

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

Judgment delivered on: May 29 , 2015.

+ W.P.(C) 1746/2014

DELHI EPDP COOPERATIVE
GROUP HOUSING SOCIETY LIMITED

..... Petitioner

Through Mr. Rakesh Munjal, Sr. Advocate
with Mr. Ankur Arora and Ms.
Srishti Sharma, Advocates

versus

REGISTRAR COOPERATIVE SOCIETIES
AND ORS

.....Respondents

Through: Ms. Farida Seetarawala, Advocate
for R-1.
Mr. Sandeep Kumar, Advocate for
Mr. B.L. Jana, R-3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

%

KAILASH GAMBHIR, J.

1. The present Writ Petition has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India, to seek a writ of certiorari for quashing /setting aside of the order dated 03.03.2014 passed by the learned Delhi Cooperative Tribunal, Govt. of NCT of Delhi (*hereinafter referred to as the 'learned Tribunal'*) in Appeal No.99/2012/DCT whereby the learned Tribunal has remanded the case to

Respondent No.1 for deciding the case afresh and for holding, declaring and directing that the expulsion of Respondent No.3 is deemed to have been approved.

2. The petitioner is a Co-operative Group Housing Society Limited (*hereinafter referred as the 'Petitioner Society'*) duly registered under the Delhi Cooperative Societies Act, governed by the provisions of Delhi Cooperative Societies Act, 2003(*hereinafter referred to as the 'Act'*), the Delhi Cooperative Societies Rules, 2007 (*hereinafter referred to as the 'Rules'*) and its registered Bye-laws. The Respondent No.1, Registrar Cooperative Societies is a statutory authority created under the provisions of Delhi Cooperative Societies Act, 2003, Respondent No. 2 has been appointed Special Registrar to implement the provisions of the Delhi Cooperative Societies Act, 2003 and rules framed thereunder and Respondent No. 3, Sh. Bimal K. Jana was a member of the Petitioner Society and was expelled by the Petitioner Society vide resolution dated 17.07.2011.

3. The Petitioner Society took a stand that Respondent No.3 was liable to be expelled as he has committed various acts detrimental to the interests of the Petitioner Society, so the proceedings to expel him were

initiated under Section 86 (1) of the Act. The Respondent No. 3 was served with three notices dated 14.10.2010 , 23.11.2010 , 26.01.2011 at an interval of 30 days each whereby he was confronted with the grounds of expulsion as per section 86(1) proviso 1 of the Act read with rule 99(1) of Rules. Final Show Cause Notice dated 26.01.2011 was also served upon the said Respondent providing an opportunity for personal hearing after the issuance of last & final notice of 26.01.2011 on 10.04.2011 after a lapse of 75 days.

4. The said Respondent was duly informed about the meeting of the Managing Committee to be held on 10.04.2011 and the same was attended by him. On 17.07.2011 Managing Committee of the Petitioner Society unanimously decided to expel Respondent No. 3 as per section 86(1) of the Act. Thereafter, the Petitioner Society submitted the expulsion dossier dated 12.08.2011 to the office of the Respondent No.1 on 16.08.2011 within 30 days from the date of expulsion, seeking its approval in terms of Section 86(2) of the said Act. Respondent No.3 wrote to the registrar vide letter dated 25.10.2011 requesting for early action in the matter of expulsion lest the approval would be considered as deemed to have been granted after 180 days w.e.f 16.08.2011 i.e. the date

of filling reference. Special Registrar, i.e. Respondent No.2 issued the first notice on 12.01.2012 to both the parties for appearance on 19.01.2012 which was received by the Petitioner Society on 17.01.2012. Respondent No.2 being bound to take cognizance of the expulsion resolution within 30 days from the receipt of the resolution for expulsion as per section 86(3) of the said Act did not take cognizance within the said period and issued a notice only after five months.

5. On 19.01.2012, both parties had appeared before the Special Registrar, Respondent No.3 asked for an adjournment to file a reply to the expulsion dossier and sought for a longer date on the ground that he had to go to Kolkata and produced a train ticket to support his plea that he was travelling from 11.2.2012 to 22.2.2012. The Petitioner Society requested for a date in January or in the first week of February but Respondent No.3 insisted for a date in March as he was travelling. Respondent No.2 gave a date of 01.03.2012 in order to accommodate respondent No.3 thereby the Petitioner Society took time for filling Vakalatnama. Respondent No.3 vide letter dated 06.02.2012 alleged that certain documents /signatures were incomplete or missing in the said dossier issued by the Petitioner Society when infact a complete set of

documents/ signatures were provided to the said Respondent and the same was intimated to him vide letter dated 11.02.2012. Meanwhile, the Petitioner Society, as contemplated by the section 86(3) of the Act read with rule 99(3) of the Rules took a stand on 01.03.2012 that the resolution of the Petitioner Society to expel Respondent No.3 has been deemed to be approved by Respondent No.1, since 180 days ended on 13.02.2012. The Petitioner Society vide letter dated 18.02.2012 intimated respondent Nos.1, 2, 3 regarding expulsion of respondent No.3. The Petitioner Society contended that Respondent No.2 had become *functus officio* in terms of the Act and this hearing fixed by Respondent No.2 is beyond the statutory period of 180 days. Respondent No.3 submitted detailed reply on 01.03.2012 against each of the allegations mentioned in the various show cause notices, to the Petitioner Society as well as to the Special Registrar. Respondent No.2 held a hearing on 20.03.2012 without giving knowledge or notice to the society and issued a notice dated 22.03.2012 to the Petitioner Society fixing the date of hearing on 29.03.2012 to which the Petitioner Society sent a letter dated 28.03.2012 whereby an objection was raised regarding the powers of Respondent No.2 regarding continuation of proceedings after expiry of 180 days which the staff of

