

(2007) 08 DEL CK 0041
In the Delhi High Court
Case No : WP (C) No. 13032 of 2004

Shri Pal Jain

APPELLANT

Vs

Financial Commissioner

RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Co-operative Societies Act, 1972 — Section 63, 76, 76(1)
Delhi Co-operative Societies Rules, 1973 — Rule 24, 25, 25(1), 25(2), 25(4)

Citation : (2008) 1 ILR Delhi 450

Hon'ble Judges : Reva Khetrapal, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Praveen Agrawal, for the Appellant; Amitabh Marwah and 2 and R.P. Kapur, for Responden No. 3, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned Counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition challenges the order dated 2nd December, 2003 passed by the Registrar Cooperative Societies, respondent No. 2 and its affirmation by the Financial Commissioner, respondent No. 1 by its order dated 16th March, 2004.

3. The facts of case stated briefly are that

(i) On 29th December, 1952, the Delhi Peasant Cooperative Multipurpose Society Limited, which is respondent No. 3 herein was constituted. Shri Nathu Mal Jain, who is the deceased father of the petitioner Shri Pal Jain, was one of the founding members of the respondent No. 3 Society, which allotted him a plot of land measuring 23 Bighas and 10 bids was for agricultural purposes.

(ii) In 1957, another Society called Adarsh Farmers Co-operative Multi Purpose Society Limited (hereinafter referred to as the second Society) was constituted and the deceased father of the petitioner also became an ordinary member of

the said Society. On 23rd June, 1959, the said second Society ceased to function. On 4th February, 1978, the said second Society was ultimately wound up u/s 63 of the Delhi Cooperative Societies Act, 1978.

(iii) Shri Nathu Mal Jain, the father of the petitioner expired on 12th July, 1989 and on 6th October, 1989, the respondent No. 2 in its Board Meeting nominated the petitioner, the only son and legal heir of his deceased father as a bona fide member and bonafide transferee of plot of land allotted to his father. On 9th September, 1991, the aforesaid decision of the Society was conveyed by the then General Secretary of the respondent No. 3 Society to the petitioner.

(iv) In 1992, an Administrator of the respondent No. 3 Society was appointed by the respondent No. 2. On 8th February, 1996, the Administrator of the respondent No. 3 Society addressed a communication to the Deputy Registrar, Delhi, making an enquiry about the membership of the Second Society and another Society (Ajudhya Co-operative Multi Purpose Society) in respect of members of the respondent No. 3 Society, including the petitioner.

(v) On 19th June, 1998, one Balbir Singh, a member of the respondent No. 3 Society made a complaint to the respondent No. 2 - Registrar of Cooperative Societies, seeking the termination of the membership of the petitioner on the plea that Shri Nathu Mal Jain and as his successor-in-interest consequently, the petitioner had forfeited his membership of the respondent No. 3 Society by becoming a member of the Second Society and, Therefore, the petitioner was liable to the forfeiture of his membership, as dual membership was contrary to the mandate of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as the Act).

(vi) On 11th May, 2001, a legal notice was dispatched by the counsel for the respondent No. 3 Society to the petitioner seeking a payment of Rs. 3622.50 in respect of the plot allotted to the father of the petitioner.

(vii) On 1st April, 2002, the respondent No. 2 dropped the proceedings against the petitioner qua the complaint lodged by the said Balbir Singh dated 19th June, 1998, with the observation that the complainant Balbir Singh had no locus standi and consequently directed the respondent No. 3 to examine the issue of dual membership of Shri Nathu Mal Jain, the deceased father of the petitioner within three months from the date of the order. The relevant portion of the order dated 1st April, 2002 reads as follows:

I have gone through the records available on file and find that the said Society was defunct ab-initio and was subsequently wound up. I also find from the records that while examining the issue administratively also, it is seen that the complainants have no locus standi in the matter because in case of cessation, which is for the Society to decide first, the land would be transferred back to the Society for allotment amongst other eligible members in case it was so decided.

In view of the above discussion, I.N. Diwakar, Registrar Cooperative Societies,

Govt. of NCT of Delhi hereby drop the present proceedings and direct the Managing Committee of the Society to examine the issue of dual membership at their end first within a period of three months from the issue of this order.

