
(1972) 01 DEL CK 0030

In the Delhi High Court

Case No : Letter Patent Appeal No. 195 of 1971

The Chief Commissioner (Now Lt. Governor), Delhi and
Another

APPELLANT

Vs

Kitty Puri and Another

RESPONDENT

Date of Decision : 10-01-1972

Acts Referred:

Citation : AIR 1973 Delhi 148 : (1972) 1 ILR Delhi 698 : (1972) RLR 39

Hon'ble Judges : V.S. Deshpande, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : Deepak Chaudhary, A.K. Marwaha, G.S. Vohra and A.S. Puri, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) In this fast growing capital of India, all land which can be used for construction has been acquired by the Government to prevent profiteering by private persons. Government has further adopted the policy of leasing such land only to cooperative housing societies. Thus the only way for any one to get land for house building has been to become a member of such a society. It is important, Therefore, both for the members of the public and for the Government to understand properly the law governing such membership and this is precisely what is involved in this appeal.

(2) The Diplomatic Enclave Extension Co-operative House Building Society Limited (hereinafter called the Society) granted membership to Shri H.S. Puri on 13-2-1959. The latter transferred the membership to his father Shri B.S. Puri on 12-11-1969. When Shri B.S. Puri died on 3-2-1961 the name of Shri H.S. Puri was found in the books of the society as the nominee of the deceased member. On 31-10-1961, the Society informed Shri H.S. Puri that he could become a member if, inter-alia, he or his dependents did not have any plot of land in Delhi. Shri H.S. Puri apparently could not avail of this opportunity of becoming a member as he already owned a house in Delhi. After a long time he wrote to the

Society on 21-4-1964 that his right as a nominee to become a member should be transferred by the Society to his daughter Mrs. Kitty Puri who did not have any plot or house in Delhi. This request was further supported by a joint letter dated 15-10-1964 by Shri H.S. Puri and Shri S.S. Puri, the sons and heirs of the deceased member Shri B.S. Puri. On 28-4-1964, the Managing Committee of the Society informed the Deputy Housing Commissioner as well as Sarvashri H.S. Puri and S.S. Puri that it had decided that membership be transferred to Mrs. Kitty Puri as requested by Sarvashri H.S. Puri and S.S. Puri, heirs of the late Shri B.S. Puri. On 16-9-1964 however, Shri H.S. Puri withdrew his consent to the transfer. On 28-9-1964, the Deputy Housing Commissioner informed the Society that neither Shri H.S. Puri nor Shri S.S. Puri could become a member of the Society as both possessed houses in Delhi. Sarvashri H.S. Puri and S.S. Puri could not, Therefore, nominate Mrs. Kitty Puri. On 20-10-1965, Therefore, the Society cancelled the decision to transfer the membership to Mrs. Kitty Puri.

(3) Mrs. Kitty Puri, Therefore, filed Civil Writ Petition 857-D of 1965 praying that the cancellation of her membership by the Society at the instance of the Government be quashed. Her case was that first Shri H.S. Puri and then Shri B.S. Puri was a member of the Society. On the death of Shri B.S. Puri, Shri H.S. Puri was the nominee of the deceased member and as such he could transfer his right to become a member to the petitioner. The Society accepted the petitioner as a member and it could not thereafter cancel her membership at the instance of the Government. Moreover, the Society with the consent of the Government had allowed other similarly situated persons to become members of the Society and they could not Therefore, discriminate against the petitioner by cancelling her membership.

(4) The petition was defended by the Government but not by the Society. In pursuance of Government policy, the Society was told as long ago as on 19-6-1959 by Annexure R-1 at page 88 of the record that the Government had decided that every co-operative House Building Society who wished to approach the Government for the acquisition of land under the land Acquisition Act should give an undertaking that their members did not possess any residential house or plot in Delhi. The Society was asked to give such an undertaking to the Government. It was also asked to amend its bye-laws to ensure that only those persons could become its members who did not possess any land or house in Delhi. After the acquisition of the land, the Government had entered into an agree³ 700 ment with the Society by which the Society became entitled to develop the land. It was only after the development was completed and the conditions laid down by the Government were fulfilled that a lease of the land was to be given to the Society. As no lease had yet been granted, the Society did not have any right or interest in the land. It could not, Therefore, confer any right or interest in any piece of land on any of its members. The allotment of plots by the Society to its members was, Therefore, only in anticipation of the lease being granted to the Society by the Government . It did not confer any rights in the land on the members. On the death of the last member Shri B.S.

