

(2010) 03 DEL CK 0176

In the Delhi High Court

Case No : Writ Petition (C) No. 7323 of 2008

Virender Kumar Yadav

APPELLANT

Vs

Delhi Co-operative Society and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Co-operative Societies Act, 1972 — Section 54, 60

Citation : (2010) 169 DLT 92

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.P. Kalra, S.K. Pruthi and Manoj Ahuja, for the Appellant; Parul Sharma, for V.K. Tandon, for Respondent No. 1, R.K. Gupta and Ankur Arora, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has assailed the common order dated 28th July, 2008 passed by the Delhi Cooperative Tribunal in Appeal No. 178/2009-DCT and Appeal No. 199/2005-DCT, preferred by the petitioner and the respondent No. 2 society.

2. The facts giving rise to the present petition are in a narrow compass and to the extent necessary, are set out hereafter. The New Subhash Cooperative Group Housing Society, respondent No. 2 herein is a cooperative group housing society registered under the Delhi Cooperatives Societies Act, 1972. This society was allotted a plot of land by the Delhi Development Authority bearing plot No. A-2 Paschim Vihar, New Delhi for the construction of 58 flats for allotment to its 58 members.

3. Sh. Lal S. Vaswani, respondent No. 3 herein was enrolled as an original member of the respondent No. 2 in the year 1971 and was allotted a flat No. 57 in the allotments effected on 7th December, 1980 to the members. It appears that the respondent society passed a resolution on 21.9.1997 to expel Shri Lal S.

Vaswani from the primary membership of the society on account of his alleged default in making payment of dues. The case of expulsion of Shri Vaswani was placed before the Registrar, Co-operative Societies in accordance with Rule 36 of the Delhi Co-operative Societies Rules 1973. In those proceedings, Shri Vaswani relied upon the audit report for the year 1994-95 of the accounts of the society. He also stated that he made payment of Rs. 66,000/- and a loan was also advanced by DCHFC Limited to the society on his account. He contended that he was not a defaulter. He also challenged the rate of interest which had been charged by the society.

4. After hearing the society and Shri Vaswani, the Registrar Co-operative Societies vide order dated 8/13.10.1998 held that the society had not followed the procedure under Rule 36 scrupulously and had merely completed the formalities to harass Shri Vaswani. The conduct of the society in not producing, or giving the statement of dues pending against Shri Vaswani was held as substantiating his allegations of ulterior motive, mala fide and harassment made against the society. Consequently the Registrar Co-operative Societies dropped the proceedings for expulsion of Shri Lal. S. Vaswani.

5. The respondent society preferred an appeal from the Registrar's order before the Financial Commissioner, Delhi which was registered as Case No. 376/98-CA. The Financial Commissioner also did not accept the plea of the respondent society and dismissed the appeal. Consequently the expulsion proceedings undertaken by the respondent society against respondent No. 3, Shri Lal. S. Vaswani stood dropped, as the orders passed in those proceedings attained finality and were not challenged by the society any further.

6. It appears that despite the aforesaid orders, the disputes between the respondent society and Shri Lal. S. Vaswani continued to persist. According to Shri Vaswani, he sent communications to the society enquiring about the genuine and verifiable dues of the society to make payment of the same, but there was no response from the society. At the behest of Shri Vaswani, the Registrar of Cooperative Societies ordered an inspection u/s 54 of the Delhi Co-operative Societies Act vide order dated 03.02.2004. Respondent No. 3, it appears, learnt from the inspection report prepared on the orders of the Registrar Co-operative Societies that flat No. 57 which had been allotted to him, had been further allotted to Shri Virender Kumar Yadav, the petitioner herein, even though no allotment of the said flat had been made in his favour by the DDA.

7. At that stage, the respondent No. 3 invoked Section 60 of the Delhi Co-operative Societies Act, 1972 to seek reference to his claims against the respondent society and the petitioner to arbitration. He claimed possession of flat No. 57 from the society and Shri Virender Kumar Yadav, the petitioner herein. He further sought a direction that the respondent society should provide the genuine, bona fide and verifiable amount due and payable by him. Respondent No. 3 claimed that he had tendered various amounts to the respondent society in the year 2004, but the same were returned by the respondent society. He also

claimed a sum of Rs. 6,000/- per month w.e.f. September 2001, till the date of handing over of possession of the flat, as damages for delay in handing over possession of flat No. 57 to him.

