

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

+ **W.P.(C) No. 9660/2004**

% Reserved on: 30<sup>th</sup> September, 2010

Pronounced on: 6<sup>th</sup> October, 2010

M/S BURMAH SHELL CO-OPERATIVE HOUSING SOCIETY (REGD.)  
.... Petitioner

Through: Mr. Ashim Vachher, Advocate.

VERSUS  
SHRI PRAKASH NARAIN SHARMA & OTHERS

....Respondents

Through: Mr. Surinder Anand and  
Mr. K.K.Rohtagi, Adv. for R-1.  
Respondents No.2 and 3 are  
formal parties.  
Mr. Manoj Kr. Rath, Adv. for Mr.  
V.K.Tandon, Adv. for R-4/RCS.  
Mr. Ashutosh Lohia, Addl.  
Standing counsel for R-  
5/NDMC.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

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 the Digest?

### **JUDGMENT**

**VALMIKI J. MEHTA, J**

1. The petitioner society by this petition under Articles 226 and 227 of the Constitution of India challenges the order dated 18.3.2004

passed by the Delhi Cooperative Tribunal (DCT) dismissing its appeal against the Award of the Arbitrator dated 7.10.2003. By the award, the Arbitrator upheld the claim of the claimant/respondent no.1 herein and directed the petitioner society to give a plot to the respondent no.1 on payment of cost of land.

2. Before us, the learned counsel for the petitioner has challenged the decisions of the authorities below on three principal grounds:-

(i) The respondent no.1's father was not a member of the society as he had resigned from his earlier membership in the year 1951 and his membership application of 1952 was never accepted by the society.

(ii) The claim of the membership by the respondent no.1 is barred by virtue of Rule 35(7) of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as the 'said Rules') inasmuch as no challenge was laid by the respondent no.1 within 30 days of his filing of an application for grant of membership as a nominee of his father, although, within a period of 30 days, the society did not enrol respondent no.1 as a member.

(iii) There are no plots available with the petitioner society for allotment, and in fact, even persons who are senior in the list to the respondent no.1, assuming the respondent no.1 to be a member, have not been allotted plots. Also, there is no space available for carving out any fresh plots because New Delhi Municipal Corporation (NDMC),

being appropriate local authority, has said that the plot density stands exhausted.

The learned counsel for the petitioner has also urged that there is no equity in favour of the respondent no.1 for allotment of a plot on account of his father having paid Rs.25/- in the year 1952 and no charges thereafter having been received towards cost of the land or development of the land.

3. Learned counsel for respondent, on the other hand, has countered the arguments as raised by the counsel for the petitioner by urging that it is incorrect for the petitioner society to claim that the father of the respondent no.1 was not enrolled as a fresh member again in the year 1952 inasmuch as in various lists after 2001, which were filed with the Registrar of Cooperative Society, the father of the respondent no.1 was shown to be a member. We may note that it was argued that in fact the membership was since 1951. It was further urged that it cannot be contended that Rule 35(7) bars the membership of the respondent no.1 inasmuch as legal cases were pending between the respondent no.1/his father with the petitioner society and in these proceedings, the respondent no.1 has been substituted as a legal heir of his father and which orders were not challenged by the petitioner society. It is lastly urged relying upon a letter of the NDMC dated 25.3.2002 that there is space available for

making a plot on account of an electricity sub-station being not constructed in the colony.

4. In rejoinder, the learned counsel for the petitioner has, inter alia, argued that the name of the father of the respondent no.1 was shown in the list only on account of the fact that the amount of Rs.25/- was shown in the suspense account in the books of the petitioner society under the rejected application of 1952 and therefore to cover up this entry, the father of respondent no.1 was shown as a member. It is argued further that the list on which reliance has been placed upon by the respondent no.1 itself showed that the claim of membership is of the year 1951 and admittedly, the said membership was terminated on account of the resignation of the father of the respondent no.1. It is therefore, said that the lists which are referred to itself proceeded on an incorrect premise of membership of the year 1951. Reference has also been made to the various resolutions passed by the petitioner society refusing to accept the respondent no.1 as a member and also refusing to accept the amount of Rs.15,000/- which was sought to be paid by cheque by the father of the respondent no.1 in the year 1952.

5. We find on a reference to the decisions of both the authorities below that the same are in fact totally cryptic and almost entirely bereft of reasoning. The arguments as raised by the petitioner society have been given a mere lip service and in substance, the same have not met.

