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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 17.03.2017

Judgment delivered on : 08.05.2017

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REVIEW PET. 498/2013, C.M. No.13696/2003 (for stay) and CM. No.13697/2013 (for condonation of delay of 123 days) in W.P.(C) 2224/2013

DERA GAZI KHAN CO-OPERATIVE HOUSE BUILDING SOCIETY LTD.

..... Petitioners

Through Mr.Anil Kumar, Advocate.

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES AND ANR.

..... Respondents

Through Mr.Rakesh Dhingra, Advocate for R-2.

CORAM:

HON'BLE MR.JUSTICE S.RAVINDRA BHAT

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J

CM. No.13697/2013 (for condonation of delay of 123 days)

1 The submission of the petitioner that in this intervening period i.e. after the judgment dated 09.4.2013 he had been constrained to move the Supreme Court and it was pursuant to the directions of that Court (dated 14.8.2013) that he has approached this Court makes out a justifiable cause for condoning the delay of 123 days. Delay is accordingly condoned.

REVIEW PET. 498/2013, C.M. No.13696/2003 (for stay)

2 Petitioner seeks a review of the order dated 09.4.2013.

3 One Shyam Lal Sehra was admitted as a member of the Dera Gazi Khan Co-operative House Building Society Limited (hereinafter referred to as the said Society) on 26.12.1960. Between May, 1964 to April, 1987 Shyam Lal Sehra owned another property i.e. the property bearing No.F-54, Kirti Nagar, New Delhi; this property was in his name. A question was raised before the Registrar of the Co-operative Societies (RCS) as to whether Shyam Lal Sehra had incurred a disqualification under Rule 25(2) of the Delhi Cooperative Societies (DCS) Rules, 1973. This question had arisen pursuant to a notice issued to Saroj Bhutani to show cause as to why her membership in the said Society be not ceased.

4 Record reveals that Om Prakash Bhutani (husband of Saroj Bhutani) had been recorded as a member of the said Society on 20.01.1973. Pursuant to his death (20.04.1989) Saroj Bhutani applied for transfer of the membership in her name on 10.4.1991. This transfer was effected in her name on 12.4.1991. Possession of the plot was handed over to her on 20.4.1991.

5 Before the RCS the contention raised was that the name of Saroj Bhutani could not be cleared as the original allottee Shyam Lal had himself become disentitled to membership having incurred a disqualification under Rule 25 of the DCS Rules. The RCS had rejected this contention. He had noted that in the light of the judgment of Ishwar Nagar CHBS Ltd. Vs. Parma Nand Sharma and Ors. (2010) 14 SCC 230 Rule 25(2) had no retrospective operation; it was prospective. Applying the ratio of the said judgment to the case in hand the RCS was of the view that Shyam Lal Sehra (the original member) at the time of allotment (1960) did not suffer from any disqualification. Shyam Lal Sehra had become a member of the Society on 26.12.1960; he had transferred his membership to Om Prakash Bhutani (husband of Saroj Bhutani) on 20.01.1973; the DCS

Act came into force on 17.6.1972; the DCS Rules 1973 came into force on 20.4.1973. The DCS Act 2003 Act came into force on 01.4.2005 followed by the DCS Rules 2007 which came into force on 19.10.2007. Thus between 26.12.1960 upto 20.01.1973 neither the DCS Act 1972 and nor the DCS Rules 1973 were in force in the NCT of Delhi which is the period when Shyam Lal Sehra became a member of the Society (in 1960) or even when his membership was transferred to Om Prakash Bhutani (20.01.1973). The Bombay Cooperative Societies Act, 1925 and the Delhi Cooperative Societies Rules, 1950 (which were then in force) had no disqualifying provision on this count. Rule 25(2) of the DCS Rules could not be invoked retrospectively; Saroj Bhutani was well entitled to the transfer of ownership in her name in the record of the Society.

6 On 09.4.2013 this Court upheld the order passed by the RCS. The relevant extract of the judgment reads herein as under:

“The crux of the dispute is that the petitioner/Society has been refusing to clear the name of Mrs.Saroj Bhutani for execution of the documents though she has been enjoying the property. The basis of the same is that Sh.Shyam Lal Sehra was disentitled to membership from which the claim of Mr.O.P.Bhutani and Mrs.Saroj Bhutani respectively flowed on account of having allegedly incurred a disqualification under Rule 25 of the Delhi Cooperative Societies Rules, 1973.

It is this aspect which has been analyzed by the RCS in the impugned order.