8. The Registrar, Co-operative Societies vide order dated 18.2.2005 held that, in his opinion, a dispute existed regarding the membership, management and business of the Co-operative society. It was held that the prayer with regard to the claim of possession of flat No. 57 and for a direction to the respondent society to provide to him the genuine, bona fide and verifiable amount due and payable by him, is arbitrable.

9. The Registrar Co-operative Societies appointed Shri D.P. Dwivedi as the Arbitrator. After hearing Shri Vaswani, the society and Shri Virender Yadav - the petitioner herein, the Arbitrator passed a detailed award dated 13th of September 2005 in favour of respondent No. 3, Shri Vaswani holding that the respondent society had violated the orders of the Registrar Co-operative Societies dated 30.10.1998 (sic 13.10.1998) and the order of the Financial Commissioner dated 07.01.1999 whereby the expulsion proceedings against Shri Vaswani had been dropped. It was held that without taking the issue of the expulsion of Shri Vaswani to its logical conclusion, the respondent society had acted in violation of the Delhi Co-operative Societies Act, the Rules and the directives issued thereunder, as the society had proceeded to accept money from the petitioner for handing over possession of flat No. 57 to him. The arbitrator held that the respondent society was under a duty to raise a verifiable and genuine demand on Shri Vaswani and upon payment of the same, to hand over possession of flat No. 57 to him. The respondent society was also held solely responsible for its conduct in dealing with Shri Yadav, the petitioner herein. The society was directed to make efforts to retrieve the account of Shri Vaswani as had been done in the case of other defaulter members so that Shri Vaswani could make payment of the amount due, along with interest as applicable. He also held that Shri Virendra Kumar Yadav the present petitioner was not entitled to allotment of a flat. The allotment of flat made to the petitioner and his possession thereof was held to be illegal and he was directed to hand over the same to the respondent society. He also held the transaction between the society and the petitioner herein to be illegal and void. The Arbitrator also directed that the Registrar should take necessary action against the Managing Committee of the respondent society for violation of the provisions of the Act provided under the Chapter-Offences and Penalties.

10. The petitioner- Shri Virender Kumar Yadav and the respondent society preferred appeals bearing Nos. 178/05-DCT and 199/2005 DCT respectively before the Delhi Co-operative Tribunal against the aforesaid award of the learned Arbitrator. By its order dated 28th July, 2008, the learned Delhi Co-operative Tribunal has dismissed both the appeals and affirmed the arbitrator's award dated 13.9.2005, after hearing the parties.

11. Shri S.P. Kalra, learned senior counsel for the petitioner submits that

respondent No. 3 Shri Vaswani was a persistent defaulter and he had not paid the amounts due from him from the beginning. He submits that even after the passing of the order dated 07.01.1999 by the Financial commissioner dropping the expulsion proceedings, and despite repeated demands made by the society, Shri Vaswani failed to make payment of the amounts due from him.

12. The further submission is that in respect of the loan disbursed to the respondent society by the Delhi Co-operative Housing Financial Corporation Limited (DCHFC Ltd.), the said corporation had initiated arbitration proceedings to recover an amount of Rs. 13,21,859/- as principal along with interest and costs. The Arbitrator appointed by the Registrar Co-operative societies had passed an award in favour of DCHFC Ltd and against the society on 28.01.2003 directing payment of Rs. 13,84,383/-. He submits that with a view to liquidate the liability of DCHFC Ltd., the general body of members of the respondent society decided to enrol the petitioner as a member of the society. The petitioner is stated to have paid a sum of Rs. 13,75,000/- towards cost of the flat as demanded by the society. Mr. Kalra contends that in these circumstances there is no equity in favour of respondent No. 3 who has been a persistent defaulter, and, at the same time, equity lies in favour of the petitioner who is a bona fide purchaser of the said flat for valuable consideration. The further submission is that the petitioner came to the rescue of the society by providing the necessary funds to the society to clear the dues of DCHFC Ltd. under the award. Shri Kalra has also submitted that the Registrar, not having disapproved the expulsion of respondent No. 3 in terms of Rule 36 of the Delhi Cooperative Societies Rules, 1973 within the statutory period of 6 months, the expulsion of respondent No. 3 attained finality and by passing the subsequent orders, the Registrar and the learned Financial Commissioner, as aforesaid, could not have restored the membership of respondent No. 3.

