

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: September 19, 2012
Pronounced on: October 08, 2012

+ **W.P.(C) No.2934/1996 & CM No. 11747/12 (u/O 1 R 10(2) CPC)**

RAM KUMAR KAPOOR

(Since deceased) Through LR & Anr. Petitioners
Through: Mr. Kiran Suri & Ms. Aparna
Matoo, Advocates for petitioner
No.1
Mr. Kailash Vadudev, Senior
Advocate, with Ms. Nandani
Sahni & Ms. P. Puri, Advocates
for petitioner No.2

versus

**DELHI DEVELOPMENT
AUTHORITY & ANR.**

..... Respondents
Through: Ms. Renuka Arora, Advocate
for Respondent No.1/DDA
Mr. Rakesh Kumar Garg,
Advocate for Respondent No.2

+ **W.P.(C) No.8159/2010**

KIRTI MOHAN SAKLANI

..... Petitioner
Through: Mr. Ashok Sethi, Ms. Jyoti
Rana & Ms. Sumati Sharma,
Advocates

Versus

**DELHI DEVELOPMENT
AUTHORITY & ANR.**

..... Respondents
Through: Ms. Renuka Arora, Advocate
Respondent No.1/DDA
Mr. Rakesh Kumar Garg,
Advocate for Respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. With the consent of learned counsel for parties, the above captioned two petitions were heard together as their subject matter is the same and by this common judgment, these two petitions are being disposed of.

2. In the above captioned first writ, in the year 1982, petitioner - Ram Kumar Kapoor was called upon by respondent - *Sarv Priya Vihar Cooperative House Building Society Ltd.* (henceforth referred to as respondent - Society), to execute perpetual sub-lease in respect of *Plot No.10/10, Sarv Priya Vihar, New Delhi*, i.e, the subject plot . Vide Communication of April, 1994, respondent - Society had ceased the membership of petitioner - Ram Kumar Kapoor as he had entered into a business deal in respect of subject plot. The cessation of petitioner's membership of respondent - Society was contested before Registrar, Cooperative Societies, Delhi who vide order of 14th February, 1995 had set aside cessation of petitioner's membership of respondent - Society as proper procedure was not followed and because sufficient opportunity was not afforded to petitioner - Ram Kumar Kapoor. Petitioner – Ram Kumar Kapoor asserts that necessary formalities for execution of sub-lease of the subject plot was duly completed and was submitted to respondent - DDA who had called upon the respondent - Society to come forward for execution of the sub-lease of subject plot in favour of petitioner - Ram Kumar Kapoor but on account of late execution of sub-lease deed and non-

construction on subject plot, respondent - DDA had charged penalty of ₹1,49,603/- , which was paid by him. However, vide Communication of 29th September, 1994 (Annexure-F), respondent - DDA had sought clarification from respondent - Society regarding petitioner's membership, though it was already clarified by Registrar, Cooperative Societies vide Communication of 10th February, 1994 that petitioner's membership of respondent - Society had not ceased.

3. Due to old age, petitioner - Ram Kumar Kapoor had appointed Shri R.V.Bhasin, Advocate, as his constituted Attorney to obtain sub-lease of the subject plot and for resolution of various disputes. Vide Communication of 23rd February, 1996 (Annexure - G), aforesaid Attorney of petitioner - Ram Kumar Kapoor was informed that membership issue of petitioner is yet to be decided by Registrar, Cooperative Societies, Delhi and so, registration of sub-lease in respect of subject plot would be done thereafter.

4. The above captioned first writ petition was filed, seeking direction to respondents to execute registered Deed of Sub-Lease in respect of subject plot and to refund penalty of ₹1,49,603/- charged by respondent - DDA towards non-execution of sub-lease and non-construction on the subject plot. This writ was contested by respondent – Society justifying cessation of petitioner's membership as General Power of Attorney executed by petitioner - Ram Kumar Kapoor in favour of Shri R.V.Bhasin was said to be for consideration, which violated Rule 40 of the *Delhi Cooperative Societies Rules, 1973*. Strangely, in the counter filed by respondent - Society, the stand taken is that petitioner's membership of this society had rightly ceased

and the finding of Registrar, Cooperative Societies in its order of 14th February, 1995 is without jurisdiction and not in conformity with law.