The first issue as raised by the petitioner society was that the father of the respondent no.1 has resigned in 1951 and the subsequent application of 1952 was not accepted. A reference to the pleadings filed by the respondent no.1's father in the original proceedings before the Arbitrator shows that the claim of membership is not of the year 1951 but of the year 1952, meaning thereby, that the resignation of 1951 is not an issue and a fresh claim of membership was made on account of the application having been filed in 1952 for fresh membership. This is the conclusion one can easily draw by reference to para 4 of the written statement filed by the petitioner society in the arbitration proceedings and to which there is only a general denial by the respondent no.1.

#### **Written Statement of Society**

**"4.** That the dispute being raised is hopelessly barred by time in as much as the claimant had resigned from membership of the society and his resignation was accepted vide resolution of the Managing Committee on 5.5.1951 (Annexure-) in the amount of share money was refunded to him by re-allotting his share to one Sh. B.N.Talwar. The claimant again applied for membership but his application was rejected by the Management Committee in its meeting on 5/11/52 and the deposit of membership fee and share money was never accepted but kept under suspense account. And since the question of limitation goes to the root of the matter in controversy and since its adjudication is the very basis of the claim and since the legal implications revolve around it, it can be adjudicated upon at any stage of any legal proceedings."

### **Rejoinder of Member**

“4. The contention of this para is denied. The claimant filed this claim u/s 60 before the Joint Registrar (Arbitration) Cooperative societies who has rightly admitted the application u/s 60 and referred the same to this Hon’ble court for decision u/s 61 of the Act and the respondent society has no jurisdiction to raise this objection at this stage before the Hon’ble court. The application was within time as per provision of sub (4) of sec. 60 of the Act.”

In fact, there is no doubt on this aspect whatsoever because the authorities below have also proceeded on the basis of the membership of 1952 and the resignation of membership of 1951 being correct. If there is any doubt whatsoever the same is cleared by a reference to para 1 of the replication filed by the respondent no.1 herein in the arbitration proceedings and which reads as under:-

“1. That the contention of para 1 of written statement is denied and the corresponding para of the same is reaffirmed as correct. The claimant became a member on 5.11.1952 by depositing the share money and admission fee and the society did not reject this application and the claimant deemed to be a member of the society from that date.”

(Emphasis added)

It is quite clear that the claim of membership is undoubtedly from 1952 only and that also on a deeming basis.

6. Curiously, the list of membership which has been relied upon by the respondent no.1 of 2001 and later years itself show that the reference of membership of the father of the respondent no.1 is not on the basis of the membership of 1952 but of the year 1951. The entry in the list of the year 2003 is relevant and the same reads as under:-

**“C. List of members (Non-plot holders)**

| S. No.<br>MS No. | Name and<br>address of<br>the member                     | Father's<br>husband<br>name        | Age at<br>the time<br>of<br>enrolment | Date of<br>application<br>for<br>enrolment | Date of<br>resolution<br>in which<br>member<br>ship<br>approved | Date of<br>deposit<br>of share<br>and<br>Adm.<br>Fee. | Amount<br>of share<br>& adm.<br>fee | Whether<br>affidavit<br>recd. at<br>the time<br>of<br>enrolment |
|------------------|----------------------------------------------------------|------------------------------------|---------------------------------------|--------------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------|-------------------------------------|-----------------------------------------------------------------|
| 1.               | 2                                                        | 3                                  | 4                                     | 5                                          | 6                                                               | 7                                                     | 8                                   | 9                                                               |
| -                | -                                                        | -                                  | -                                     | -                                          | -                                                               | -                                                     | --                                  | -                                                               |
| 5.               | <b>Sh.S.N.Sharma,<br/>WZ-1840, Rani<br/>Bagh, Delhi.</b> | <b>Sh.<br/>Rajinder<br/>Narain</b> | <b>42</b>                             | <b>6.1.51</b>                              | <b>22.11.50</b>                                                 | <b>"</b>                                              | <b>No.</b>                          | <b>-do-</b>                                                     |

7. The aforesaid therefore leaves no manner of doubt that a mistake has been committed, which is apparent, of the reference in the lists of membership, of the respondent no.1's father, because the reference is to the membership of the year 1951 and when it is not even the case of the respondent no.1 and his father that the membership is of 1951, and their claim of membership is of the year 1952. We are, therefore, inclined to accept the stand of the petitioner society that it was only on account of an amount of Rs.25/- lying in the suspense account, that the father of the respondent no.1 was shown as a member, of course as a non-plot holder. Clearly, therefore, there is doubt of the membership of the father of the respondent no.1 simply because it is based on the lists of 2001 onwards. Membership would require a resolution of the society accepting the membership, and on such query being put to the counsel for the respondent no.1, it is admitted that neither is there any resolution nor was any membership certificate issued to the respondent no.1's father on the basis of the application of 1952. On behalf of the respondent no.1, reference of claim of membership was made on the basis of the receipt of deposit of Rs.25/-, however, the counsel for the petitioner has referred to the resolutions of 1952

onwards which clearly show that the application for membership of the respondent no.1's father of 1952 was never accepted and the society also refused to encash a cheque of Rs.15,000/- as given by the father of the respondent no.1. The relevant resolutions in this behalf read as under:-

