

(2002) 09 DEL CK 0054

In the Delhi High Court

Case No : C.W. 3345, 3348, 3363 and 3373 of 2001

S.N. Gupta, I.S. Gupta, R.L. Aggarwal and Atam Swaroop
Gupta

APPELLANT

Vs

Registrar Coop. Societies and Others

RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Citation : (2002) 100 DLT 598

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : R.S. Tomar, for the Appellant; Jiwan Pal Singh, for counsel for R-1, O.P. Khadaria, for R-2 and Rakesh Munjal and Pawan Mathur, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—All these writ petitions involve common questions of law and fact and are being disposed of by this common judgment.

2. Petitioners claim to have become members of respondent society. A share certificate was also issued to them on payment of Rs. 100/- way back in 1981, but they fell in red and allegedly defaulted. The Society's General Body consequently resolved to expel them by Resolution dated 4.9.1983, intimation whereof was sent to Registrar for approval on 16.10.1983. But nothing was heard from Registrar thereafter, though petitioners claim to have approached the society and him also several times to know their fate.

3. Meanwhile, respondent society was superseded on 19.9.1996 and An Administrator appointed to it which was challenged by some members in Civil Writ Petition No. 100/97. While this petition was pending, petitioners filed CM 1092/89 in this for their impleadment and obtained order dated 12.4.1999 whereby liberty was granted to them to approach newly appointed Administrator of the society for redressal of their grievance regarding their expulsion who was

directed to decide their plea within two weeks.

4. Pursuant thereto petitioners approached the Administrator who asked them to clear their dues and raised a demand against them. They satisfied this and made the requisite payment. They claim that they were then allowed to participate in the elections and some of them even contested these elections. Later a new elected managing committee took over the revised their expulsion vide General Body Resolution dated 4.9.1983 and addressed letter dated 11.9.2000 to them informing them of their expulsion and of futility of their having deposited the society dues pursuant to Administrator's action. That is how they have filed these petitions claiming continuation of their membership and their entitlement to allotment of flats.

5. Both, the Registrar and Society have filed their counter to this petition disputing the petitioners' membership status. The society points out that they had paid Rs. 100/- way back in 1981 and had then defaulted despite repeated demands raised against them on which they were expelled by General Body Resolution on 4.9.1983, intimation where was sent to the Registrar who had failed to convey his approval or otherwise for years on. Later, new members were enrolled in their place which was not challenged by them. So much so that one of the petitioners had also filed CW No. 2211/83 along with some others challenging their expulsion which was dismissed in limine by order dated 6.10.1983. It is urged that Administrator of the society had no authority or competence to disregard or over-reach the General Body Resolution and to revive their membership because their expulsion had become final irrespective of Registrar's non-communication of approval within six months in terms of Rule 36 of DCS Rules. Petitioners' plea is also opposed by the Registrar in his counter affidavit and so is their entitlement to allotment of flats.

6. Petitioners have filed a rejoinder affidavit to controvert the stand taken by the society and Registrar explaining that they had acted upon the Administrator's orders backed up by the orders of this court dated 12.4.1999 passed in C.M. 1092/98 and had thereafter fully participated in the affairs of the society and also in the elections. Their case was not of any new enrolment but since Registrar had failed to grant approval to their expulsion, Administrator had validly regularised the action by asking them to pay the society dues which had the consequence of restoring their membership.

7. The matter raises some interesting issues viz. whether petitioners should be deemed expelled despite Registrar's failure to communicate his approval for years on and whether Administrator's action in raising a demand against them pursuant to court order dated 12.4.1999 and allowing them to pay society dues and participate in the society affairs would revive their membership in derogation or supersession of the General Body Resolution dated 4.9.1983 expelling them.

8. The procedure for expulsion of members is provided under Rule 36 of DCS Rules. The relevant provision reads thus:-

"36(3) When a resolution passed in accordance with Sub-rule (1) or (2) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under Sub-rule (1) or (2) give his approval and communicate the same to the society and the members concerned within a period of 6 months. The resolution shall be effective from the date of approval."

9. This provision, requires the expulsion resolution to be sent to Registrar who in turn is obliged to consider it and enquire into whether the expelled member was granted full and final opportunity to come out clean and then to accord his approval or refusal within six months. Should the expulsion of member be deemed approved it he fails to do it within prescribed six months. This court has taken the view in B.B. Chibber Vs. Anand Lok Cooperative GRP Housing Society Ltd. Vs. Registrar Co-operative Societies Ltd. v. B.B. Chibber, that it would not amount to a deemed expulsion and we don't propose to take any contrary view either. As a matter of fact we have gone a step further to prescribe a time frame of one year for Registrar to convey his approval/rejection in CW 2/98 failing which expulsion resolution of the Society would be deemed approved. Following that we have no choice but to hold in the present case which exposes uncontrollable inaction of Registrar sitting over the proposal for years on that petitioners' proposal should be treated deemed approved. Even petitioners seem to have taken it so. Otherwise there was no reason or justification for their silence of waiting in the wings on this from 1983 to 1997 till they filed their CM 1092/98 making grievance of their expulsion in CW 100/97 filed by some other members challenging the society's supersession. It is difficult to fathom how they had done so in a writ petition related to a different subject matter altogether and in which expulsion of any member, least of petitioners, was not even remotely in issue. Therefore, even when court order dated 12.4.1999 required Administrator to consider their grievance, it did not require revival of their membership. Nor could the Administrator take it upon himself to do so in supersession of the General Body's expulsion resolution. We find support for this in two Supreme Court judgments, K. Shantharaj and another Vs. M.L. Nagaraja and others, and Jt. Registrar of Cooperative Societies, Kerala v. T.A. Kuttappan , AIR 2000 Scc 237 and one of these holds thus:-

"A Co-operative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession."

10. Therefore Administrator's action in reviving petitioner's membership and raising demand against thereon was wholly unauthorised also because it ran contrary to the society's General Body Resolution dated 4.9.1983. Needless to

emphasise that Section 28 of DCS Act vests the final authority of a cooperative society in a General Body of members and once this body had resolved to expel the petitioners, a make-shift Administrator appointed u/s 32 primarily to hold elections to the society could not defeat the resolution to validate the otherwise ceased membership of petitioners. It may as well be that Administrator is vested with powers of the Managing Committee of the society u/s 32(3) but such power was also exercisable by him only subject to the control of Registrar. He does not enjoy and license or unbridled power to enrol any new members or to review the membership of any expelled member. Even otherwise the decision of the Managing Committee and for their purpose the Administrator who steps into the shoes of the Committee cannot either override nor supersede the decision of the General Body which alone is the final authority.

11. Petitioner compliance to Administrators action was equally inconsequential. Their depositing the society's due or participating in society's affairs during his lame duck tenure would not accrue and rights to them claim continuation of their membership. Because once their membership was extinguished by their deemed approval expulsion, it could only be revived in accordance with the procedure contained in provisions of Section 36 which admittedly was not followed or adopted in the present case. Therefore, all things considered, we hold that petitioners' expulsion should be deemed approved in the facts and circumstances of the case and that Administrator had no competence or authority to do away with their expulsion and to revive their membership by asking them to pay society dues which had the consequence of over-riding the General Body Resolution. These petitions accordingly fail and are dismissed.