Puri, both his sons Sarvashri H.S. Puri and S.S.Puri were eligible to become members as the heirs of Shri B.S. Puri; but they both owned houses in Delhi and could not, Therefore, become members. Even if Shri H.S. Puri was assumed to be a nominee of Shri B.S. Puri, he was himself ineligible for membership and could not nominate the petitioner for it. The petitioner is not a nominee of the original member namely, the late Shri B.S. Puri. The petitioner's nomination was accepted by the Society because it was proposed by Sarvashri H.S. Puri and S.S. Puri. As Shri H.S. Puri later withdrew his consent to it, the Government was entitled to advise the Society to cancel the membership of the petitioner.

(5) The writ petition was allowed by S. Rangarajan J. mainly on the ground that the Society had no power to cancel the membership of the petitioner for the allotment of a plot to her under bye-laws 7 and 8 of the Bye-laws of the Society. The learned Judge observed that the Society acted regarding the petitioner in the same manner as it had acted with reference to other cases though the Government had tried to explain that there has been no discrimination against the petitioner. Hence the appeal by the Government.

(6) The questions arising for decision in this appeal may be considered as below :-

(1) Was Shri H.S. Puri a nominee of the deceased member Shri B.S. Puri ?

(2) Could he further nominate the petitioner for membership?

(3) Did the Society legally transfer the membership to the petitioner ?

(4) Whether the Government discriminated against Shri H.S. Puri or the petitioner ? and

(5) What right, if any, did the petitioner or her predecessors in title have in any particular piece of land ?

(7) Question No. 1 According to section 3(c) of the Bombay Co-operative Societies Act, 1925 as applied to Delhi (hereinafter called the Act) a "member" of a co-operative co-operative society includes "a person admitted to membership after registration (of the society) in accordance with the rules and bye-laws applicable to such society". According to bye-law 5(ii) of the Society, every person seeking membership of the Society has to sign declaration to the effect that he or his wife or any of their dependents does not own a dwelling house or plot in Delhi. Such ownership is made a disqualification by bye-law 5(1)(c). Further, bye-law 9(4) prevents the Society from allotting any plot to members who own a house or plot in Delhi. When the Government informed the Society in 1959 that land would be given to the Society only if the Society excludes from its membership persons holding a house or a plot in Delhi, the Society was also advised to amend its bye-laws to ensure the exclusion of such persons from membership. It is not known when the exclusionary provisions in bye-laws 5 and 9 were inserted by the Society. It is, however, stated in paragraph 25 of the Government's affidavit that an amendment in the bye-laws was adopted and

registered on 23-7-1962 to ensure that a person acquiring a plot of land or house in Delhi would cease to become a member [vide bye-law 8(vi)]. Bye-laws 5 and 9 may also, Therefore, be taken to have been amended either then or near about .Shri B.S. Puri could, Therefore, validly become a member even if he owned a house or land in Delhi prior to these amendments in the bye-laws. The right of nomination was conferred on a member by bye-law 15. Only one person could be nominated there under and the nomination was to be completed by an entry in the register of members. According to section 31(1) of the Act, the existence of an entry in the registers regularly kept in the course of business by the Society is to be evidence of the transactions recorded therein. It is admitted by the Government that the name of Shri U.S. Puri was found in the register of the Society as a nominee of late Shri B.S. Puri. This is, Therefore, sufficient for the finding that Shri H.S. Puri was a nominee of the last member the late Shri B.S. Puri.