*The RCS has noted that neither the Delhi Cooperative Societies Act, 1972 nor the Delhi Cooperative Societies Rules, 1973 framed therein were in force in National Capital Territory of Delhi when Mr. Shyam Lal Sehra became a member in the year 1960 nor were they in force when the membership of Mr. Shyam Lal Sehra was transferred to Sh. O. P. Bhutani. It is the Bombay Cooperative Societies Act, 1925 which was applicable along with the Delhi Cooperative Societies Rules, 1950, both of which did not contain any provision for disqualification of an individual member because of owning a residential property in National Capital Territory of Delhi. In this behalf, a reference has been made to the judgment of the Supreme Court in *Ishwar Nagar CHBS Ltd. V. Parma Nand Sharma and Ors.*; (2010) 14 SCC 230 where the aforesaid Rule 25(2) of the Delhi Cooperative Societies Rules, 1973 has been held to be applicable only prospectively.*

We find no infirmity with the finding of the RCS in relation to the aforesaid. The legal position is crystal clear. There was no disqualification of Mr. Shyam Lal Sehra as per the then existing Rules at the time of his enrolment or at the time of transfer of his membership to Mr. O. P. Bhutani. The succeeding parties therefore acquired a valid membership”

7 The petitioner society was aggrieved. It filed an SLP before the Supreme Court. The SLP was disposed of on 14.08.2013. The contention raised before the Apex Court appeared to be two fold; the first was the applicability of the ratio of the judgment of the Supreme Court delivered in *Ishwar Nagar* (supra). The second objection was in the context of Bye-Law 5(1)(e) of the Bye-Laws of the petitioner society.

8 The Supreme Court had directed the petitioner to seek a review before this Court. Hence this petition.

9 The judgment of Ishwar Nagar (supra) had been highlighted. Learned counsel for petitioner has drawn attention of this Court to various paragraphs of the said judgment including paras 21 and 23.

10 A similar question has arisen before the Supreme Court in that case. The question related to the disqualification of a member from a group housing society as the allottee owned a residential property in Delhi in the name of the HUF of which he was a coparcener. While dealing with Rule 25(2) of the DCS Rules the Court was of the categorical view that Rule 25(2) did not have a retrospective operation. It was prospective. The Rule came into force w.e.f. 02.4.1974.

11 Applying the ratio of Ishwar Nagar (supra) this Court had rightly held that Rule 25(2) not being retrospective but being prospective the question of Shyam Lal Sehra being disqualified in the year 1960 when this allotment was made in his favour would not arise. This objection of the petitioner has no force.

12 The second objection of the petitioner relates to Bye Law 5(1)(e) of the Bye Laws of the Society. This argument now raised was never raised before the RCS. It was also not argued before the Division Bench at that time when the judgment dated 09.4.2013 was delivered. It appears that this was the same position before the Supreme Court in Ishwar Nagar Coperative Building Housing Society Ltd.'s (supra). Nevertheless the Supreme Court thought it appropriate to consider Bye-Law 5(1)(e) as admittedly it was in existence. The said Bye-Law reads herein as under:

“5(1) Any person shall be eligible to be a member of the Society.

Provided

(e) he or his wife (she or her husband in cse of a woman) or any of his/her dependent does not own a land, house or a plot for building a house in Delhi.”

13 In this case, there is nothing on record to show that the alleged violation of this Bye-Law [5(1)(e)] was ever communicated to the respondent by any showcause notice. The show cause notice (dated 23.08.2011) issued to the respondent is silent on this aspect. This show cause was predicated on an allegation that the original member (Shyam Lal Sehra) was holding a property in Delhi at the time when

he was granted membership in the said society; there was no reference to any violation of Byelaw 5(1)(e). The show cause notice/letter written by the petitioner Society to the RCS as (08.09.2011) (P-17) was also silent on this aspect. It also did not speak of any such violation. In Ishwar Nagar (supra) the facts were different. In that case {Ishwar Nagar (supra)} after his allotment the said petitioner being a persistent defaulter and not having paid his dues as demanded by the Society had been expelled from membership which expulsion has been approved by the RCS; her reference of the dispute to arbitration had also been dismissed; notice of the alleged violation of the Bye Law [5(1)(e)] had also been communicated to the party in the show cause notice issued to her. In the instant case, at the cost of repetition, the violation of the said Bye-Law was never communicated to the respondent. This is clear from the aforementioned communications. This was also not argued either before the RCS or before the Division Bench. The factual situation in Ishwar Nagar (supra) was wholly different and thus inapplicable to the facts of this case.

14 The parameters of review are distinct; unless there is an error apparent on the face of the record or there was discovery of a new material or evidence which despite due diligence was not within the knowledge of the review petitioner at the time when the judgment was delivered a judgment is not liable to be reviewed. The case of the petitioner does not fulfill the aforementioned parameters. The review petition is without any merit. Dismissed.

INDERMEET KAUR, J

S.RAVINDRA BHAT, J

MAY 08, 2017
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