

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) 5968/2003**

Reserved on : 27th April, 2009
Date of Decision : 8th May, 2009

PAWITTRA COOPERATIVE GROUP
HOUSING SOCIETY LTD.
THROUGH: ITS PRESIDENT SH. ANAND KUMAR
HAVING ITS OFFICE AT:
FLAT NO.28, SHANKAR MARKET
CONNAUGHT CIRCUS
NEW DELHI-110 001. Petitioner
Through: Mr. Sumit Bansal and
Mr. Ajay Monga, Adv.

Versus

1. REGISTRAR OF COOPERATIVE SOCIETIES
DELHI COOPERATIVES SOCIETIES
PARLIAMENT STREET
NEW DELHI-110 001
2. SMT. KAMLA PANDE
W/O SH. MAN MOHAN LAL PANDE
R/O C-5/1, FIRST FLOOR
SAFDARJUNG DEVELOPMENT AREA
HAUZ KHAS
NEW DELHI-110 016 Respondents

Through: Mr. V.K. Tandon, Adv. for R-1.
Ms. Bina Madhavan,
Mr. S. Udaya Kumar Sagar and
Mr. Shwetank Sailakwal, Advs. for
R-2.

% **CORAM:**
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The Petitioner in the present petition is aggrieved by an order dated 21st July, 2003 passed by the Registrar of Cooperative Societies, Delhi, Respondent No.1 herein, whereby the Show Cause Notice issued to Smt. Kamla Pande, Respondent No.2 herein, the member of the Petitioner-Society, under the provisions of Rule 25 of the Delhi Cooperative Societies Rules, 1973 has been withdrawn with immediate effect.

2. The facts as are necessary for the adjudication of the present petition are briefly that on 4th January, 1986 the Respondent No.2 was enrolled as a member with the Petitioner-Society with membership No.128.

3. In terms of the by-laws of the Society and also the Delhi Cooperative Societies Act, the Respondent No.2 was required to submit an affidavit, *inter alia*, stating that neither she nor her husband or dependent children own any property in the Union Territory of Delhi.

4. On the 13th July, 1987, an affidavit was furnished by the Respondent No.2 to the Petitioner-Society, *inter alia*, stating that neither the Respondent No.2 nor her husband or dependent children own, either in full or in part, on leasehold or freehold basis, any plot of land or a house in the Union Territory of Delhi. It was further stated therein that Respondent No.2 shall inform the Society as well as the Lieutenant Governor, if any plot of land or house is so acquired by her or by her husband.

5. On the 19th November, 2001 the Respondent No.2 submitted another affidavit. In the said affidavit the Respondent No.2 stated that neither she nor her husband or dependent children own any property in the Union Territory of Delhi.

6. In December, 2001, it came to light that husband of Respondent No.2, Sh. Manmohan Lal Pande had acquired the property bearing No.C-5/1, Safdarjung Development Area, New Delhi, during the period of membership of Respondent No.2 and, therefore, the Respondent No.2 had incurred disqualification from the membership of the Society.

7. The Petitioner-Society issued a Show Cause Notice to Respondent No.2 dated 12th December, 2001.

8. In response to the said Show Cause Notice, a reply was sent by Respondent No.2 on 24th December, 2001 stating therein that the property bearing No.C-5/1, Safdarjung Development Area, New Delhi was purchased by her husband Sh. Manmohan Lal Pande from the funds derived out of HUF property inherited by the family.

9. On 27th April, 2002 after hearing the husband of Respondent No.2, the Petitioner-Society passed an order, *inter alia*, ceasing the membership of Respondent No.2.

10. Against the said order dated 27th April, 2002, the Respondent No.2 filed a representation before Respondent No.1, and the Respondent No.1 vide the impugned order dated 21st July, 2003 was pleased to set aside the order dated 27th April, 2002 passed by the Petitioner-Society.

11. The Petitioner who is aggrieved as aforesaid by the impugned

order dated 21st July, 2003 passed by the Respondent No.1, submitted that the Respondent No.1 had failed to appreciate that Respondent No.2 had sworn false affidavit and submitted the same to the Petitioner-Society, and that by virtue of the said affidavit the Respondent No.2 was able to continue as a member of the Petitioner-Society. In other words, the Respondent No.2 had obtained allotment of a flat in the Petitioner-Society in contravention of the Rules as contained in Delhi Cooperative Societies Act and the Rules framed thereunder, by mis-representing not only to the Petitioner-Society but to the Respondent No.1 as well.

12. Per contra, on behalf of Respondent No.2 it was urged that the said property was purchased by Sh. Manmohan Lal Pande, husband of Respondent No.2, from the funds derived out of HUF property inherited by the family and as such there was no infirmity in the impugned order dated 27th April, 2002.