(8) Question No. 2 It is essential to bear in mind the distinction between a member and a nominee of an ex-member. Firstly, a member and his nominee could not co-exist. In the presence of the member, the nominee would have no place. It is only on the death of a member that his nominee could be considered for the purpose of eligibility to become a member. Secondly, there are two distinct modes recognised by the Act for the transfer of the share or interest of a member of the Society. The first mode is transfer by a member to another member inter-vivos u/s 19(2) of the Act. An existing member can transfer his share or interest either to the Society or to a member of the Society or to a person whose application for membership has been accepted by the Society. No such transfer of a share or interest was made during his life time by the last member Shri B.S. Puri.

(9) The second mode of transfer is by the Society after the death of a member. u/s 27(1) the Society can transfer the share or interest of a deceased member only within a period of one year from the death of such member. It is decisive in this case that the Society did not transfer the share or interest of the late Shri B.S. Puri to any one including the petitioner within one year from the death of Shri B.S. Puri who died on 3-2-1961. The Society may transfer the share or interest of a deceased member to either of the following two types of persons :-

(A) To a person or persons nominated in accordance with the bye-laws of the Society, if duly admitted a member of the Society, in accordance with the rules or the bye-laws of the Society, as it purported to do with the petitioner in the present case;

(B) If there is no person so nominated, to such person as may appear to be the heir or the legal representative of the deceased member if duly elected a member of the society.

(10) As the petitioner was never elected a member of the Society, she cannot avail herself of provision (b) by which the Society could transfer the share and

interest of Shri B.S. Puri to her.

(11) The question then arises whether a transfer by the Society u/s 27(1) of the Act could be made not only to a nominee of a member but even to a nominee of a nominee of a member. The petitioner was not a nominee of the member but was a nominee of Shri H.S. Puri who himself was a nominee of the member. Section 27(1) refers us to the bye-laws to seek an answer to this question. For, nomination is to be "in accordance with the bye-laws of the society". The answer is inferable from bye-law 9(1) which is as below :-

" A member or the nominee or the successor of an ex-member may transfer his shares to another member or applicant qualified under bye-law (5) and approved by the Managing Committee or to share transfer fund created by the Society out of its profits and shall then be paid the value of the shares less any sum due from him to the Society. No transfer of shares or interest shall, however, be made unless a member has held such shares for not less than one year, but the condition of bye-law (5) will not be applicable to the nominee or legal heir of the deceased member".

(12) BYE-LAW 9(1) is obscurely worded because it lumps into one two dissimilar provisions, namely, (a) regarding the transfer by a member of his share or interest to another member (under section 19 of the Act) and (b) regarding the transfer by a nominee or a successor of a member of his eligibility to apply for membership to a member or an applicant for membership qualified under bye-law 5 and approved by the Managing Committee of the Society (contemplated by section 27 of the Act). u/s 71 of the Act, the State Government is empowered to make rules to carry out the purposes of the Act. One such purpose is to prescribe the matters in respect of which a society may or shall make bye-laws. Rule 4 of the Delhi Co-operative Societies Rules, 1950 enumerates such matters. Clause (d) thereof relates to "transfer of the share or interest of member". It is clear that only a member holds a share or interest in the society. He alone has paid the share money and is entitled to exercise the rights of a member. He alone has the right to transfer his share to another member u/s 19(2) of the Act. During his life time, there is no question of any nominee of such a member having any rights whatever. Even after his death, section 27(1) gives the Society the right to transfer the share or interest of a deceased member. But it does not give any such right to the nominee of a deceased member. In fact, even the Society cannot transfer the share or interest of a deceased member to the nominee of such a member except after the nominee is duly admitted to be a member of the Society. Sections 19 and 27 read together, Therefore, confine the holding of a share or interest to a member during his life time and to the Society after his death. Under the general law, the share or interest of a member could devolve on his nominee or successors. But the general law is modified by section 27 of the Act with the effect that a nominee or a successor has been only given the right to apply to become a member of the Society. He does not automatically succeed to the share or interest of the deceased member. The reason is that the

membership is a contract between the member and the Society. It is not an interest which can be inherited by the nominee or the successors from the deceased member without reference to the Society. The right to transfer the share or interest of a member can be exercised only by a member u/s 19(2) but not by his nominee or successor. This may be contrasted, for instance, with section 109 of the Companies Act, 1956 which permits a transfer of the share or other interest in a company of a deceased member by his legal representatives although the legal representative is not himself a member.