**(A)**

**"Annexure-5**

The Secretary,  
B-S Co-op. Housing Society Ltd.,  
B-S House,  
New Delhi

Dear Sir,

**Reg: One Share of Rs. 25/- withdrawal of.**

As I am not interested in the Housing Scheme, I would be glad if you please refund the amount of my share of Rs.25/- at your earliest convenience.

Thanking you,

Yours faithfully,

(S.N.Sharma)  
3.4.1951

**Annexure-6**

**(B)**

Phone: 26875003

**Burmah-Shell Co-Operative Housing Society Ltd. (Regd.)**  
Aradhana Colony, Ring Road, R.K.Puram, Sector-XIII, New Delhi-110066

**Minutes of Managing Committee's meeting held on 05-05-1951**

**Resolution No.3**

" Following resignations from membership were accepted:  
Shri S.D.Dhir  
Shri S.N.Sharma  
Shri T.N. Verma".

**(S.K.Dar)**  
**Acting Hony. Secretary**

**(C)**

**Annexure-7**

Phone: 26875003

**Burmah-Shell Co-Operative Housing Society Ltd. (Regd.)**

Aradhana Colony, Ring Road, R.K.Puram, Sector-XIII, New Delhi-110066

**Minutes of Annual General Meeting held on 18.08.1951**

**Resolution No.3**

“The following transfers of shares were approved:

- (a) Share No.3 to Shri J.L.Sachar
- (b) Share No.9 to Shri V.S.Nanda
- (c) Share No. 11 to Shri Radhke Narain.
- (d) Share No. 23 to Shri B.N.Talwar.
- (e) Share No. 16 to Shri P.L.Kumar.”

**(S.K.Dar)**

**Acting Hony. Secretary**

**Annexure-8**

**(D)**

Phone: 26875003

**Burmah-Shell Co-Operative Housing Society Ltd. (Regd.)**

Aradhana Colony, Ring Road, R.K.Puram, Sector-XIII, New Delhi-110066

**Minutes of Managing Committee's meeting held on 05-11-1952**

**Resolution No.3**

“The application of Shri S.N.Sharma for membership of the Society was rejected.”

**(S.K.Dar)**

**Acting Hony. Secretary**

**(E)**

**Annexure-9**

Phone: 26875003

**Burmah-Shell Co-Operative Housing Society Ltd. (Regd.)**

Aradhana Colony, Ring Road, R.K.Puram, Sector-XIII, New Delhi-110066

**Minutes of Managing Committee's meeting held on 20-06-1953**

"The application of Mr. Baij Nath of 04 04 1953 for transfer of his membership in favour of Mr. S.N.Sharma was not entertained."

**(S.K.Dar)**  
**Acting Hony. Secretary**

**(F)**

**Annexure-10**

Phone: 26875003

**Burmah-Shell Co-Operative Housing Society Ltd. (Regd.)**  
Aradhana Colony, Ring Road, R.K.Puram, Sector-XIII, New Delhi-110066

**Minutes of General Body Meeting held on 04.11.1979**

**Resolution No.5:**

"Shri S. N. Sharma, a member of the Society, requested that he should be permitted to pay the deposit for a plot of land now to entitle him for a plot of land of the Society. It was explained to him that this was not possible at this late stage."

**(S.K.Dar)**  
**Acting Hony. Secretary"**

In view of the aforesaid, it is quite clear that there is no claim of membership of the respondent No.1's father of the year 1951 and the claim of the membership of the year 1952 is clearly without basis because undoubtedly resolutions of the petitioner society show that the

claim of membership on the basis of the application of the year 1952 was not accepted and in fact categorically rejected.

