

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 02.09.2009
Judgment delivered on: 14.09.2009

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+ **W.P.(C) 6159/2007**

PROMILA ANAND

..... Petitioner

- versus-

**REGISTRAR COOPERATIVE SOCIETIES
& ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rakesh Munjal, Sr. Advocate with Mr. Maneesh Goyal and Mr. Manish Paliwal, Advocates.
For the Respondent : Ms. Deepa Tiwari for Ms. Sujata Kashyap, Advocate for respondent no.1/RCS.
Mr. Sandeep Kumar, Advocate for respondent No.2.

CORAM:-

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MS. JUSTICE VEENA BIRBAL**

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

BADAR DURREZ AHMED, J

1. This writ petition is directed against the report dated 26.10.2006 submitted by Justice P.K. Bahri (Retd) to the extent it relates to the petitioner's case for eligibility for allotment of a plot in the respondent no. 2 society (Jagriti Nagar Cooperative House Building Society Ltd).

2. The report came to be submitted because of an order passed by a learned Single Judge of this court in Cont. Cas. (c) No. 378/2005. The said contempt petition was filed in connection with the order dated 11.10.2000 passed by another learned Single Judge of this court while disposing of the writ petition bearing no. C.W. No. 4808/1997. It is indicated in the order dated 01.05.2006 that at the stage the said writ petition (C.W. No. 4808/1997) was filed, 102 plots had to be allotted to 102 members. It was also observed that as per the procedure prescribed by the Registrar of Cooperative Societies, at the stage of allotment of plots, continued eligibility and entitlement of the member of the society had to be verified and approval had to be granted by the Registrar of Cooperative Societies.

3. Forty-eight members out of the 102, had been cleared and a draw-of-lots had been held by the DDA on 24.08.2005. Thereafter, the said 48 members were allotted specific plots. Out of the remaining 54 members, we are told that 3 have resigned which meant that 51 members were yet to be allotted plots inasmuch as their names had not been officially cleared by the Registrar of Cooperative Societies for allotment of plots. The petitioner was one of the said 51 members.

4. Since no progress was being made in the matter concerning the verification of the membership and entitlement for allotment of plots insofar as the 51 persons were concerned, the learned Single Judge by his order dated 01.05.2006 appointed Justice P.K. Bahri (Retd) as a court nominee to scrutinize the claims of the said 51 persons awaiting clearance for the purposes of allotment. It was indicated that the list of persons cleared by Justice P.K. Bahri (Retd) would be accepted without demur by the Registrar of Cooperative Societies and that the DDA would act in pursuance of the said list.

5. It is pursuant to these directions given in the said order dated 01.05.2006 that Justice P.K. Bahri (Retd) prepared his report dated 26.10.2006. Prior to the said report, the Administrator of the respondent society after due scrutiny had already recommended the petitioner's case for allotment. The petitioner, in her writ petition, has claimed that though the resolution passed by the Administrator was communicated, the same was not received by her. This fact has not been denied by the respondents.

6. We may also point out that the petitioner had applied for membership on 20.06.1979 and her membership had been cleared by the Managing Committee in its meeting held on 29.09.1981. The petitioner has throughout remained a member of the respondent no. 2

society since then. We may also point out that the question of residence in Delhi had not been raised at the time of grant of membership nor was it an issue when the Administrator (Mr. S.N. Aggarwal) had given his recommendation.

7. In the said report dated 26.10.2006, while considering the case of the petitioner, it has been noted that the only question to be decided was whether the petitioner was a resident of Delhi or not at the relevant time. The report indicates that the 'relevant time' was construed as the time for application of membership and, that was in 1979. According to the said report, the petitioner was not a resident of Delhi and, therefore, she was ineligible to be a member of the society. The case of the petitioner has been mentioned in the said report in the following manner:-

“Number 1

Smt Promila Anand (Membership No. 576)

Sh. Vinay Kumar husband of Smt. Promila Anand, is stated to have become member of the Society in 1968. A receipt of Rs. 110/- as being member of the waiting list was issued in his favour by Sh. P.C. Kohli, then President of the Society. As per photocopies of receipts on the record of the Society, Sh. Vinay made payments to the Society from time to time.

On 20.06.1979, Smt. Promila Anand gave an application for being enrolled as member and Sh. P.C. Kohli made an endorsement on this application on 20.09.1979 as follows:-

“Admitted on waiting list”

She did not deposit any admission fee of Rs. 110/- at that time. It is her plea as is evident from her letters written to the Society that the share money of Rs. 110/- and other payments made by her from which it could have been easily ascertained the above facts. It is evident that her husband did not continue to be waitlisted member of the Society after 20.9.1979.

In the detailed proforma sent by Sh. S.M. Aggarwal, Administrator based on the available records of the Society along with his letter dated 26.11.2005 to the Registrar it is clear that the Managing Committee approved her as member vide resolution dated 29.9.1981 and date of payment of share money is 21.9.1979. Thus, mere fact that she did not again deposit the share money herself is of no consequence when the share money deposited by her husband stood transferred to her in the records of the Society on her husband giving up his own membership.