13. Before considering the rival submissions made by the parties, it would be necessary to extract Rule 25 of the Delhi Cooperative Societies Rules, 1973:

“25. Disqualification for Membership

1. No person shall be eligible for admission as a member of a co-operative society if he –

(a) and (b) xxxxxxxx

(c) in the case of membership of a housing society-

(i) owns a residential house or a plot of land for the construction of a residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale:

Provided that disqualification of membership as laid down in sub-rule (l)(c)(i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq. metres of land:

Provided further that the said disqualification shall not be applicable in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the membership of the housing society concerned,”

14. From a plain reading of the Rule extracted above, it is clear that according to Clause 1 of the sub-rule, no person shall be eligible for admission as a member of the Society in question if he/she owns a residential house or a plot of land for construction of a residential house in any of the approved or un-approved colonies or other localities in the Union Territory of Delhi either in his own name or in the name of his spouse or any of his dependent children on leasehold or freehold basis. The proviso appended to the sub-rules makes an exception in case of persons who are only co-sharers of joint ancestral properties and whose share is less than 66.72 square meters of land.

15. In the present case it is seen that the Respondent No.2 filed an affidavit on 13th July, 1987 stating therein – (a) that neither I nor my spouse and of my dependent/relations including unmarried children is a member of any other Cooperative Societies functioning in the Union Territory of Delhi; (b) that neither I nor my spouse and any of my dependent relation including unmarried children has owned either in full or in part on leasehold land or freehold basis, any plot of land or a house in the Union Territory of Delhi and **(c) that neither I nor**

my spouse is a member of undivided family which owns either in full or in part, on leasehold or freehold basis any plot of land or a house in the Union Territory of Delhi. (*emphasis ours*)

16. It is also seen that Respondent No.2 filed another affidavit dated 19th November, 2001 to the same effect but also stating that “I will inform within one month to the said Society and as well as to the Lieutenant Governor, Delhi, if any plot of land or a house is acquired by him or my spouse or any of my dependent children including unmarried children.”

17. It is observed from the Agreement to Sell dated 17th November, 1996 of the property bearing No.2179 in Block-J, Nai Wala, Karol Bagh, New Delhi, which is an admitted document, that the said property was allotted by the President of India through the Delhi Development Authority to the first party Shri Manmohan Lal Pande son of Shri Mizaji Lal.

18. It is also seen from the Sale Deed dated 31st March, 1997 that Shri Manmohan Lal Pande acquired on “as is where is basis”, 50% rights in the first floor flat of the one and half storeyed dwelling house constructed on a leasehold plot of land admeasuring 550 square yards and bearing No.C-5/1, Safdarjung Development Area, New Delhi, from one Dr. (Mrs.) Kirpal Kaur.

19. It is further seen from the counter affidavit filed by Respondent No.2 that the land underneath the said building namely C-5/1, Safdarjung Development Area owned by the said Shri Manmohan Lal Pande is 153.28 square meters.

20. The Respondent No.2 relies on the assessment order for the

year 1968-69 to urge that the house property situated at Gurudwara Road, Karol Bagh, New Delhi had an ancestral nucleus and the plot of land was inherited from the family of late Pt. Mizaji Lal Pande, father of Manmohan Lal Pande. However, it is not clear whether this assessment order refers to Plot No.2179, Gurudwara Road, Karol Bagh, New Delhi or some other plot, since the Agreement to Sell dated 17th November, 1996 between Shri Manmohan Lal Pande and one M/s J.R.M. Properties (P) Ltd., categorically refers to property bearing plot No.2179 in Block-J, Nai Wala, Karol Bagh, New Delhi as having been allotted by the President of India through Delhi Development Authority to Shri Manmohan Lal Pande and not to his father Shri Mizaji Lal Pande. Furthermore, the Income Tax Return for the assessment year 1997-98 relied upon by the Respondent No.2 is the individual return of Sh. Manmohan Lal Pande, husband of Respondent No.2 and not the return of alleged HUF.

21. It is also pertinent to state that the respondents were given opportunities by this court on 28th July, 2008 and again on 11th February, 2009 to place on record proof regarding C-5/1 at Safdarjung Development Area having a character of a HUF property but did not produce anything to show that the said property was purchased out of the proceeds of HUF funds and also held that character.

22. In view of the above, we are of the view that the finding arrived at in the impugned order dated 21st July, 2003; to the effect that the property in question is derived out of HUF property inherited from late Pt. Mizaji Lal Pande, father-in-law of Smt. Kamla Pande

(Respondent No.2); and further that the property in question is not an individual plot but a flat occupied by these persons whose shares come to less than 66.72 square meter; and hence falls under the exception granted under Rule 25 1(c)(i) proviso of Delhi Cooperative Societies Rules, is erroneous and without any foundation.

23. In the result, the impugned order is quashed and the present writ petition is allowed. The order passed by the Managing Committee of the Petitioner-Society on the 27th April, 2002 is upheld.

24. The writ petition stands disposed of.

SIDDHARTH MRIDUL, J.

MADAN B. LOKUR, J.

MAY 08, 2009

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