5. It would be relevant to note here that respondent - Society has not disclosed in its counter if aforesaid order had attained finality or not and whether any fresh proceedings for ceasing petitioner's membership were taken. However, copy of Attorney of 31st August, 1994, General Power of Attorney, Receipt of 5th September, 1994 executed by petitioner - Ram Kumar Kapoor in favour of Shri R.V.Bhasin is appended as Annexure R-1(Colly) to the counter filed by respondent - Society which reveals that the execution of this Attorney was for a consideration of Rupees Two lacs only.

6. Respondent - DDA in its counter had maintained that it had received communication of 14th December, 1995 from Registrar, Cooperative Societies to the effect that until membership issue of petitioner is decided, no action to allot subject plot be taken. What proceedings are pending before Registrar, Cooperative Societies, neither side had disclosed nor Registrar, Cooperative Societies has been made a party in the above captioned two petitions.

7. In the above captioned second writ, petitioner- K.M.Saklani is impugning Communication of 21st August, 2010 of respondent - Society expressing inability to allot subject plot to him due to pendency of the above captioned first writ petition. The stand of respondent - Society in the counter filed to this writ is that Registrar, Cooperative Societies vide its Communication of 12th October, 1995 has restrained respondent - Society to allot subject plot to petitioner - K.M.Saklani without getting his name cleared from Registrar,

Cooperative Societies, Delhi. Despite objection taken regarding non-impleadment of Registrar, Cooperative Societies in this writ petition, no steps have been taken by petitioner - K.M.Saklani also to implead Registrar, Cooperative Societies, Delhi. Even in this writ petition, it is not disclosed as to what proceedings are pending before Registrar, Cooperative Societies, Delhi.

8. During the pendency of above captioned first writ, petitioner - Ram Kumar Kapoor had expired on 2nd October, 1998 and was survived by his wife, son and a daughter. In March, 1999, respondent - Society had refunded Late Ram Kumar Kapoor's membership deposit to his wife who was the nominee and respondent - Society's account got debited of the refund amount as per its Banker's Certificate of 5th July, 1999 and thus, cessation of membership of Late Ram Kumar Kapoor had purportedly attained finality.

9. Shri R.V.Bhasin on the strength of Codicil in his favour, purportedly executed by petitioner - Ram Kumar Kapoor on 11th November, 1994 had applied for probate in the year 2003 before High Court of Bombay and Ms.Sonia Kapoor, daughter of Late Ram Kumar Kapoor had filed a caveat which was dismissed in November, 2003 and High Court of Bombay had granted probate in favour of Shri R.V.Bhasin, on the strength of which he alongwith two surviving legal heirs of Late Ram Kumar Kapoor, i.e., Sunil Kapoor and Sonia Kapoor were brought on record in the above captioned first writ petition by order of 10th December, 2003. It is a matter of record that wife of Late Ram Kumar Kapoor had expired on 25th August, 1999 and their daughter Sonia Kapoor had died on 1st March, 2004.

10. In October, 2005 petitioner - Sunil Kapoor had filed application for revocation of probate and restoration of caveat filed by Sonia Kapoor as her legal heir and the said caveat was restored in July, 2006 which was challenged by petitioner - R.V.Bhasin before a Division Bench of High Court of Bombay but without any success and even Special Leave Petition was dismissed by the Apex Court on 30th August, 2010.

11. The precise contention advanced on behalf of petitioner - R.V.Bhasin is that what has been restored in the probate proceedings is the caveatable interest of Sonia Kapoor and petitioner - Sunil Kapoor will have to raise issues pertaining to the probate before High Court of Bombay and the same are of no relevance in the present proceedings. Reliance was placed upon decisions in *Ashok Chand Aggarwala vs. Delhi Administration*, (1985) RLR 432; *Abhay Sapru vs. Chitralekha Bakshi and anr.*, 2008 (102) DRJ 744; W.P. (C) No. 6807/2008, titled *Mayurdhwaj CGSH Ltd. Vs. Registrar, Cooperative Societies and Ors.*, rendered on 24th November, 2009; and *Smt.Rukmani Devi & ors vs. Narendra Lal Gupta*, (1985) 1 SCC 144, to contend that two types of succession form part of inheritance, i.e., testamentary and natural succession and there is no third kind of succession and that there is no embargo on society member to make a person nominee, who is not a blood relation.