Only defect pointed by the Registrar in regard to her case is that she did not give affidavit in a proper proforma. The record of the Society shows that she gave a requisite declaration on 19.10.1981 in terms of the Rules and subsequently gave duly attested affidavits from time to time as required as per directions given by the Registrar from time to time. Sh. Sewa Singh, Administrator in communication dated 18.04.2006 to the Registrar has verified that requisite affidavit has been given.

This applicant received her education in Delhi as per certificates of the academic qualifications filed by her. She was married in 1976 to Sh. Vinay who was posted in Durgapur at that time. Sh. Vinay shifted to Delhi in 1981. I had some doubt about this applicant being resident of Delhi at the time she was enrolled as member. I recorded her statements on 06.07.2001 and 25.07.2006 and statement of her husband also on 25.07.2006. The applicant has filed documents to show that she gave birth to a daughter in 1977 and her daughter as per school certificates studied in Delhi and her second daughter was also born in Delhi in 1982. A copy of Ration Card of 1983 is available on the record which includes her name from the address of her in law H 350, New Rajinder Nagar.

It is pertinent to note that the applicant has to show that she was resident of Delhi at the time she gave the application for becoming member in June 1979. The documentary evidence filed by her only show that after marriage in 1976 she gave birth to a child in 1977 at Delhi, but this fact alone would not make her resident of Delhi during the period 1976 to 1981. Her husband was not living in Delhi. He was living in Durgapur. Normally, the newly wedded wife would have lived with her husband in Durgapur and not in Delhi after marriage. Her visit to Delhi in 1977 to give birth to a child would not mean that she shifted her residence. Fleeting visits to Delhi to meet her relations and staying for short periods with them would not result in her becoming a resident of Delhi. The words resident of a place denote continuous normal living at a place. It is to be also noted that she in her application had given address of one Dr. Suri, F-84, Bali Nagar, New Delhi. She continued to show this address in her various affidavits given from time to time. She had not shown herself to be residing at any other place in Delhi except when her husband shifted to Delhi in 1981, her name came to be shown in a Ration Card of her husband's brother from January 1983. There is no doubt that when her husband shifted to Delhi in 1981, she and her husband started residing in Delhi.

The question which arises for consideration is as to where she was residing from 1976 to 1981. There is no documentary evidence produced by the applicant that she ever resided in the house of Dr. Suri at Bali Nagar. Before me the applicant and her husband stated that Dr. Suri is a god-father of the husband. Apart from this bald assertion there is nothing to support this assertion. The applicant then stated that she was some time living with in laws in Rajinder Nagar and some time at the house in Bali Nagar and visited her husband in Durgapur off and on. It is not credible that she as young bride could not have shifted her residence to Durgapur to live with her husband soon after marriage in 1976 and continued to live there till her husband shifted to Delhi in 1981. Any fleeting visits to Delhi in between to meet close relations or to give birth to a child would not make her resident of Delhi in true sense so as to be eligible to become member of the Society in 1979. She in her

pleadings before the Consumer Tribunal never took the stand that she applied to become member of the Society in her individual capacity. She pleaded in those proceedings that her husband was the member earlier and he transferred his membership in her favour and the Managing Committee approved such transfer in 1990. This plea has not been taken before me in these proceedings.

In view of above discussions, I hold that she was not resident of Delhi in June 1979 when she gave the application to become member of the Society and thus was ineligible to apply for membership under the Rules.”

8. It has been contended by the learned counsel for the petitioner that the question of residence was not an issue at all which required consideration by Justice P.K. Bahri (Retd).

9. Secondly, he submitted that the petitioner could not have been regarded as a non-resident inasmuch as the petitioner was born in Delhi in 1953 and was educated in Delhi too. She got married in Delhi in 1976 and thereafter stayed at her in-laws house at H-350, New Rajinder Nagar, New Delhi. She was blessed with a daughter at Talwar Nursing Home, Pusa Road, New Delhi on 31.3.1977. She had a bank account in Punjab National Bank, Sabzi Mandi, Delhi in the year 1979. Her daughter was admitted in Manav Sthali School, New Delhi on 08.12.1981 and studied in that school thereafter. The petitioner's name existed in the Electoral Roll as on 1.1.1983. The petitioner's husband was an employee of Steel Authority of India- a

Government of India Enterprise and he had a transferable job as a result of which he was posted out of Delhi from time to time. It is submitted by the petitioner that a person having a transferable job does not lose his permanent residence, which in this case was Delhi. The stay of her husband at Durgapur (outside Delhi) on account of his job was temporary and not permanent. Thus, in view of the aforesaid facts, it was submitted that for all intents and purposes the petitioner had to be regarded as a resident of Delhi.

10. Thirdly, the learned counsel for the petitioner referred to the Circulars dated 16.12.1992, 24.02.1994 and 05.12.2001 copies whereof have been placed at pages 84, 86 and 85 respectively, of the paper book. The first Circular dated 16.12.1992 which has been issued by the Registrar of Cooperative Societies clearly indicates that cases which had been detained on account of requirement of proof of residence ought to be examined in the light of the decision of the Government of National Capital Territory of Delhi to discontinue the requirement. As regards the future also, it was indicated that the requirement of proof of residence in Delhi for clearance of membership would not be insisted upon. The said Circular dated 16.12.1992 was in respect of Cooperative Group Housing Societies.