(viii) On 10th June, 2002, the General Secretary of the respondent No. 3 society communicated to the respondent No. 2 the decision of terminating the membership of the petitioner, on the basis of violation of Rule 28 of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as the Rules), on the ground of dual membership. The relevant portion of the said decision dated 10th June, 2002 reads as follows:

Rule 28. PROHIBITION OF MEMBERSHIP IN CO-OPERATIVE SOCIETIES.

No individual/primary Society, being a member of a primary co-operative Society/federal Society of any class shall be a member of any other co-operative Society of the same class without the general or special permission of the Registrar, and where an individual /Primary Society has become a member of two co-operative societies of the same class, either or both of the co-operative societies shall be bound to remove him from membership after giving proper opportunity to such individual/Primary Society in writing.

In view of the above discussion and in light of the concerned rules, it has been proved that Shri Nathumal Jain was a member of two societies at the same time having similar aims and objectives which is contrary to the co-operative rules and not maintainable. As the membership of Shri Nathumal Jain was illegal, unlawful and disqualified in both the societies as he was having dual membership at the same time, his nominee Shri Sripal Jain cannot qualify for the membership on behalf of the membership of his father.

(ix) An appeal was preferred by the petitioner to the Registrar Cooperative Societies against the said order dated 10th June, 2002. The petitioner in the said appeal to the Registrar not only relied upon the judgment of the Hon"ble Supreme Court in Jagdish Singh Vs. Lt. Governor Delhi and others, , but also annexed a copy of the said judgment along with the appeal. The Registrar by the impugned order dated 2nd December, 2003, recorded the following findings:

...He further made reference to the Hon"ble Supreme Court's decision in the civil appeal No. 1866 of 1997 in the matter of Jagdish Singh v. Lt. Governor, Delhi and Ors. Meanwhile, Sh. Balbir Singh, the complainant also filed application for becoming the necessary party in the matter which was allowed by this Court.

...

I have carefully considered the respective stand of the appellant and the Society and also considered the material on record. It has been found that Late Sh. Nathu Mal Jain, the original member, concealed the fact that he is the member of another Society of the similar category and acquired the membership illegally thereby suppressing material and true facts. It has also been revealed from the records that Late Sh. Nathu Mal Jain was a member of two societies at the same

time having similar aims and objectives which is clearly in violation of Rule 28 of DCS Rules, 1973. The same has also been admitted by the appellant, Sh. Shree Pal Jain in his reply to the Society. Moreover, the reply of the appellant was not satisfactory although he was provided with sufficient opportunities by the Society as prescribed under law. As the membership of Late Sh. Nathu Mal Jain was illegal, unlawful and disqualified as he was having dual membership at the same time, his nominee Sh. Shree Pal Jain cannot qualify for the membership on behalf of his father.

Accordingly, I.N. Diwakar, Registrar Coop. Societies, Govt. of NCT of Delhi hereby reject the appeal filed by Sh. Shree Pal Jain u/s 76 of DCS Act, 1972 and cease his membership from the Delhi Peasants Cooperative Multipurpose Society Ltd. under the provisions of Rule 28 of Delhi Cooperative Societies Rules, 1973 with immediate effect.

(x) The aforesaid order was challenged in appeal before the Financial Commissioner where, inter-alia, one of the grounds taken was that the judgment of the Hon''ble Supreme Court in Jagdish Singh's case (supra) though placed before the Registrar and noted by him, was not even dealt with. The said appeal case No. 20/04-CA u/s 76(1)(e) of the DCS Act, 1972 stood dismissed by the Financial Commissioner by the impugned order dated 16th March, 2004. The entire reasoning of the Financial Commissioner is to be found in the following terms:

3. The main contention of the counsel for the appellant is that late Sh. Nathu Mal Jain was a member of the two societies at the same time but one of them was ab initio defunct. Hence cessation of his membership of the other Society as ordered by the RCS was wrong.

4. I find that late Sh. Nathu Mal Jain concealed the fact that he was member of another Society of similar category and acquired membership of Delhi Peasants Cooperative Multi Purpose Society Limited illegally by suppressing material facts. As membership of two societies at the same time having similar aims and objectives is not permissible under Rule 28 of DCS Rules 1973, the impugned order passed by the RCS is fair. The same is upheld and the appeal is dismissed in liming.