12. Submissions advanced by learned senior counsel for petitioner - Sunil Kapoor revolves around legality of cessation of society membership of Late Ram Kumar Kapoor. Reliance is placed upon various provisions and the rules of *Delhi Cooperative Societies Act*,

1972 to urge that the legal heirs of society members cannot be denied their rights to membership of respondent - Society and that bye-laws of respondent - Society requires that expulsion of member of society is to be confirmed by the General Body Meeting of the Society. Regarding the refund of membership deposit to the nominee of Late Ram Kumar Kapoor, it was submitted that aforesaid refund is without following the applicable bye-laws of the society and without approval of respondent - Society's General Body Meeting and is thus invalid.

13. Much emphasis was placed by learned senior counsel for petitioner - Sunil Kapoor upon order of 14th February, 1995 of Registrar, Cooperative Societies holding that cessation of petitioner's membership of respondent - Society was without following proper procedure. It was pointed out that respondent - Society even in its Communication of 15th March, 1999 vide which a refund of deposit was made to nominee of Late Ram Kumar Kapoor had not referred to cancellation of the membership, nor it was disclosed in proceedings under Section 32 of *Delhi Cooperative Societies Act, 1972*.

14. In support of above submissions, reliance was placed upon decisions in *Pran Nath Mallik vs. Netar Prakash Mallik*, 85(2000)DLT 179; *Sushila Devi Bhaskar vs. Ishwar Nagar Cooperative House Building Society Ltd. & ors*, 45(1991) DLT 518; *Ashok Chand Aggarwala vs. Delhi Administration*, 1998 VII AD (Delhi) 639; *Swaraj Soni vs. Rehabilitation Ministry Employees Co-operative House Building Society*, 42(1990)DLT 261; *Jitender Singh vs. NDMC & ors*, 180(2011) DLT 323(DB); *A.A. Calton vs. Director of Education and anr*, (1983) 3 SCC 33; *State of Orissa vs.*

Pyarimohan Samantaray and ors, (1977) 3 SCC 396; *Promila Anand vs. Registrar, Co-operative Societies*, 163 (2009) DLT 551; *Maitri Nagar Co-operative Group Housing Society Ltd. Vs. Mehra Chand Jain & ors.*, 158(2009)DLT 535; *Hardeep Singh vs. Registrar, Coop. Societies & ors*, 41 (1990) DLT (SN) 29.

15. On behalf of petitioner- K.M.Saklani it was urged that his name was cleared for allotment of subject plot by respondent - Society on 1st August, 1995, which was put on hold by the office of Registrar, Cooperative Societies on 12th October, 1995 as membership issue of Ram Kumar Kapoor had not been finally decided and after much correspondence, respondent - Society had ultimately disclosed vide impugned communication of 21st August, 2010 that no further action can be taken due to pendency of above captioned first writ petition.

16. Reliance was placed by learned counsel for the petitioner- K.M.Saklani upon decisions in *Sanjiv Kumar Dixit vs. Registrar Cooperative Societies*, 2009 VII AD (DELHI) 350; *Zoroastrian Cooperative Housing Society Ltd. and anr. Vs. District Registrar, Cooperative Societies (Urban) and ors.*, (2005) 5 SCC 632 to urge that date of death of member of society is relevant to determine eligibility for transfer of membership and that membership would be denied to a citizen who is residing outside the area of operation of the society. According to learned counsel for petitioner- K.M.Saklani, issue of membership of Late Ram Kumar Kapoor stands closed as his nominee had already taken the refund of the membership deposit and so, allotment of subject plot to petitioner- K.M.Saklani ought to be cleared by Registrar, Cooperative Societies, Delhi as well as by the

respondents.

17. The submissions advanced by learned counsels for the respective parties, material on record and the decisions cited have been considered and thereupon, it becomes evident that subsequent to order of 14th February, 1995 respondent - Society had initiated fresh proceedings vide its resolution of 29th April 1995 and had forwarded it for approval to Registrar, Cooperative Societies, who vide order of 12th December, 1997 had not approved the cessation of Ram Kumar Kapoor from membership of respondent - Society as the Agreement to Sell in respect of subject plot appeared to have been executed in Delhi but was notarized in Mumbai.