13. In support of his submissions, Shri Kalra, learned senior counsel appearing for the petitioner has also placed reliance upon the following decisions:

- (i) R.K. Aggarwal Vs. Registrar Co-operative Societies, Delhi and Others, ;
- (ii) Anand Lok Co-operative Group Housing Society Ltd. Vs. The Registrar Co-operative Societies and Others, ;
- (iii) Myurdhwaj Cooperative Group Housing Society Ltd. v. The Presiding Officer, Delhi Cooperative Tribunal and Ors. 74 (1998) DLT 316 (SC).

We shall deal with the said decisions a little later.

14. The petition has been contested by respondent No. 3, Shri Vaswani. We may note that respondent No. 2 society has not advanced any submission in opposition of the writ petition. On the contrary, the respondent society has filed its reply dated 12.11.2009 wherein they have supported the stand of the petitioner.

15. The submission of Mr. Ankur Arora, learned Counsel for respondent No. 3 is

that the management of the respondent society has always acted in a mala fide and motivated manner against respondent No. 3. He submits that upon the passing of the order dated 07.01.1999 by the learned Financial Commissioner, the expulsion proceedings against respondent No. 3 attained finality and his expulsion was a closed chapter. Without challenging the said order any further and obtaining approval in respect of the earlier expulsion proceedings or undertaking fresh expulsion proceedings against respondent No. 3, the respondent society could not have de facto treated the respondent No. 3 as having been expelled. Consequently, respondent No. 2 could not have enrolled any other person as a member of the society in place of respondent No. 3 with a view to allot to him the flat in question which already stood allotted to respondent No. 3. He further submits that the respondent society failed to comply with the orders passed by the learned Arbitrator and the learned Financial Commissioner and did not issue a genuine verifiable demand with which respondent No. 3 could have complied. He submits that respondent No. 3 has always been ready and willing to make payment towards the outstanding cost of the flat and has even tendered various amounts from time to time which the management of the respondent society has refused to accept arbitrarily and in a mala fide manner.

16. Respondent No. 3 also submits that in order to pay the outstanding liability of DCHFC Ltd., the respondent society could not have misappropriated the flat of respondent No. 3 by illegally enrolling the petitioner as a member of the society. The liability owed to DCHFC Ltd. was not only in respect of the petitioner or the flat in question, but was also a liability of the respondent society and extended to each of the 58 members. He submits that the respondent No. 3 has been made the sacrificial goat by the respondent society to liquidate the entire liability of the society and by placing the entire burden against the respondent No. 3 alone. He further submits that though the initial cost of the flat in question was only about Rs. 1.60 Lacs, the respondent society had acted malafidely by raising exorbitant demands in excess of Rs. 22 Lacs and Rs. 50 Lacs from respondent No. 3.

17. It has come in the impugned award of the learned Arbitrator dated 13.9.2005 that the respondent society had raised a demand of Rs. 22,48,279/- on 9.8.1998 against respondent No. 3 and thereafter, in purported compliance of the order dated 07.01.1999 passed by the learned Financial commissioner, had raised a fantastic demand of Rs. 50,37,199.76 vide their demand letter dated 10.11.1999. The learned Arbitrator has further recorded that vide letters dated 17.06.1999, 22.06.1999, 20.09.1999 and 01.07.2004, respondent No. 3 had demanded from the society a proper statement of accounts and the amounts due and payable by him but the respondent-society did not come forward with the requisite information.

18. The learned arbitrator held that the crux of the order of the Financial Commissioner was not only to intimate to the respondent No. 3 the outstanding dues, but also to ensure that the same were genuine and verifiable. He also

explained the expression "verifiable", in the context, to mean that the demand has been raised after checking the records and after arriving at a satisfaction that the same is as per the records. He held that the society had not produced any document to show that after raising the demand on respondent No. 3, the society had offered its accounts and calculations for verification of respondent No. 3. The arbitrator also held that the demand, prima facie, appeared to be unsustainable on account of non application of mind as a demand of Rs. 22,48,279/- raised on 09.06.1998 could not have become Rs. 50,37,199.76 on 10.11.1999. The arbitrator has concluded that the said conduct of the society shows its malafide intent to circumvent the order of the learned Financial Commissioner and, in process, to harass the respondent No. 3.