(13) In so far as bye-law 9(1) says that "the nominee or the successor of an ex-member may transfer his shares" it seems to conflict with sections 19(2) and 27(1) of the Act. For, the nominee does not himself possess the share or interest of the ex-member. He cannot, Therefore, transfer it to any one. If bye-law 9(1) is understood to mean that the nominee or the successor of an ex-member can himself transfer the share or interest of the ex-member to another person, then to this extent it is void as being contrary to sections 19(2) and 27(1) of the Act. To avoid this consequence, these words of bye-law 9 (1) may be understood to mean that the nominee or the successor of an ex-member may transfer not his "share" for he has none, but his eligibility as a nominee to apply to become a member in place of the deceased member. This construction would also be in consonance with the rest of bye-law 9(1). For, the nominee has the alternative right to receive the value of the share or interest from the fund created by the Society out of its profits. Further, bye-law 9 which prevents holders of houses and lands in Delhi from becoming members of the Society is not to be applicable to the nominee or legal heir of a deceased member who could transfer his right to become a member to another person. The real purpose served by bye-law 9(1), Therefore, is two-fold. Firstly, it enables the nominee or the successor to transfer his liability to become a member to another person and secondly it exempts such a nominee or successor from the requirement of bye-law 5, namely, the disqualification attached to holders of lands and houses in Delhi. So read, Shri H.S. Puri, though disqualified from becoming a member by bye-law 5, was still capable of further nominating another person by transfer to such person of his own eligibility to apply for membership in place of the deceased Shri B.S. Puri. Though, Therefore, ordinarily a nominee of a member would not include the nominee of a nominee, because of bye-law 9(1) such inclusion is made possible. Shri H.S. Puri could, Therefore, nominate the petitioner validly by making her eligible in his place to apply for membership of the Society. The Government would, however, be well-advised to redraft their bye-law corresponding to bye-law 9(1) of the Society in the model bye-laws and advise all the Housing Co-operative Societies to redraft their own bye-laws in this respect to remove the obscurity and possible invalidity pointed out above.

(14) Question No. 3 u/s 27(2). the Society could transfer the share or interest of the late Shri B.S. Puri to the petitioner only within a period of one year from the death of Shri B.S. Puri. It will be recalled that Shri H.S. Puri was informed by the Society that he could become member of the Society in place of Shri B.S. Puri