4. It is the above order which led to the present writ petition challenging the said order on the ground, inter-alia, of the violation of the dicta laid down by the judgment of the Hon''ble Supreme Court in Jagdish Singh's case (supra). We have heard the learned Counsel for the petitioner Mr. Praveen Agrawal, Mr. Amitabh Marwah appearing for the respondents 1 and 2 and Mr. R.P. Kapur who appears on behalf of the respondent No. 3 Society. The sole issue which arises is the effect of Rules 25 and 28 of the 1973 Rules and the interpretation put upon the said Rules by the Hon''ble Supreme Court in Jagdish Singh's case (supra).

5. It will be appropriate to set out the following portion of the judgment of the Hon''ble Supreme Court in Jagdish Singh's case (supra) which is relevant for

determination of the present writ petition:

25. Disqualification for Membership. - (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; or
- (c) in the case of membership of a housing Society-
 - (i) he owns a residential house or 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)(i) 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 66.72 sq. metres (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 byelaws of the co-operative Society, if a member becomes, or has already become, subject to any disqualification specified in Sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.

(3) A member who ceases to be a member of a co-operative Society under Sub-rule (2), shall not be entitled to exercise rights of membership or incur liability as member with effect from the date referred to in Sub-rule (2) but as from the date he becomes a creditor of the co-operative Society in respect of the amount due to him on account of paid-up share capital, deposit, cost of land deposited or any other amount paid by him to the co-operative Society as its member. As from the date of his ceasing to be a member of the Society under Sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative Society within 3 months and when the co-operative Society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative Society.

(4) If any question as to whether a member has incurred any of the disqualification referred to in Sub-rule (1) arises, it shall be referred to the Registrar for decision. His decision shall be final and binding on all concerned. The power of the Registrar under this rule shall not be delegated to any other person appointed to assist the Registrar.

28. Prohibition of Membership in Two Co-operative Societies - No individual, being a member of a primary co-operative Society of any class shall be a member of any other co-operative Society of the same class without the general or special permission of the Registrar, and where an individual has become a member of two co-operative societies of the same class either or both of the co-operative Society shall be bound to remove him from membership upon written requisition from the Registrar to that effect.

7. A conjoint reading of the aforesaid provisions would make it clear that Rule 24 provides the conditions to be complied with by a person for being admitted as a member of a co-operative Society. Rule 25 enumerates the disqualifications of a person for becoming a member of a co-operative Society. Sub-clause (c) of Rule 25(1) deals with the disqualifications of a person in case of a housing Society, Clause (iii) of Rule 25(1)(c) provides that the said person or his spouse or any of his dependent children is a member of any other housing Society then he cannot become a member of another housing Society unless permitted by the Registrar. Sub-rule (2) of Rule 25 provides for a deemed cessation of a member in the event that member incurs any of the disqualifications mentioned in Sub-rule (1) of Rule 25 with effect from the date of such disqualification. Sub-rule (4) of Rule 25 confers power to decide a dispute as to whether a member has incurred any of the disqualifications referred to in Sub-rule (1). Rule 28 of the Rules confers power on the Registrar directing removal of an individual from membership of either or both of the co-operative societies when such individual has become a member of two co-operative societies of the same class. The short question that arises for consideration is : whether a person who is a member of a housing co-operative Society having incurred the disqualification under Rule 25(1)(c)(iii) on being a member of a subsequent housing Society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made there under should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and Therefore, this Court had held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. Bearing in mind the aforesaid rules of construction if Sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under Sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the Society pertaining to