19. It is apparent that before the learned arbitrator the stand of the respondent society was that an amount of Rs. 22,78,158/- was outstanding against the respondent No. 3. However, the respondent society did not produce any records to substantiate the said claim and the arbitrator rejected the said quantification of the dues by the respondent society in the absence of any genuine or verifiable records. The learned arbitrator has also gone into the aspect of the records of the society not being retrieved by the management from the Malviya Nagar Police Station, where they have been lying, as certain complaints had been made in the past. The learned arbitrator held that the concerned Metropolitan Magistrate had passed an order on 21.08.1991 directing the return of the records to Sh. N.K. Arora, an office bearer of the respondent society. In spite of that order, the respondent society had not collected the records. He held that for this inaction of the respondent society, the petitioner could not be made to suffer.

20. So far as the aspect of membership of the petitioner is concerned, the learned arbitrator examined the records produced by the society which showed that payments had been received from him by the society on 12.03.2003 and 12.09.2003 i.e. even before holding of the AGM on 14.09.2003, which purportedly approved the enrolment of the petitioner as a member of the society. Pertinently the resolution of the AGM, purportedly passed on 14.09.2003, was not produced before the learned arbitrator.

21. The learned arbitrator also held that the respondent society had not produced any document to establish the compliance of the requirement of Rule 24 of the Delhi Cooperative Societies Rules, 1973 before enrolling the petitioner as a member. Under Rule 24 of the aforesaid rules, it was imperative for the respondent society to have advertised the vacancy, if any, in the newspapers to invite applications from all eligible persons, and to hold a draw of lots before enrolling a new member to fill up an existing vacancy. It has been admitted by Shri Kalra, learned senior counsel appearing for the petitioner, that the respondent society did not issue any advertisement in compliance of Rule 24 and that the petitioner came into the picture as he was acquainted with some of the office bearers of the respondent society at the relevant time. The arbitrator, consequently, concluded that the enrolment of the petitioner as a member of the

respondent society was in violation of the Delhi Cooperative Societies Act, the Rules and the directives issued by the Registrar of Cooperative Societies and that his membership was void-ab-initio.

22. The award made by the learned arbitrator was upheld by the learned Delhi Cooperative Tribunal in the appeals preferred by the petitioner and the respondent society. The Tribunal has noted all the relevant facts, as aforesaid, and has considered the submissions made by the petitioner and the respondent society. Before us, Shri Kalra has not even ventured to assail the order passed by the learned Tribunal on any of the legal submissions advanced before it, each of which has been turned down by the Tribunal. We may note that the petitioner and the respondent society had raised the issue of the arbitrator exceeding his jurisdiction, and of the claim of respondent No. 3 being barred by limitation. The Tribunal has dealt with these issues in the following manner:

So far as the issue of limitation is concerned, the Financial Commissioner had directed the society in 1999 to issue verifiable/genuine demand and Sh. Vaswani pursued the matter with the society but the society did not revise the demand. Instead of giving the correct figure of the demand the society enrolled Shri Yadav in 2003 and therefore the claim was filed by Sh. Vaswani in 2004. Since the Delhi Cooperative Societies Act provides for six years' limitation period for such claims and since the claim was filed within this period we hold that it was not time barred. Coming to other issues also the society appears to be on a weak wicket. It is not denied by the society that the Financial Commissioner had finally rejected the expulsion of Sh. Vaswani done by the society and had directed the society to issue him verifiable/genuine demand. The society deliberately ignored this order and raised demand of Rs. 22 lacs/50 lacs which obviously was unreasonable and highly exaggerated considering the fact that the cost of construction of the flat is only Rs. 1.60 lacs. On the other hand, Sh. Vaswani's claim of his payment of Rs. 60/80 thousands made by him to the society has not been contradicted by the society and no justification has been given for raising the exaggerated demands. Besides, it is also a fact that Sh. Vaswani was not expelled again after the Financial Commissioner's order of 1999 which was final as it was not further challenged. This means that he continues to be a member in the society and since only one flat was available it has to be held that this flat was indirectly reserved for him. The enrollment of Sh. Virender Yadav in the year 2003 was therefore wrong because no vacancy was existing in the society on the date of his enrolment. It is also argued based on the records that the society had already accepted money (Rs. 13 lacs) from him even before the proposal for his enrollment was brought before the General Body meeting and this fact leads to a conclusion that there was some sort of collusion between the then Managing Committee and Sh. Yadav. It also needs to be noted that the enrollment of Sh. Yadav has not been approved by the Registrar Cooperative Societies or the Delhi Development Authority and therefore also the allotment of a flat to him is unauthorized. The excuse given by the society that the society was in urgent need of money can not be accepted because even if there are defaulters in the