18. The assertion of learned Senior counsel for petitioner - *Sunil Kapoor* regarding aforesaid order of 12th December, 1997 holding that society membership of Ram Kumar Kapoor does not cease, having attained finality remains unrebutted. In view thereof, what would be the legal consequences of nominee of Late Ram Kumar Kapoor accepting refund of society membership sent vide respondent - society's innocuous communication of 15th March, 1999, without disclosing about cancellation/cessation of society membership of Late Ram Kumar Kapoor, is an aspect which is required to be considered by respondent – Society or Registrar, Cooperative Societies, Delhi and not by this Court in writ proceedings, as Communication of 12th October, 1995 impugned in above captioned second writ petition refuses to clear the name of petitioner- *K.M.Saklani* for allotment of subject plot because membership issue of allottee - Ram Kumar Kapoor in respect of subject plot has not been finally decided. What is

the nature of proceedings, which are pending before Registrar, Cooperative Societies, Delhi, is not disclosed by either side. Therefore, in the above captioned second writ, petitioner- *K.M.Saklani* cannot succeed because allotment of residential plot to petitioner- *K.M.Saklani* by respondent - Society vide Communication of 1st August, 1995 was a proposed allotment only, which is required to be considered by Registrar, Cooperative Societies, Delhi vis-à-vis its previous order of 12th December, 1997 disapproving cessation of society membership of Ram Kumar Kapoor.

19. Though, Registrar, Cooperative Societies, Delhi was not required to deal with the aspect of cessation of society membership of Ram Kumar Kapoor in its order of 23rd November, 2001 while dealing with supersession of Committee of respondent - Society but the question of withdrawal of membership, leading to refund of membership deposit has to be considered by Registrar, Cooperative Societies in reference to applicable Rule under the *Delhi Cooperative Societies Rules, 1973*.

20. Neither side has disclosed as to whether any application under Section 26 of *Delhi Cooperative Societies Act, 1972* by legal heirs of Late Ram Kumar Kapoor is pending for consideration or not, before respondent - Society, who is also required to consider as to whether its proposed allotment of 1st August, 1995 of subject plot to petitioner- *K.M.Saklani* would survive in the face of order of 12th December, 1997 refusing to approve cessation of society membership of Ram Kumar Kapoor.

21. During the pendency of above captioned first writ petition,

much water has flown and subsequent events have changed the texture of the entire subject matter, on which even the above captioned second writ petition does not throw much light as it is silent about order of 12th December, 1997 of Registrar, Cooperative Societies, Delhi disapproving cessation of society membership of petitioner-Ram Kumar Kapoor.

22. Aforesaid are the grey areas which cannot be determined in writ proceedings and so, finding no fault with Communication of 12th October, 1995 of Registrar, Cooperative Societies, Delhi, this Court directs respondent - Society to deal with the society membership issue of Late Ram Kumar Kapoor and to reconsider the refund of membership deposit of Late Ram Kumar Kapoor to his nominee on 8th May, 1999, in the face of order of Registrar, Cooperative Societies, Delhi of 12th December, 1997, disapproving cessation of membership of Ram Kumar Kapoor and also to deal with fresh application under Section 26 of *Delhi Cooperative Societies Act, 1972*, of legal heirs of Late Ram Kumar Kapoor, if the same is not record, after the probate proceedings said to be pending in the High Court of Bombay, attain finality. Readiness of petitioner – Sunil Kapoor to refund the membership deposit, in question, be also taken into consideration by Registrar, Cooperative Societies, Delhi. Such a course is being adopted, for the reason that it is not known as to whether caveatable interest of Sonia Kapoor is being contested by petitioner - Sunil Kapoor before High Court of Bombay or whether probate proceedings abated or not.

23. In view of afore-noted fluid factual position and peculiar

circumstances, the above captioned petitions are disposed of, while leaving the parties to agitate their claims by relying upon above cited decisions before Registrar, Cooperative Societies, Delhi or respondent – Society as the case may be. It would be open to petitioner- *K.M.Saklani* to establish before the appropriate forum under *Delhi Cooperative Societies Act, 1972* that probate proceedings have abated and if it is so found, then membership issue of Late Ram Kumar Kapoor be promptly resolved by respondent - Society and if need be, by Registrar, Cooperative Societies, Delhi.

24. Needless to say, any observation made in this decision shall have no bearing on merits when the issue of society membership of Late Ram Kumar Kapoor is considered by the respondent - Society or Registrar, Cooperative Societies, Delhi, after hearing the affected parties including petitioner- *K.M.Saklani* whose right for consideration of his claim for allotment of subject plot is required to be considered with an expedition, i.e., preferably within a period of one year.

25. With afore-noted observations, both these petitions and pending applications stand disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

October 08, 2012
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