

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: December 22, 2009

+ W.P.(C) 8426/2008

DR. J.K. GUPTA

..... Petitioner

-versus-

REGISTRAR OF CO-OP SOCIETIES & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr R.S. Tomar and Mr Sumit Tomar, Advocates

For the Respondent : Ms Deepa Tiwari for Ms Sujata Kashyap, Advocate for
respondent no. 1
Md Shahid Anwar, 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? Yes
3. Whether the judgment should be reported in Digest? Yes

VEENA BIRBAL, J

1. By way of present petition under Article 226 of the Constitution of India, petitioner has prayed for a writ of certiorari quashing the impugned order dated 15.05.2008 passed by the Financial Commissioner, Delhi upholding the order dated 05.07.2001 passed by respondent no. 1 ceasing the membership of petitioner with respondent no. 2. Petitioner has also

challenged order dated 17.08.2007 passed by the Financial Commissioner, Delhi thereby dismissing the review application seeking review of order dated 15.05.2008.

2. Briefly the facts necessary for the disposal of present petition are as under:-

Petitioner was enrolled as a member of the respondent no. 2/Society vide decision of its Managing Committee dated 25.10.1990. As per petitioner, he had paid the share money and membership fee and other dues of respondent no. 2/Society up to 01.11.1990. Subsequently, there was a change in the Managing Committee and a new Managing Committee took over. It is alleged that the said Committee from the inception of its take over started harassing the petitioner by giving threats of cancelling his membership by raising alleged illegal demand on him vide letter dated 14.12.1994. Petitioner requested for withdrawal of said demand. On its failure to do so, petitioner had to initiate litigation against respondent no. 2 before respondent no. 1 as well as before this court for striking down of the alleged illegal demands, the details of which are given in the petition. The same is not relevant for disposal of present petition and, as such, is not discussed herein.

It is alleged that as the respondent no. 2/Society was adamant to remove the petitioner from its membership, on 15.12.2000, on the basis of a frivolous complaint against the petitioner a show cause notice was issued to the petitioner alleging therein that the wife of the petitioner owned a property bearing house no. 8315, Multani Dhanda, Paharganj, New Delhi. It

was further alleged that the owning of the said property by his wife was a disqualification under Rule 25 (1)(c) of Delhi Co-operative Societies Rules, 1973 (hereinafter referred to as 'the Rules'). Petitioner was called upon to show cause as to why his membership with respondent no. 2 be not ceased and was called upon to give his reply within 15 days of the receipt of the said notice.

3. Petitioner replied to the said notice stating therein that he did not incur any disqualification as was alleged. Petitioner also stated that the property in question was purchased from one Sh. Lajpat Rai by his wife Smt. Rekha Gupta. His wife is an Income Tax payee and had purchased the said property from her own funds in her own name. Petitioner also stated that the said property is commercial and of small size and, as such, disqualification given in Rule 25 of 'the Rules' was not attracted. Necessary documents were also annexed with the reply to the said show cause notice and respondent no. 1 was requested to withdraw the same. The respondent no. 1 vide order dated 05.07.2001 did not consider the evidence produced by the petitioner and illegally ceased the membership of the petitioner vide impugned order dated 05.07.2001.

Aggrieved with the aforesaid order, the petitioner filed a revision petition under Section 80 of the Delhi Co-operative Societies Act, 1972 before the Financial Commissioner, Delhi on 23.08.2001. As the Presiding Officer was not posted by then, the petitioner had to file a writ petition before this court bearing C.W.P. No. 5251/2001 for protection of his rights. On 30.08.2001, this court passed an order reserving one flat for the

petitioner for the category opted by him. Thereafter, on assumption of charge by the Financial Commissioner, this court directed the parties to appear before the Financial Commissioner on 27.11.2001 and till then, the interim order was ordered to be continued. During the pendency of the appeal before the Financial Commissioner, one flat remained reserved for the petitioner. During arguments of revision petition, petitioner reiterated his stand before the Financial Commissioner as was raised by him before the respondent no. 1. However, the Financial Commissioner dismissed the revision petition vide impugned order dated 17.08.2007 upholding the finding of respondent no. 1. Thereafter, the petitioner filed a review petition and the same was also dismissed by the Financial Commissioner vide order dated 15.05.2008. Aggrieved with the aforesaid orders of Financial Commissioner, the present writ petition is filed.

4. Counsel for the petitioner has contended that the property bearing house no. 8315, Multani Dhanda, Paharganj, New Delhi, on the basis of which the membership of the petitioner with respondent no. 2 has been ceased, was purchased by his wife in her own name and is not covered by the alleged disqualification. It is contended that petitioner had also placed on record evidence to establish that the said property was purchased by his spouse out of her own funds and that be also placed on record the Income Tax Returns and other documents to prove the same. It is contended that the membership of the petitioner could have been ceased under Rule 25(1)(c)(i) of the Rules had the property at Multani Dhanda been owned by the petitioner in his own name or in the name of his wife. It is contended that

the phrase “in the name of” as stated in Rule 25(1)(c)(i) means the ownership must be of the member though it may stand ‘Benami’ in the name of his wife or child. In support of his contention, the learned counsel has relied upon *Alimuddin v The Registrar of Co-operative Societies & Ors., C.W.P. No. 5551/1993* reported in *63(1996) Delhi Law Times 655 (DB)*. It is contended that aforesaid contentions were raised by petitioner but the same have not been dealt with by the respondent, i.e., the Registrar as well as by the Financial Commissioner, Delhi. It is contended that ingredients of Rule 25 (1)(c)(i) of the Rules are not attracted in the present case and, as such, the impugned order is illegal, arbitrary and perverse.