society the society is expected to deal with them in accordance with the law and to raise money by legal means by filing arbitration cases against the defaulters; and not by illegal means like selling of somebody's flat to a newcomer by enrolling him illegally. In this case, the society has ignored all the legal actions and formalities and has not only harassed Sh. Vaswani for obvious personal reasons but has also deprived him of his flat by not complying with the Financial Commissioner's order. Sh. Virender Yadav's argument that no direct claim was raised against him can not be accepted because he is the allottee and the possessor of the flat which should have legally gone to Sh. Vaswani and he was made a party in the original claims u/s 60. The arbitrator has rightly held that the society has now to deal with him at their own level.

23. Having heard learned Counsel, we find no merit in the submissions of Shri Kalra that the petitioner, while making the payment, acted bonafide and in the belief that the allotment of the flat in question made to him was legal. The petitioner ought to have been aware of the law that a cooperative group housing society could have enrolled a new member only after complying with the provisions of Rule 24(2) of the Delhi Cooperative Societies Rules, 1973, which states that the vacancy "shall be filled by the Committee by notifying it in leading daily newspaper of Delhi in Hindi and English. In case of 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". Admittedly, these steps were not taken by the respondent society. The fact that he made part payment to the respondent society even before the holding of the purported Annual General Meeting, which is claimed to have approved his enrolment as a member, clearly shows the nexus between the petitioner and the office bearers in the management in the respondent society at the relevant time. It is not explained, how the petitioner came to be allotted/delivered the flat in question on payment of Rs. 13.75 Lacs, when the demand against respondent No. 3 (who admittedly was a member since 1971 and had made some payments) as on that date was over Rs. 50 Lacs. It is evident that the petitioner illegally and irregularly came to occupy the flat in question with the connivance and the blessings of the office bearers of the society by riding roughshod over the rights of respondent No. 3.

24. Moreover, there was no existing vacancy in the respondent society against which any other person, including the petitioner, could have been enrolled. Even if it were to be assumed for the sake of arguments that the petitioner deserves sympathy, he cannot displace respondent No. 3, whose expulsion proceedings had been dropped and in whose favour the Registrar and the learned Financial Commissioner had ruled. The rights of respondent No. 3 could not have been defeated by the acts and omissions of the respondent society in, firstly, not raising a genuine and verifiable demand and, secondly, not accepting the payments tendered by respondent No. 3. The fact that the demands raised by the respondent society of Rs. 22,48,279/- as on 09.06.1998 and Rs. 50,37,199.76 upon the respondent were not genuine or verifiable is evident from

the fact that the respondent society proceeded to palm off the flat in question for Rs. 13,75,000/- to the petitioner.

25. Shri Kalra's submission that respondent No. 3 stood expelled on account of the deemed approval of his expulsion is also without any merit. Firstly, the petitioner has no locus standi to raise this issue as he was not even in the picture when those proceedings took place. If the respondent society was so advised, it could have itself raised the said issue. However, the respondent society has, admittedly, not raised any such issue at any stage. The same does not appear to have been raised either before the Registrar (who granted a hearing to the respondent society and respondent No. 3) before passing of the order dated 13.10.1998, or in the appeal preferred from the said order before the learned Financial Commissioner. The memorandum of appeal and the order passed by the learned Financial Commissioner, which have been perused by us, bear out the aforesaid position.

26. Secondly, the submission of Shri Kalra is even otherwise not supported by a plain reading of Rule 36 of the Delhi Cooperative Societies Rules, 1973. Sub-rules (1) & (2) prescribe the procedure by which the society may pass a resolution for the purpose of expulsion of a defaulting member. For our purpose, Sub-rule (3) of Rule 36 is relevant and the same reads as follows:

(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 member concerned within a period of 6 months. The resolution shall be effective from the date of approval.