11. The next Circular is that of 24.02.1994 which is in connection with the objections raised by the office of the Registrar of Cooperative Societies in some cases on the point of proof of residence in Delhi for membership clearance in Cooperative Housing Societies. By virtue of the said Circular dated 24.02.1994, it was clarified that requirement of proof of residence has been dispensed with in the case of freeze list members of Cooperative Housing Building Societies.

12. The third Circular is of 05.12.2001 whereby there is a clear exemption issued by the Lieutenant Governor of the National Capital Territory of Delhi in exercise of his powers under section 88 of the Delhi Cooperative Societies Act, 1972 whereby exemption has been granted from the operation of the condition of Model Bye-Law No.5(1)(a) during the period 16.12.1992 to 22.04.1997 with regard to proof of residence in respect of members of Group Housing/House Building Societies. The matter, therefore, stands clarified that during the said period – 16.12.1992 to 22.04.1997, proof of residence was not necessary. In fact, the learned counsel for the petitioner submits that in all cases of membership prior to 22.04.1997, proof of residence had been virtually dispensed with. The petitioner's case was of a membership of 1981 and, therefore, the Circulars would squarely apply.

13. Fourthly, the learned counsel for the petitioner placed reliance on a decision of Division Bench of this court in the case of **Hardeep Singh Sandhu v Registrar Coop. Societies & Others** 41 (1990) DLT (SN) 29 as also in the case of **Hardit Singh Sudan v Governor Delhi & Ors.** In the said decision, it has been observed that the inquiry with regard to proof of residence should be considered at the time prior to enrolment of an applicant as a member. Having enrolled a person as a member, it would not be proper on the part of the society to go back on its earlier decision unless a case of fraud is put forth by the society. As in that case, so also in the present case, the learned counsel for the petitioner submits that there is no allegation of any fraud on the part of the petitioner and, therefore, once the membership has been granted by the Managing Committee as far back as in 1981, the society is precluded from going into the question of proof of residence. For all these reasons, the learned counsel for the petitioner submitted that the conclusion in the said report dated 26.10.2006 with regard to the petitioner ought to be quashed.

14. The learned counsel appearing for the respondent no.2 society which is now being run by an Administrator appointed by the Registrar of Cooperative Societies submits that, after the report of Justice Bahri (Retd), he has nothing further to say inasmuch as paragraph 12 of the order dated 01.05.2006 whereby the said report

was necessitated, made it clear that the Registrar of Cooperative Societies would accept the list of members cleared by Justice Bahri without demur. The learned counsel submits that since the Administrator is a nominee of the Registrar of Cooperative Societies, he has been 'tied down' to accept the said report.

15. On an examination of the circumstances as indicated above, we find that the requirement of proof of residence has been considered by Justice Bahri (Retd.) in his said report without referring to any of the three Circulars dated 16.12.1992, 24.02.1994 and 05.12.2001. Reading the Circulars together, the impression that we get is that prior to 22.04.1997, the requirement of proof of residence has been virtually dispensed with. The petitioner's case was pending clearance at the time said Circulars were issued and, therefore, the petitioner's case would be covered by the said Circulars. This aspect of the matter was not at all considered or brought to the notice of Justice P.K.Bahri when he prepared his report. In view of the said Circulars, it is clear that whether a person was residing in Delhi or outside Delhi became an irrelevant issue. This is categorically indicated in the Circular dated 24.02.1994. Of course, this situation would prevail in respect of memberships prior to 22.04.1997 and that, too, only those which had not been finalized.

16. This being the position, the finding in the said report that the petitioner was not cleared for allotment on the ground of not being a resident in Delhi cannot be sustained. Apart from this, on the facts of the present case also, we are of the view that the petitioner has not given up her status of being a resident in Delhi merely because her husband had a transferable job which required him to stay outside of Delhi temporarily from time to time. The permanent address continued to be her in-laws house at H-350, New Rajinder Nagar, New Delhi. On this ground also, the report insofar as the petitioner is concerned, is liable to be set aside.

17. For the foregoing reasons, this writ petition is allowed. The impugned report dated 26.10.2006 to the extent it relates to the petitioner is set aside. Consequently, the respondent no.2 society is directed to immediately process the case of the petitioner for forwarding the same to the Registrar of Cooperative Societies for clearance from the Registrar so that the allotment can be got done through the DDA. This would, however, be subject to completion of all formalities by the petitioner. The petitioner shall complete the formalities within two weeks and the Administrator of the respondent no.2 society shall forward the same to the Registrar of Cooperative Societies for his clearance within two weeks thereafter. The Registrar shall also expeditiously forward the same for allotment to the DDA.

The writ petition stands allowed to the aforesaid extent.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

SEPTEMBER 14, 2009
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