which disqualifications are incurred. A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two co-operative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the co-operative societies. If Sub-rule (2) of Rule 25 is interpreted to mean that deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28 will not arise. If the interpretation given by the Registrar to Sub-rule (2) of Rule 25 as well as the contention raised by the learned Counsel for the respondents is sustained then the said sub-rule will be at loggerhead with Rule 28. On the other hand, if Sub-rule (2) is interpreted to mean that the deemed cessation is in relation to the Society in respect of which the person concerned incurs the disqualification then both Sub-rule (2) as well as Rule 28 would have its play. Rule 28 in our considered opinion cannot be held to be otiose and must be allowed to have its full play. In this view of the matter the only way by which Sub-rule (2) of Rule 25 and Rule 28 can be harmoniously construed is to construe Sub-rule (2) to Rule 25 to mean that the deemed cessation of the person concerned from the membership of the Society is the Society in respect of which the disqualification was incurred. In the case in hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Co-operative Housing Society Ltd. as he could not have become a member of the said Society as he was already a member of Dronacharya Co-operative Group Housing Society, and Therefore, by operation of Sub-rule (2) he would be deemed to have ceased to be a member of the Tribal Co-operative Housing Society right from the inception in November, 1983 and not from the Dronacharya Cooperative Group Housing Society.

8. Apart from the aforesaid harmonious construction of Sub-rule (2) of Rule 25 and Rule 28, on a plain construction of Rule 25 also the same conclusion has to be arrived at. Sub-rule (1) disqualifies a person for admission as member of a housing Society if he or his spouse or any of his dependent children is a member of any other housing Society. The disqualification in question obviously attaches to membership of the second Society and has no connection with his membership of the first Society. In view of the aforesaid embargo contained in Sub-rule (1) to Rule 25, Sub-rule (2) by its operation bring in the fiction of deemed cessation from the membership of such Society from the date when the disqualification was incurred and such fiction of deemed cessation has nothing to do with the membership of the first Society. This being the position, Sub-rule (2) of Rule 25 when read with Sub-rule (1) of the said Rule is not susceptible of a construction that the person concerned ceased to be a member of both the societies. In view of our aforesaid construction of Sub-rule (2) of Rule 25, the conclusion is irresistible that the Registrar while passing the impugned order dated 23-2-1993 and Lt. Governor while dismissing the appellant's Revision by his order dated 25-8-1993 as well as the High Court in the impugned judgment

dated 20-3-1996 committed gross error in holding that the appellant ceases to be a member of both the societies under Sub-rule (2) of Rule 25. The aforesaid orders, Therefore, are wholly unsustainable and cannot be sustained.

6. The learned Counsel for the petitioner, Mr. Agrawal strongly relied upon the above judgment and particularly the position of law laid down in paragraphs 7 and 8 of the said judgment. Mr. Marwah and Mr. Kapur on the other hand contended that even the Hon"ble Supreme Court has upheld the power of the Registrar to cancel the membership of both the Societies as per the provisions of Rule 28 and Therefore, the impugned orders could not be interfered with under Article 226 of the Constitution of India. It is also submitted that full opportunity of hearing was given to the petitioner by the Registrar and the Financial Commissioner.

7. In so far as the order of the Registrar is concerned, it is unfortunate that the Registrar while noticing the judgment of the Hon"ble Supreme Court in Jagdish Singh's case (supra), which was relied upon by the petitioner as also filed before him nowhere in the narration of the facts has even cared to advert to the said judgment in any manner though his consideration of the matter by him is termed as "careful consideration".

8. In our view, the reasoning of the Registrar does not disclose "careful consideration" and in fact discloses non-application of mind, particularly in view of the fact that binding effect judgment of the Hon"ble Supreme Court cited before him has not been noticed by him. The order of the Registrar is liable to be set aside on this ground alone but unfortunately we have noted that the error has been compounded by the order of the Financial Commissioner who has chosen to pass the following order:

3. The main contention of the counsel for the appellant is that late Sh. Nathu Mal Jain was a member of the two societies at the same time but one of them was ab initio defunct. Hence cessation of his membership of the other Society as ordered by the RCS was wrong.

4. I find that late Sh. Nathu Mal Jain concealed the fact that he was member of another Society of similar category and acquired membership of Delhi Peasants Cooperative Multi Purpose Society Limited illegally by suppressing material facts. As membership of two societies at the same time having similar aims and objectives is not permissible under Rule 28 of DCS Rules 1973, the impugned order passed by the RCS is fair. The same is upheld and the appeal is dismissed in liming.