being the latter's nominee if he did not hold either land or house in Delhi. Shri H.S. Puri apparently could not avail himself of this opportunity because he held a house in Delhi. Shri G.S. Vohra, learned counsel for the petitioner (Respondent I herein), argued that the Society was not justified in putting this condition in the way of Shri H.S. Puri's membership. We are unable to agree with this contention. For as early as in 1959 the Government had informed the Society that if the Society wanted to get land from the Government, the Society must ensure that persons holding houses or lands in Delhi are not allowed to become members of the Society. This policy of the Government was reasonable and in the interests of the public. The very object of the large-scale acquisition of land by the Government and allowing house-building only to members of Co-operative societies would have been defeated if persons could hold lands and houses in Delhi and yet could become members of more than one housing society and there- by go on possessing a number of houses and plots in Delhi. It is possible that in 1961 the Society may not have actually amended its bye-laws to ensure the exclusion of such persons from becoming members. But what is a bye-law after all ? It is .not a law in the same sense that a statute or statutory rules are laws. They merely govern the internal management business or administration of a society and are binding between the persons affected by them as was pointed by the Supreme Court in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, .(1) The Society depended absolutely on the Government for getting the land which was the very object of the formation of the Society. The policy decision of the Government was taken as far back as in 1959 and the Society was informed in 1959. It was not possible, Therefore, for the Society to ignore that decision and to grant membership to persons holding lands and houses in Delhi. Had the Society done so, the Government would have refused to grant land to the Society. The Society cannot be blamed, Therefore, if they told Shri H.S. Puri that he should not possess a plot of land or house in Delhi if he would to become a member in 1961. Even Shri H.S. Puri apparently knew that the Society was right in doing so. This is why he did not protest to the Society against such a condition. Nor did he sell away his house or plot and try to become a member of the Society by fulfilling the condition. He apparently put greater store by his own house than by mere membership of the Society. At any rate, if Shri H.S. Puri or his nominee, the petitioner, felt aggrieved by the imposition of this condition by the Society, they could have complained against the Government by way of a proceeding in Court within three years from 1961. They cannot complain against it now as any writ petition with such a complaint would be liable to be dismissed as unduly delayed. The period of one year thus expired and nobody became a member during that period to take the membership of the late Shri B.S. Puri. Consequently, the Society also lost its right available to it u/s 27(1) to transfer the share or interest of the late Shri B.S. Puri to the nominee of Shri B.S. Puri or to the nominee of such a nominee, namely, the petitioner. The transfer by the Society to. the petitioner being made after the expiry of the period of one year from the death of Shri B.S. Puri was contrary to section 27(1) of the Act and was, Therefore,

illegal on this ground alone. The period of one year for this purpose is fixed by the statute itself. There is neither any provision in the statute nor is any case made out by the petitioner for the extension of this period of one year. The general principle is that the inherent power of the Court to extend the period of time to a person for doing any act cannot be exercised if doing so would be contrary to the express provisions of the statute. If time for doing a thing is fixed by the Court itself then the Court would have the power to extend the time. But if the time is fixed by a statute, then in the absence of a provision analogous to section 5 of the Limitation Act, the Court would be powerless to extend such a time. If the statutory provision is merely directory, then perhaps the Court may be able to extend such time. If, however, it is mandatory, then the Court cannot do so. Section 27(1) confers a privilege or benefit on the nominees and heirs and legal representatives of a deceased member to apply for membership within one year. It would be reasonable to think that a person who wishes to avail himself of this benefit must comply strictly with the terms of the statute to get the benefit. If he fails to do so, the benefit would be denied to him. For instance, a lessee who has a right to the renewal of a lease by applying for such renewal within the time prescribed by the lease would forfeit such benefit if he fails to apply within time. The provision regarding the period during which the application had to be made was held to be mandatory by the Supreme Court in *Caltex (India) Limited v. Bhagwan Devi* 1969R.C.R.552. On the same principle, the period of time prescribed by section 27(1) of the Act must also be regarded as mandatory. Any way, there has been no prayer and no argument for Respondent No. 1 that time could or should have been extended for Shri H.S. Puri to become a member and the question hardly arises.

(15) Question No. 4 The argument about discrimination put forth by the petitioner Respondent No. 1 is misconceived. Article 14 of the Constitution guarantees equality before law and equal protection of the laws. It means that the State must treat similarly situated persons equally according to law. If the State departs from the law and treats a person more favorably than others, then such other persons can challenge the act of favoritism and get it quashed by way of a writ petition under Article 226 of the Constitution. Similarly, if the Government treats a person illegally less favorable than others then such aggrieved person can challenge the less favorable act. In either case, the act has to be contrary to law or to the principle of equality before it can be challenged as being contrary to Article 14 of the Constitution. The complaint of the petitioner Respondent No. 3 is that on 9-10-1959 the Society passed a resolution by which members who were barred from getting a plot from the Society due to their previous possession of a house or a plot would be able to transfer their membership and their assets to their nominees and that pursuant to this resolution a number of transfers were recognised by the Society. As stated above, the Government informed the Society in 1959 that it must not allow holders of lands and houses in Delhi to become members. The bye-laws of the Society were not amended immediately in 1959 but a little later to achieve this

