner does not contain the declaration on oath, that she was not the member of any other cooperative society having similar objects.

12. The declaration made by the petitioner was that she was not a member of "any such society in the Union Territory of Delhi". The word "such" has to refer to a society of the kind of which she sought membership i.e. of a Cooperative Group Housing Society. Though, the declaration made by the petitioner may not be strictly in terms of clause (i) of Rule 24(1), for the sake of argument, we proceed

on the basis that she did make the said declaration. However, the declaration, as aforesaid, was not made on "oath" which was a specific requirement of the Rule.

13. The Stroud's Judicial Dictionary explains the word "Oath". It says "An oath is a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth" (R.v. White, Leach, 430, 431). SACRAMENT."

14. Thus, when a declaration is made on oath, it is a solemn declaration by the person taking the oath. Learned counsel for the petitioner has himself placed before the Court the legal definition of "oath", which he appears to have downloaded from the Legal Dictionary - the freedictionary.com. Some of the meanings of the word oath provided by the counsel for the petitioner himself, read as follows:

"(i) Any type of attestation by which an individual signifies that he or she is bound in conscience.....

(ii) An individual's appeal to God to witness the truth of what he or she is saying.....

(iii) Similarly an affirmation is a solemn and formal declaration that a statement is true.....

(iv) In order for an oath to be legally effective, it must be administered by a public official.....

(v) A declaration made according to law, before a competent tribunal or officer, to tell the truth....."

15. The purpose of requiring an applicant to make a declaration on oath that he is not a member of any other co-operative society having similar objects, as prescribed in Rule 24(1)(i), is to ensure strict adherence to this important qualification of being a member of a Group Housing Co-operative Society. The society to which an application is made for membership, has no means of verifying the truth, or otherwise, of the statement that the applicant may make that he is not a member of any other co-operative society having similar objects. Much less would it be in a position to verify the correctness of such a statement at the stage of consideration of the application for admission as a member of the co-operative society. To ensure that the applicant makes a truthful declaration by which he is bound, on the pain of prosecution for making a false declaration, the Rules prescribe that the said declaration has to be made on oath. The manner of making a declaration on oath is prescribed by the Oaths Act, 1969 which empowers Courts and various persons to administer oath. Section 3 of this Act reads as follows:

"3. Power to administer oaths.-(1) The following courts and persons shall have power to administer, by themselves or, subject to the provisions of subsection(2) of section 6, by an officer empowered by them in this behalf, oaths

and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:-

(a) all courts and persons having by law or consent of parties authority to receive evidence;

(b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf-

(a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or

(b) by the State Government, in respect of other affidavits."

16. Thus, an oath may be administered by a person only when he is so empowered by or in accordance with Section 3 of the Oaths Act. Reference in this regard may be made to *M. Veerabhadra Rao v. Tek Chand*, AIR 1985 SC 28. The Calcutta High Court has held in *Sudebi Sundari Mondal v. State*, AIR 1983 Cal 1 that an affidavit cannot be said to be proper, if it is sworn before a Notary Public. Such an affidavit cannot be used in proceedings under Article 226 of the Constitution.

17. In the present case, the petitioner merely made a declaration that she is not a member of any such society in the Union Territory of Delhi. This declaration does not even remotely purport to be a solemn affirmation, and by no stretch of reason could it be considered to be on oath. Thus, the third ground contained in the communication dated 11.08.2003 of the respondent society is a valid ground for rejection of the petitioner's application for membership.

18. Rule 24 also provides in Sub Rule (1)(v) that the applicant should make a statement - when applying for membership of a co-operative housing society, that "he has been a resident of the National Capital Territory of Delhi for a minimum period of three years" at the time of applying for membership in such society. The application made by the petitioner does not even contain a statement to the effect that she has been a resident of the National Capital Territory of Delhi for a period of three years or more at the time when she made the application dated 19.07.2003, much less, she produced any proof in respect thereof. To this, the submission of learned counsel for the petitioner is that she has been married to the petitioner for a long time and her matrimonial home is in Delhi in the apartments of the respondent society itself. In our view, this submission is meritless. Firstly, the obligation cast on the petitioner to make the said declaration is a statutory obligation and the same cannot be trivialized by the petitioner by claiming that she is residing in the same apartment complex

with her husband.

19. Thus, in our view, the respondent society was justified in rejecting the petitioner's application for membership on the aforesaid ground as well.

20. Learned counsel for the petitioner has submitted that the respondent society should not have evaluated the eligibility for membership when it received the applications, and it should have straight away held a draw of lots since, apparently, seven applications were received by the respondent society in respect of two vacancies. We do not find any merit in this submission either. It is only after the applications are scrutinized that the society would be in a position to determine as to how many valid applications have been received. Only in the eventuality of the number of valid applications being more than the notified vacancies, the draw of lots could be called for in terms of Rule 24(2) of the DCS Rules, 1973.

21. Pertinently, apart from the petitioner, no other applicant who was not successful in getting membership of the respondent society raised any dispute or claim. Since the petitioner's application itself was rejected by the respondent society, in our view, the petitioner has no locus standi to question the membership of respondent Nos. 2 and 3.

22. For the aforesaid reasons, we find no merit in this petition and dismiss the same. The parties are left to bear their respective costs.