9. We may also notice that the Financial Commissioner (Respondent No. 1) has dismissed the appeal preferred by the petitioner in liming. Whether the in liming dismissal is warranted in respect of the statutory appeal before the Financial Commissioner is a moot question which need not be gone into in the present case, because we find that the entire reasoning of the Financial Commissioner again fails to notice the impact of the judgment of the Supreme Court in Jagdish

Singh's case (supra) when a specific ground in this respect was specifically taken before him. The order thus discloses clear non-application of mind and deserves to be set aside on this ground alone. Nevertheless since the issue involved is an important one and since the writ petition is pending in this Court for a period 3 years wherein an interim order has been passed and we have gone through the judgment of the Hon'ble Supreme Court and we proceed to decide the issue raised.

10. A perusal of the judgment of the Hon'ble Supreme Court in Jagdish Singh's case (supra) extracted above clearly shows that the Hon'ble Supreme while construing Rule 28 held that the Rule 28 confers power on the Registrar to direct removal of an individual from membership of either or both of the co-operative societies when such individual has become a member of two co-operative societies of the same class. However, while interpreting the said Rule 28, the Hon'ble Supreme Court read harmoniously Rule 25 also and, held that one rule cannot be used to defeat another rule in the same Rules unless it is impossible to effect harmonisation between them.

11. The Hon'ble Supreme Court held that Rule 28 makes it clear that the Registrar when becomes aware of the fact that an individual has become a member of two co-operative societies of the same class, which obviously is a disqualification under Rule 25, then while exercising his discretion the Registrar can direct removal of the said individual from the membership of either or both the co-operative societies. If Sub-rule (2) of Rule 25 is interpreted to mean that the deemed cessation is in respect of the society in respect of which the person concerned incurs the disqualification, then both Sub-rule (2) of Rule 25 as well as Rule 28 would have their play. The Court Therefore harmonised the provisions of Rule 25(2) and Rule 28 to mean that the deemed cessation of the person concerned from the membership of the Society is the Society in respect of which the disqualification was incurred. Thus, the disqualification attaches to membership of the second society and has no connection with his membership of the first society. It is also held that even while passing an order under Rule 28, the Registrar has a discretion to direct cancellation of the membership of the person concerned from any one of the two societies or both but, the said Rule also casts upon him a corresponding duty to examine the circumstances under which the person concerned has become member of two societies and for taking a conscious decision in the matter of the exercise of his discretion. The discretion has to be judiciously exercised and not arbitrarily.

12. In addition, the learned Counsel for the petitioner submitted that Rules 25 and 28 came into force in the year 1973 and even if the disqualification of dual membership was said to attach on account of the said Rule, the said Rule could not have operated retrospectively.

13. We have further noted the fact that the second Society ceased to function on 23rd June, 1959 and in any case was wound up by the order of the Deputy Registrar Cooperative Societies on 4th February, 1978. Thus, it is also not in

dispute that at no stage the petitioner acquired a plot in the second Society, namely, Adarsh Farmers Co-operative Multi Purpose Society Limited. Thus even the circumstances of the case indicate that the petitioner and his predecessor - his father Shri Nathu Mal Jain enjoyed no unfair advantage by becoming member of two societies and accordingly derived no benefit there from. Thus the Registrar while exercising his discretion judiciously ought to have kept this factor in mind and given it due weight as the Hon''ble Supreme Court had held that under Rule 25 there was no automatic cessation of membership of either Society. Furthermore the disqualification of dual membership imposed by the Rules 25 and 28 in 1973 in any event could not have been given retrospective effect because at best the cause of action for disqualification had been incurred as far back as 1957 much prior to the disqualification for such dual membership which was prescribed for the 1st time only in 1973. Furthermore by 23rd June, 1959 the said second Society had ceased functioning. The rationale supporting the disqualification for dual membership is that no one should obtain 2 plots/flats in Societies in Delhi. Such a rationale is inapplicable in the present case as it is no one's case that any plot was acquired by the petitioner/his father in the second Society. Accordingly, the impugned order cannot be sustained and thus the writ petition is allowed. Thus writ of certiorari shall issue quashing and setting aside the impugned orders dated 2nd December, 2003 passed by the Respondent No. 2 and 16th March, 2004 by the Respondent No. 1.