27. A perusal of the aforesaid sub-rule shows that there is no deeming provision, as contended by Shri Kalra, which would render the resolution for expulsion passed by the society as having been approved by the Registrar, on the expiry of a period of six months.

28. In support of his submission Shri Kalra has placed reliance on a decision of a Single Judge of this Court in *Anand Lok Co-op. Group Housing Society Ltd. v. The Registrar Co-op Societies and Ors.* In this case the learned Single Judge had held that the order of the Registrar, disapproving the expulsion of the member, having been passed beyond the period of 6 months from the date when it was sent to him for his approval, was without jurisdiction as the Registrar had become *functus officio* and that the resolution of the society had become operative on its own strength on the expiry of the period of 6 months.

29. While delivering the aforesaid judgment, the court relied upon the decision of the Supreme Court in *Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others*, . This decision of the Supreme Court dealt with Section 36 of the Gujarat Cooperative Society Act, which also provides for expulsion of a member of a cooperative society.

30. We may note that a learned Single Judge of this Court in the decision of Beena Singhal Vs. The Presiding Officer Delhi Co-operative Tribunal and Others, noted the distinguishing features in Rule 36 of the Delhi Cooperative Societies Rules and Section 36 of the Gujarat Cooperative Society Act. Section 36 of the Gujarat Cooperative Society Act contains the following material proviso:

Provided further, that the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective.

The consequence of the approval or disapproval not being granted by the Registrar within 6 months has not been specifically provided in the Delhi Rules, in contradistinction with a provision made in Section 36 of the Gujarat Cooperative Society Act for the same.

31. We find that in a judgment of this Court reported at B.B. Chibber Vs. Anand Lok Cooperative GRP Housing Society Ltd. Vs. Registrar Co-operative Societies Ltd. v. B.B. Chibber, , the Division Bench has held that the time limit of 6 months prescribed in Rule 36(3) is not mandatory, and on the expiry of the period of 6 months from the date when the resolution passed by the general body of the cooperative society is sent to the Registrar for approval, he does not become functus officio. The relevant extract from the decision in B.B. Chibber (supra) reads as follows:

5. A comparison of Rule 36 of the Rules and Section 36 of Gujrat cooperative Societies Act, 1961 (in short Gujrat Act) which was under consideration of the Apex Court, would go to show that there is no prescription in Rule 36 as to the consequences which flow in the event of non-communication by the Registrar either while approving or disapproving the resolution. In Section 36 of the Gujarat Act it was there. In fact the Apex Court has come to the conclusion regarding the officer becoming functus officio in view of the specific provision contained in the second proviso. This is clear from the following observations of the Apex Court:

After the society communicates a resolution for the expulsion of a member for acts detrimental to the working of the society passed in the manner required by Sub-section (1) of Section 36 to the Registrar for his approval under the first proviso, there is a duty cast on the Registrar to exercise his power of according approval or disapproval within a period of three months from the date of such submission, as provided by the second proviso. According to its plain terms the second proviso places a limitation on the powers of the Registrar. It appears to us that the obvious intention of the Legislature was that once the period of three months stipulated period expires, the Registrar becomes functus officio and his power to accord approval or disapproval to the resolution passed by the Society for expulsion of a member under Sub-section (1) of Section 36 of the Act lapses.

6. Learned Counsel for the respondent Society submitted that inaction of the

Registrar in dealing with the matter within the stipulated period has serious consequences. A person who is found undesirable by the Society may merrily continue to act as a member because of supine indifference of the Registrar. This cannot be the legislative intent. According to him the Court must read into the provision about the deemed approval. We do not find force in the plea, though in a given case inaction on the part of the Registrar may lead to undesirable consequences. But to read into the provision deemed approval is legally not permissible. It can be very well argued that even after taking six months the Registrar does not give his approval, it may be construed that he has not approved the action and in a sense there is disapproval. We do not think it necessary to go into this hypothetical question.

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9. In view of the contextually and conceptually difference in the language of the two provisions, i.e. Rule 36 of the Rules and Section 36 of the Gujrat Act in our view the learned Single Judge was not correct in holding that the Registrar had become functus officio after expiry of six months.

(Emphasis Supplied)

32. It is evident that view taken by the Single Judge was overruled and is not the correct view. We are dismayed, and record our strong disapproval of the petitioner citing the aforesaid decision in Anand Lok Cooperative Group Housing Society v. The Registrar Co-op Group Housing Society, which has been overruled by a Division Bench of this Court in its judgment reported as B.B. Chibber Vs. Anand Lok Cooperative GRP Housing Society Ltd. Vs. Registrar Co-operative Societies Ltd. v. B.B. Chibber, .