8. Before we proceed ahead, it is necessary, at this stage, to refer to relevant paragraphs of the Award i.e. the decision of the first authority and the impugned order of DCT to show as to how the stand of the society has not at all been fairly and correctly discussed. The only relevant portion of the Award rejecting the stand of the society reads as under:

“I have gone through the submissions filed, the oral arguments advanced by both the parties and the record available on file. It has been observed that it cannot be disputed that Sh. S.N. Sharma was an original member. His offer of Rs.15,000/- by way of a demand draft for a plot larger in size was not accepted by the society at appropriate time, basically leading to the present dispute. The original claimant seems to have performed his part of duty and obligations towards the society in his attempts to get his plot. The plea of resignation of Sh. S.N. Sharma and his subsequent re-entry to settle some accounts are not tenable as they are neither supported by any reason nor by the law. It has to be presumed that he continued to be a member of the society till the end of his life and his name continued to be shown in the list of members. Had he not been a member, such situation would not have arisen. On the aspect of the present petitioner being the legal heir of the original claimant, when the issue was decided by the Arbitrator in presence of the respondent society, the same was not challenged or disputed by the society. The society had also not asked for the nominees/legal representatives of Late Sh. S.N. Sharma which they were required to do within 30 days from the date of death of the member. Also, in the present case there is no dispute between the legal heirs of late Sh. S.N. Sharma and all other legal heirs have given separate affidavit in favour of Sh. P.N. Sharma relinquishing their rights in the estate of late Sh. S.N. Sharma. Moreover, a Succession Certificate is also in

support of the petitioner. On the issue of the availability of land, the petitioner made reference to the judgment of the trial court dt. 31.3.1965 confirmed by the Delhi High Court on 21.7.72, which released the land for giving plots to the members whose names were provided by defendant society to the court which included the name of Late Sh. S.N. Sharma.”

9. The relevant portion of the order of the DCT which is in fact an order of just five paragraphs, the relevant para being para No.4, reads as under:

“4. I find that it is true that Late Sh. S.N. Sharma resigned from the membership in 1951 but subsequently the Managing Committee decided to admit him as a member as a special case in order to clear the suspense item in the accounts pending for a number of years. I also find that the name of Shri S.N. Sharma figures in the list provided by the society to the court whose judgment dated 31.3.1965 was confirmed by the Delhi High Court on 21.7.1972.”

A reference to the aforesaid findings of the authorities below shows that there is absolutely no discussion as to why the membership on the basis of the year 1952 of the respondent No.1's father has been accepted when admittedly the resolutions show that the application was rejected. A reference in the list of year 2001 showing the membership of respondent No.1's father cannot stand in the face of the categorical resolution of the petitioner society rejecting the membership of the respondent No.1's father. We have already made reference to the fact that list of the year 2003 itself refers to the membership of the respondent No.1's father with reference to the year 1951 and not of 1952, and not the former but the latter is the claim of the membership of the respondent No.1's father i.e. of 1952 only and

not of 1951. In fact, the Arbitrator used the expression “it has to be presumed that he continued to be a member of the society till the end of his life.....” Clearly, the Arbitrator was wholly unjustified in acting on the basis of a presumption in view of the categorical resolutions filed and relied upon by the petitioner society. There is absolutely no discussion of any substance on this aspect in the award and we feel that this would be because there was no answer which could be given by the Arbitrator once the resolutions rejecting the membership application of the year 1952 of the respondent No.1’s father clearly established on record the falsity of the claim of membership. The other discussion in the Award with regard to the present respondent No.1/the son stepping into the shoes of his father would be not of any issue inasmuch as our present judgment proceeds on the basis that the respondent No.1 stepped into the shoes of his father and Rule 35(7) does not stand in his way.

10. The next issue to be decided is with respect to whether the petitioner society has any plot available for allotment to the respondent No.1 and whether the respondent No.1 is entitled to a plot once there are persons senior to him in the list and who have not been allotted a plot. To appreciate this aspect, it is necessary to refer to the list which is relied upon by the respondent No.1 to show the membership of the father of the respondent No.1 in which the father of the respondent No.1 is shown at serial No.5 in the list of non-plot

holders. The list of the non-plot holders and in which the respondent No.1's father is only at serial No.5 reads as under:

“BURMAH SHELL CO-OPERATIVE HOUSING SOCIETY LTD.  
(REGD.)