5. On the other hand, Ld. counsel for the respondent contended that the impugned order is legal and valid in all respects and does not call for any interference by this court. It is further contended that Bye laws of respondent no. 2 also do not permit the petitioner to become its member. It is contended that as per the Bye laws of the respondent no. 2 society, a person cannot become a member of the society if he or his wife or any of his dependent owns a plot or a dwelling house. In support of his contention, learned counsel has relied upon *Sh. O.P. Choudhry v Rehabilitation Ministry Employees’ Co-operative House Building Society and others* reported in *AIR 2003 Supreme Court 3996*.

6. We have considered the submissions made and perused the record.

The relevant portion of Rule 25 of the Rules under which petitioner is sought to be disqualified is reproduced as under:-

“Rule 25: Disqualification of membership

(1) No person shall be eligible for admission as a member of a co-operative Society if he.....

(a)

(b)

(c) In the case of membership of a Housing Society:

(i) He 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 Union 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:

provided, disqualification as laid down in Sub-rule (1)(c)(i) shall not be applicable in case of persons who are only co-sharers of joint ancestral properties in congested localities (Slum Area) whose share is less than 66.72 sq. meters (80 sq. yards) of land.”

Rule 25(1)(c)(i) has been interpreted in three decisions of this court,

i.e., *O.P. Sethi v Lt. Governor* MANU/DE/0678/1991 : 45(1991) DLT 426, *Navjeevan Co-operative House Building Society Ltd v Delhi Co-operative Tribunal* : CWP 3150/1985 decided on 10.07.1987 and *Shri Sita Ram Jain v Registrar of Co-operative Societies* : CWP 3203/1992 decided on 15.11.1995.

Relying on the aforesaid judgments, a Division Bench of this court in

Alimuddin’s case (supra) observed as under:-

“The view taken by this Court has been that to attract the applicability of Rule 25(1)(c)(i), the member of the Society must own a residential house or a plot of land for the construction of a house in his own name or in the name of his spouse or a dependent child. The phrase “in the name of” has been interpreted to mean the ownership must be of the member though it may stand Benami in the name of the wife or a child.”

We have also followed the same view in two cases decided by us

recently which are as under:-

(i) **Jagdish Chander v Lt Governor and Ors.** W.P.(C) No. 1646/1995 decided on 22.07.2009 and,

(ii) **Krishan Kumar Sachan v The Lt Governor and Ors.** W.P.(C) No. 417/1995 decided on 10.08.2009.

7. In the present case, the membership of the petitioner has been ceased by respondent no. 1 by holding that property bearing no. 8315, Multani Dhanda, Paharganj, New Delhi is held by petitioner as 'Benami' and therefore the disqualification as stated in Rule 25(1)(c)(i) is attracted in the present case. The said finding is also upheld by the Financial Commissioner, Delhi vide impugned order dated 15.05.2008. It may be mentioned that the petitioner has throughout contended before the respondent no. 1 and Financial Commissioner as well as stated in reply to the show cause notice that the said property is in the name of his wife who has purchased it from her own funds. There is an affidavit of the petitioner and his wife before the respondent no. 1 in this regard. Petitioner has also categorically stated in the affidavit that his wife is the owner of the same and she has purchased it from her own resources. Petitioner has also placed on record Income Tax Returns of his wife to substantiate the same. Petitioner has also placed on record material to show that the said property is assessed in the name of his wife and in the records of the municipal authorities, the same is mutated in her name. 'Agreement to sell' of the property in question is in the name of his wife. But none of these aspects have been considered by the respondent no. 1 or by the Financial Commissioner.

The other contention of petitioner is that said property is commercial in nature and, in any event, provisions of Rule 25 of the Rules are not attracted in the present case. In support of his contention, petitioner has relied upon notice issued by the DDA to the previous owner of the property under Section 7(3) of Public Premises (Eviction of Unauthorized Occupant) Act. The said notice shows that property is commercial in nature. There is also no finding on aforesaid contentions of petitioner – i.e., about nature of property i.e. whether the same is residential/commercial and as regards the funds as to who had purchased it. The contention that the finding about size of the property is not being given by respondent no. 1 and Financial Commissioner is immaterial in as much as it is not the stand of petitioner that property in question is coming as a share of joint ancestral property. We have perused the ‘Agreement to Sell’ in respect of property in question. The same shows that property is a ‘house’. Even considering the property in question to be residential, the finding given in the impugned order that same is held by the petitioner as ‘Benami’ is not based on any material on record. Rather, evidence on record is to the contrary. The same shows property in question is purchased by the petitioner’s wife out of her own funds and the same stands in her own name. The present case is fully covered by the judgment in **Alimuddin’s** case (supra). It may also be mentioned that proceedings have been initiated against petitioner for cessation of membership on the ground of ownership of house in the name of his wife in her own capacity. The respondents were not justified in doing so. In view of the facts and circumstances of the case, we are of the view that

disqualification as held in the impugned order under Rule 25 of the Rules is not attracted in the present case.

8. The other contention of the respondent that the petitioner otherwise can't become member in view of the Bye laws of respondent no. 2/society also has no force as no such contention has been raised in the show cause mentioned above as well as in the proceedings before the Registrar of Cooperative Societies and even before the Financial Commissioner. The same is being raised for the first time in the present petition which petitioner is not legally permitted to do.

9. In view of above discussion, we are of the view that petitioner does not incur any disqualification under Rule 25(1)(c)(i) of the Rules. We, therefore, set aside the impugned orders dated 15.05.2008 and 17.08.2007 passed by the Financial Commissioner. The allotment of flat be made to the petitioner in accordance with his seniority.

The writ petition stands allowed accordingly.

Parties are left to bear their own costs.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

DECEMBER 22 , 2009

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