33. We may note that in the present times, with the advent of computerized legal softwares it is not difficult for counsels to carry out legal research, particularly to determine whether a particular decision, relied upon, has been affirmed or reversed in appeal, or otherwise, by the same Court or by the Supreme Court. It is evident that the requisite research has not been done. While observing the aforesaid, we are assuming that the failure to cite the aforesaid decision of the Division Bench is a mere oversight, and is not a deliberate omission.

34. From the order passed by the Registrar disapproving the expulsion of respondent No. 3, it is evident that he has held the necessary inquiry under Rule 36 before arriving at his decision. In Anand Lok Co-op. Group Housing Society Ltd. (supra) the learned Single Judge had held that the only inquiry which is envisaged under Sub-rule (3) of Rule 36 be made by the Registrar, while granting his approval, is whether full and final opportunity has been given under Sub-rule (1) or (2) to the member concerned or not. Even on this aspect a Division Bench of this Court has taken a contrary view. In Sh. P.K. Gupta v. Gold Craft Group

Housing Society Ltd. 1996 II AD (Delhi) 106, it has been held that while dealing with a case falling under Sub-rule (3) of Rule 36, the scope of the inquiry before the Registrar is wide and he has to go deep into the matter. He has the power to hold a full inquiry, examine the resolution carefully, deliberate upon it and then form an opinion whether to approve the same or not.

35. In our view, the period of six months prescribed in Sub-rule (3) of Rule 36 cannot be said to be mandatory and sacrosanct. It merely provides for a guideline of the timeframe within which the Registrar is expected to convey his decision on the aspect of approval/disapproval of the expulsion of a defaulting member. Pertinently, the said rules do not provide for a consequence which would flow in case the said deadline of six months is breached. Even when a provision of law is couched in a negative language which generally implies mandatory character, the same does not necessarily lead to the conclusion that it is to be interpreted as a mandatory provision. We may note that the language of Rule 36(3) is not couched in negative language. The court, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form (See *Kailash Vs. Nanhku and Others*,).

36. In the present context, the interpretation that the time limit of 6 months is mandatory can lead to unjust results. The power of Registrar is to grant approval to the expulsion of the member. Therefore, he may, in a given case even disapprove the same. Merely because the Registrar chooses not to pass the order within the period of 6 months, there is no reason why his inaction should be understood as an approval when a given case deserves the disapproval of the Registrar. The effect of the said time limit not being complied with, certainly cannot go against the concerned member and result in a deemed approval.

37. Reliance placed by Sh. Kalra on the Division Bench judgment of this Court in *R.K. Aggarwal Vs. Registrar Co-operative Societies, Delhi and Others*, . to submit that the provision of Rule 36 is mandatory and not directory is of no avail in the facts of this case. What has been held in the said decision is that the society, while expelling a member, has to strictly comply with and adhere to the procedure prescribed in Rule 36 before it chooses to expel a member. The decision in 74 (1998) DLT 316 *Mayurdhwaj Cooperative Group Housing Society Ltd. v. The Presiding Officer, Delhi Cooperative Tribunal and Ors.* also does not come to the aid of the petitioner. The Supreme Court also took the view that the procedure for expulsion of members under Rule 36 is a mandatory procedure and that even after the general body of the cooperative society passes resolution for expulsion, it requires approval of the Registrar. In these two decisions, the court was however, not called upon to and did not go into the aspect as to whether the period of 6 months available to the Registrar for the purpose of granting approval for expulsion is mandatory or directory and the consequence of the said period not being adhered to. We, therefore, have no hesitation in rejecting the aforesaid submission on behalf of the petitioner.