List of Non-Plot-holder members as on 31.03.2001

| S.No.        | Membership<br>No. | Name in full        | Share money paid         |
|--------------|-------------------|---------------------|--------------------------|
| .....        | .....             | .....               | .....                    |
| 106          | 50                | Sh. Rakesh Kumar    | Rs.25/-                  |
| 107          | 51                | Sh. A.K. Banerjee   | Rs.25/-                  |
| 108          | 52                | Sh. M.N. Tandon     | Rs.25/-                  |
| 109          | 53                | Sh. J.L. Sachar     | Rs.25/-                  |
| 110          | 55                | Late Sh.S.N. Sharma | Rs.25/-                  |
| <b>Total</b> |                   |                     | <b><u>Rs.2,750/-</u></b> |

11. The counsel for the respondent No.1 has drawn our attention to a decision of the learned Single Judge of this Court in Writ Petition (C) No.356/03 titled as ***Rakesh Kumar Vs. The Burmah Shell Co-operative Housing Society Ltd. and Ors.*** dated 7.10.2004. This decision pertains to a writ petition filed by Sh. Rakesh Kumar who is at serial No.106 and the first in the list of non-plot holders. By the order dated 7.10.2004, the writ petition and the claim of the said Rakesh Kumar was rejected and only his request for a flat was acceded to. We may also note, at this stage, that a flat was offered to the respondent No.1 and his father but the said offer of the petitioner society was

rejected by them. In the order dated 7.10.2004 in W.P.(C) No.356/03, the stand of the NDMC has been noted that there is no land for carving out further plots in the society. The relevant paras of the judgment dated 7.10.2004 are paras 15,19, 24 and 26 which read as under:

**“15.** Stand of NDMC in the counter affidavit is that on 6.12.2001, it was informed to the society that additional plots could not be permitted in existing parks, green places or on roads. Society was asked to submit a revised plan excluding parks, green spaces or roads from being brought within plotted area. Society submitted revised plans on 21.12.2001. Proposal was based on norms of 23.7.1998 stayed by the Supreme Court. Moreover, additional plot proposed to be carved out being on existing park, plan could not be sanctioned.

xxxxxxx

**19.** NDMC categorically states that Master Plan norms under which plotted area has to be determined, on being applied, has exhausted plotted development. Petitioner has brought no material on record to show that an additional plot can be carved out.

Xxxxxxx

**24.** Execution filed by late Sh. R.C. Trivedi is pending before the Additional Collector (REC). Order dated 5.10.1999 passed by the Additional Collector, unfortunately cannot be given effect to as the two plots attached by the Additional Collector, being on park, cannot be converted into plots. Further, categorical stand of NDMC is that Master Plan norms have been exhausted vis-a-vis plotted development.

Xxxxxxx

**26.** Writ petition is accordingly disposed of with a direction to the Additional Collector (REC) before whom execution proceedings are pending to determine as to what additional construction can be permitted on the multi-storeyed block. The award, as noted above, directs a flat or a plot to be allotted to the claimant. The executing authority who has to execute the award would proceed to issue notice to the NDMC as well as the society on the issue of determining whether an

additional flat could be constructed as per revised FAR norms. It would be free to the Additional Collector to issue such appropriate directions as it feels would be necessary to give effect to execution of the award dated 12.1.1990.” (Emphasis added)

Clearly, assuming that respondent No.1's father was a member and the respondent No.1 stepped into the shoes of his father as a nominee member, yet, once the local authority has taken up a clear cut stand that no plot is available, and the plot and population density stands satisfied, it is not permissible to violate the law by carving out a plot from open ground areas and parks in the petitioner society for being allotted to the respondent No.1. The decision in the W.P.(C) 356/2003 is dated 7.10.2004 and the letter of NDMC relied upon by the respondent no.1 is earlier of 25.3.2002. Of course, we have already held that the respondent No.1's father never became a member on the basis of his application of the year 1952 and admittedly his membership of the year 1951 came to an end by means of his own resignation.

12. We also feel that in the facts and circumstances of the present case, as also in equity, a person who has just contributed Rs.25/- in the year 1952, and further assuming that a sum of Rs.15,000/- was also paid (though the said cheque of respondent No.1's father was never encashed by the petitioner society), we do not feel that the respondent No.1 should be entitled to a plot of land, especially keeping in view the fact that there are four other senior members who have not been allotted a plot. The claim of the respondent No.1 is at best to stand in

the line and his entitlement would only arise if the members senior to him, who are otherwise eligible, have been allotted plots and which is not so. Looking at it from other angle, we do not feel that the respondent No.1 was entitled to plot.

13. In view of the above, we accept the writ petition and set aside the orders of both the authorities below inasmuch as they are not only cryptic but they fail to discuss the relevant facts and the issues, and which if would have been done the same would have resulted in a decision in favour of the petitioner society. We, therefore, set aside the impugned order dated 18.3.2004 passed by the DCT and Award dated 7.10.2003 and dismiss the claim petition as filed by respondent No.1 and his father for grant of a plot in the petitioner society. The parties are left to bear their own costs.

**VALMIKI J. MEHTA, J.**

OCTOBER 06, 2010  
ib/Ne

**SANJAY KISHAN KAUL, J.**