object. The persons possessing lands and houses in Delhi who had already become members of the Society were till then legally entitled to remain members. They could, Therefore, be allowed to transfer their share and interest to other persons u/s 29(2) of the Act. Similarly, the share and interest of deceased members could be transferred by the Society u/s 27(1) of the Act. The Society was to follow the law and treat every person equally in accepting such members. The petitioner Respondent No. 1 does not fit in any of these categories. If the petitioner Respondent No. 3's case is that any person is allowed to become a member of the Society contrary to sections 19 and 27 of the Act by an act of favoritism, then she being an aggrieved person could have challenged that act and got it quashed. But the Respondent No. 1 cannot contend that because the Society and the Government have illegally shown favor to some person, then this Court must compel them to commit another illegality to show favor to Respondent No. 1 in the same way. This is not the meaning of equality guaranteed by Article 14 of the Constitution. It has not been shown by the petitioner Respondent No. 1 that any of the cases mentioned by her in paragraphs 24 and 25 of the writ petition were similar to her case. For instance, it is not shown that the transfers were not in accordance with sections 19 and 27. It is also not shown that the petitioner was entitled to the benefit of sections 19 and 27. The petitioner was clearly out of time to come u/s 27. We do not find, Therefore, that the petitioner was discriminated against in any way by the Society and the Government.

(16) Question No. 5 In paragraph 12 of the counter-affidavit of the Government it is clearly stated that the Society was given only a license to enter upon the land for the purpose of development and no lease had been granted to the Society. In paragraph 9 of the rejoinder the petitioner Respondent No. 1 did not deny this assertion of the Government but argued on the assumption that only a license had been granted to the Society. It is clear, Therefore, that no right or interest as such had been created in favor of the Society by the Government till the license granted to the Society was replaced by a lease. Even then it is the Society but not its members who would get a right or interest in the land. The right in favor of the members is created only through the Society when the lease is granted to the Society by the Government and then sub-lease is given to a member by the Society as lessee by the Government as the Lesser. This is the standard pattern of development of land for construction of buildings adopted by the Government in Delhi and is a matter of common knowledge. The petitioner Respondent No. 1 did not have, Therefore, any interest in any particular piece of land at all. The allotment of a particular plot by the Society to Shri B.S. Puri was only by way of anticipation to be carried out after a sub-lease is executed in favor of the member.

(17) Shri Dipak Chaudhry for the appellant had also argued that u/s 54 of the Act, a dispute between a person claiming through a member and the society touching the constitution or business of a society has to be referred to the Registrar for decision and that this alternative remedy being available to the

petitioner Respondent No. 1, the writ petition should have been dismissed by the learned Single Judge. Firstly, this point does not seem to have been urged before the learned single Judge. Secondly, the dispute in the present case is not only between the petitioner Respondent No. 1 and the Society but the petitioner Respondent No. 1 also seeks relief against the Government. Section 54, Therefore, could not have barred the writ petition. We may further point out that u/s 8 of the Act, the Registrar has the power to decide whether a person seeking admission as a member of the Society under the Act belongs to any particular class. According to the bye-laws of the Society, a person holding a house or a plot in Delhi is excluded from membership. Such excluded persons can be said to form a class within the meaning of section 8. Whether Shri H.S. Puri belonged to this class and was, Therefore, not entitled himself to apply for membership could have been decided by the Registrar and his decision would have been final. This must have been realised by Shri H.S. Puri and this was the reason why he did not apply for membership from 1961 to 1964.

(18) In view of our finding on Question No. 3 that the action of the Society in transferring the share and interest of Shri B.S. Puri in the Society to the petitioner Respondent No. 1 .was contrary to section 27(1) of the Act being made after the expiry of the period of one year specified therein, the decision of the learned Single Judge allowing the writ petition is set aside. The appeal is allowed and the writ petition is ordered to be dismissed. In the circumstances, however, we make no order as to costs.