38. In the present case, the resolution of the society purporting to expel respondent No. 3 from the primary membership of the respondent No. 2 society was passed on 21.09.1997. From the order passed by the Registrar, it appears that matter was listed by him for hearing on various dates when the society and Sh. Vaswani were represented through their respective counsel. It also appears that on 17.03.1998, the Registrar directed the Secretary of the society to calculate the amount with interest as per the directives of his office and to furnish the same to respondent No. 3 along with a copy to his office. It also appears that the society failed to furnish the same till the conclusion of the proceedings on 30.09.1998. After conclusion of proceedings on 30.09.1998, the Registrar passed the order on 13.10.1998 disapproving the purported expulsion of respondent No. 3. It, therefore, appears that the delay, if any, in passing the order dated 13.10.1998 was attributable to the respondent No. 2 society and not to the Registrar or to respondent No. 3. It is also clear from the order that the Registrar had already taken up the case for consideration well within the period of 6 months of the passing of resolution by the respondent society on 21.09.1997 and heard the parties on various dates whereafter he proceeded to pass a direction to the respondent society on 17.03.1998, which remained un-complied till the closing of the proceedings on 30.09.1998.

39. Lastly, learned senior counsel for the petitioner has sought to throw doubts on the statement of facts recorded by the learned Arbitrator in his award with regard to the raising of the demands of Rs. 22,48,279/- on 09.06.1998 and Rs. 50,37,199.76 as on 10.11.1999. We do not see any substance in this submission. It is noteworthy that the petitioner was not even in the picture when the said demands were raised by the respondent society on respondent No. 3. The petitioner, in any event, was not privy to the said demands.

40. Moreover, the aforesaid findings of fact were recorded by the learned arbitrator in his award dated 13.09.2005 and have also been relied upon by the Tribunal in the impugned order dated 28th July, 2008. In judicial review under Article 226 of the Constitution of India, it is not for us to indulge into another fact finding inquiry when the same has been duly conducted by the learned arbitrator and also considered by the learned Delhi Cooperative Tribunal in statutory appeals. The learned arbitrator has recorded in his award as follows:

In addition, the demand raised by society, prima-facie, indicates that no application of mind has been there while raising the demand because the demand of Rs. 22,48,279 on 9.6.1998 cannot become Rs. 50,37,,199.76 on 10.11.1999. This shows the malafide intention of the society to circumvent the order of the Financial Commissioner and in the process, harass the claimant leading to deprive him from the membership of the society resulting in non-allotment of flat to the claimant. Thus, it is concluded that defendant society has failed miserably on this account and has violated the order of the RCS and Financial Commissioner.

It has been further recorded in the award:

Defendant society has not furnished any detail on the above issue. It has claimed that Rs. 22,78,158 was outstanding against the claimant, hence, flat could not be allotted to Shri Lal S. Vaswani.

41. Pertinently the petitioner has not placed before this Court the memorandum of appeal preferred by him or by the respondent society to challenge the award made by the learned arbitrator dated 13.09.2005, before the learned Delhi Cooperative Tribunal. It is not the petitioner's case even in this petition that the above recording of facts made by the learned arbitrator in his award about the demands raised by the respondent society on Shri Vaswani was factually incorrect. Even the respondent society has not disputed the aforesaid facts.

42. From the order of the Registrar dated 13.10.1998 it is seen that the society had raised a demand vide letter dated 08.08.1997 for Rs. 17,27,321.20 on respondent No. 3. In the appeal preferred before the Financial Commissioner from the said order dated 13.10.1998, the respondent society did not even contend that it had not raised a demand for Rs. 17,27,321.20 on 08.08.1997 on respondent No. 3. This demand of Rs. 17,27,321.20 corroborates the finding that the said demand stood revised firstly to Rs. 22,48,279/- as on 09.06.1998 and to Rs. 50,37,199.76 as on 10.11.1999 against respondent No. 3. Consequently, it is clear to us from the record that no dispute can be raised by the petitioner in these proceedings with regard to the factum of the raising of the aforesaid demands of Rs. 22,48,279/- on 09.06.1998 and Rs. 50,37,199.76 on 10.11.1999 by the respondent society on respondent No. 3, Sh. Vaswani. We have already noticed hereinabove that, all these demands were not genuine or verifiable considering the fact that the initial cost of the flat was Rs. 1.6 Lacs approximately and the respondent society palmed off the said flat to the petitioner for Rs. 13.75 Lacs only in the year 2003. We, therefore, do not find any merit in the submission of Shri Kalra that there is any equity in favour of the petitioner.

43. For all the aforesaid reasons, we find absolutely no merit in this writ petition and dismiss the same with costs quantified at Rs. 50,000/- to be paid by the petitioner to the respondent No. 3 within two weeks from today.