
(2009) 05 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4209 of 2001

Swayam Sidha Cooperative Group Housing Society

APPELLANT

Vs

The Financial Commissioner, The Registrar, Cooperative Societies Government of N.C.T. of Delhi, Sh. R.S. Bairva

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 159 DLT 455 : (2010) 7 RCR(Civil) 239

Hon'ble Judges : Siddharth Mridul, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Sujatha Kashyap, for Respondent No, for the appearing parties; Indrani Ghosh, for LR's of Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, J.—The question for our consideration is whether the mere membership of a deceased member of a cooperative group housing society can be inherited by his nominee, who is otherwise ineligible to be a member of that society. Our answer to this question is in the negative in view of the decision of the Supreme Court in Gayatri De Vs. Mousumi Co-operative Housing Society Ltd. and Others,

2. The Petitioner is a cooperative group housing society and one of its objects is to acquire land on lease for development from the slum wing of the Delhi Development Authority and construction of residential houses or flats for allotment to its members. The membership of the Petitioner-Society is restricted only to widows having an income which does not exceed Rs. 1,500/- per month from all sources.

3. The mother of Respondent No. 3, Smt. Ganesh Devi, was a widow who satisfied the eligibility requirements for membership as per the Bye-Laws of the Petitioner-Society. As such, she was made a member of the Petitioner-Society. However, before she could be allotted a flat, she passed away leaving her son

(Respondent No. 3) as her nominee.

4. Respondent No. 3 sought to take over the membership rights of his deceased mother but the Petitioner-Society did not accept his membership since he was not eligible.

5. On these broad facts, Respondent No. 3 filed Complaint No. 2471/1992 before the Consumer Dispute Redressal Forum (District Forum-II). By an order dated 13th July, 1994, the District Consumer Dispute Redressal Forum came to the conclusion that Respondent No. 3 was not eligible to be a member of the Petitioner-Society and, therefore, his complaint was devoid of any merit. We are told that the order passed by the District Consumer Dispute Redressal Forum has attained finality.

6. Not being satisfied with the above decision, Respondent No. 3 raised a dispute before the Registrar, Cooperative Societies claiming membership of the Petitioner-Society. We are not concerned with the first round of litigation that took place before the Registrar but eventually by an order dated 30th November, 2000 (passed in the second round) the Registrar came to the conclusion that Respondent No. 3 was entitled to step into the shoes of his deceased mother and was, therefore, entitled to membership of the Petitioner-Society.

7. Feeling aggrieved, the Petitioner-Society filed a revision petition u/s 80 of the Delhi Cooperative Societies Act, 1972 being Case No. 24/2001-CA. The revision petition came to be dismissed by the Financial Commissioner by the impugned order dated 15th February, 2001.

8. The only contention urged before us by learned Counsel for the Petitioner is that membership of the Petitioner-Society was restricted to widows who have an income of less than Rs. 1,500/- per month from all sources. Respondent No. 3 is not a widow (being a male) and is also earning well over Rs. 1,500/- per month as a bank official. The purpose of setting up the Petitioner-Society was to assist indigent and homeless widows and Respondent No. 3 does not fall in this category by any stretch of imagination. On the other hand, the submission of learned Counsel for Respondent No. 3 was that her client was entitled to step into the shoes of his deceased mother being her nominee, and he was merely seeking to enforce this entitlement that was available to him.

9. In our opinion, the dispute is really covered by the decision of the Supreme Court in *Gayatri De Vs. Mousumi Co-operative Housing Society Ltd. and Others*, . There are in fact two situations that can arise in a case such as the present. The first is where the deceased member has not been allotted any plot or flat and is merely a member of a society. The second situation is where a deceased member has been allotted a plot or flat by virtue of his or her membership of a society.

10. In the first situation as mentioned above, there is no interest of a deceased member that can devolve on a nominee. It is merely a membership of a society and this cannot be termed as the estate of the deceased which can be inherited

by the legal heirs of the deceased. A somewhat parallel situation would be a membership to a club or an association. The death of a member of a club or an association does not confer any entitlement on any of his legal heirs to membership of that club or association. In the second situation the allotment of a plot or flat is an interest that can devolve upon the legal heirs of a deceased. This is what has been held in *Gayatri De*. We may note that we have followed *Gayatri De* in a recent decision rendered by us in *Manmohan Nath N. Puri (Deceased) through L.Rs. v. Shri Madan Jha and Ors.* WP(C) No. 182/1990 decided on 18th March, 2009. In another Division Bench decision being *Pran Nath Mallick v. Dr. Netar Prakash Mallick and Ors.* 2000 3 AD (Del) 843 a Division Bench dealt with the second situation mentioned above and concluded that after allotment is made, legal rights get vested in the member and the society cannot stop inheritance of those rights on the legal heirs of the deceased on the plea that such a person is not a member of the society. Of course, this decision would not be applicable to the first situation that we are concerned with but is being mentioned only to indicate the two distinct situations that can arise.

11. In view of the above, in our opinion Respondent No. 3 could not succeed to the mere membership of his deceased mother, more particularly on the facts of this case because Respondent No. 3 did not satisfy the eligibility conditions laid down in the Bye-Laws of the Petitioner-Society. We may note for the record that learned Counsel for the Petitioner contended before us that the decision of the District Consumer Dispute Redressal Forum having attained finality, Respondent No. 3 is bound by that decision and cannot agitate the claim all over again in a different forum. We are not going into this aspect of the matter because even otherwise on merits we are of the view that the impugned orders passed by the Registrar, Cooperative Societies and the Financial Commissioner are not sustainable in law.

12. The writ petition is allowed. No costs.