the said respondent refused to accept, and which was later tendered to the Special Registrar through speed post with comments and a copy on 29.03.2012. The Petitioner Society did not attend hearings before Respondent No.2 but submitted vide letters dated 18.02.2012, 27.02.2012, 01.03.2012, 28.03.2012, 29.03.2012 that their absence was due to the Respondent No.2 becoming *functus officio*. Respondent No.2 vide order dated 10.04.2012 rejected the petition of the Petitioner Society seeking approval of expulsion of Respondent No. 3 without assigning any reason. The said order did not give any reasons of the purported hearing beyond the expiry of the period of 180 days which deprived Respondent No.2 of any power whatsoever to conduct any proceedings on the deemed expulsion served upon Respondent No.3.

6. The Appellant Society then approached this Court vide Writ Petition (Civil) No. 2874/2014 in the first instance impugning the order of Respondent No. 2. However, the said Writ Petition was withdrawn with the liberty to approach the Delhi Cooperative Tribunal vide order dated 15.05.2012. The learned Tribunal vide order dated 03.03.2014 set aside the order of Respondent No.2 dated 10.04.2012 and remanded the case to Respondent No.1 for deciding the case afresh. The learned Tribunal also

held that the computation of period of 180 days shall begin from 18.03.2014.

7. The main issue involved in the present Writ Petition is whether the period of 180 days provided under Section 86 (3) of the Act read with Rule 99 (3) of the Rules for passing a final order by the Registrar either approving the expulsion or rejecting the proposal for expulsion is a mandatory period or is directory in nature as the same entails deemed expulsion of a member if the matter is not decided by the Registrar within the said period. Another collateral issue raised in the Petition is whether the learned Tribunal could have given direction to the Registrar by determining as to when the period of 180 days in respect of expulsion proceedings should begin as contrary to section 86 (3) of the said Act and Rule 99 (3) of the said Rules.

8. Mr. Rakesh Munjal, the learned Sr. Counsel for the petitioner submitted that the Authorities below failed to appreciate that it was obligatory upon respondent No.1 to decide the case of expulsion and pass an order within a maximum period of 180 days from the date of receipt of the reference and failure to do so would amount to deemed expulsion in terms of section 86 (3) of the said Act read with Rule 99 (3) of the said

Rules. The learned Sr. Counsel further submitted that the Authorities below also failed to appreciate that respondent No.3 was expelled by the Petitioner Society on 17.07.2011 in the meeting of its Managing Committee in accordance with law and thereafter a case of expulsion of respondent No.3 was referred to respondent No.1 for approval on 16.08.2011 within the prescribed period of 30 days from the date of passing of the resolution as provided under Section 86 (3) of the said Act. The learned Sr. Counsel also submitted that after having received the said resolution from the Petitioner Society, it was incumbent upon respondent No.1 to take cognizance of the said resolution within a period of 30 days and then to pass a final order of either approving the resolution for expulsion or rejecting the same within the upper limit of 180 days as prescribed under law and if it is not done so within the said period of 180 days then the expulsion has to be taken as deemed to have been approved by the Registrar Society. The learned Sr. Counsel also argued that the learned Tribunal has no jurisdiction to determine as to when the period of 180 days in respect of expulsion proceeding should begin. Under Section 86 of the Act read with Rule 99 of the Rules, it is specifically provided that the said period of 180 days shall begin from the date of filing of the

reference to the Registrar Cooperative Societies, therefore, direction given by the learned Tribunal stating that the computation period of 180 days shall begin from 18.03.2014 is absolutely illegal and contrary to law. Based on these submissions, the learned Sr. Counsel strongly urged for setting aside the impugned order passed by the learned Tribunal and a declaration that the expulsion of respondent No.3 is deemed to have been approved.

9. We have heard the learned counsel for the parties at considerable length and have given our conscious consideration to the arguments advanced by them.

10. Before we embark and deal with the controversy at hand, it would be relevant to reproduce Section 86 of the said Act and Rule 99 of the said Rules as under:

“Expulsion of a member.

86. (1) Notwithstanding anything contained in this Act and the rules framed thereunder, the committee of a co-operative housing society may, by a resolution, expel a member on any one or more of the following grounds, namely - (a) if he has been a persistent defaulter in respect of any dues of the co-operative housing society; or

(b) if he has wilfully deceived the co-operative housing society by making any false statement or submitting any false document to obtain the membership of such co-operative society; or

(c) if he has brought disrepute to the co-operative society or has done any other act detrimental to the interest and proper working of the co-operative society : Provided that no such

resolution shall be passed unless the member concerned has been given an opportunity of being heard after service of three registered notices confronting the member with the grounds for his proposed expulsion : Provided further that no member shall be expelled unless a resolution to that effect is passed by not less than three-fourths of the members of the committee present and entitled to vote at the meeting and no resolution for expulsion shall be valid unless approved by the Registrar.

(2) After the resolution for expulsion is passed as above by the committee, the resolution shall be referred to the Registrar for approval within a period of thirty days.

(3) On the receipt of the resolution for expulsion, the Registrar shall take cognizance of such resolution within thirty days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of one hundred and eighty days and if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved : Provided that the Registrar, before approving the resolution, shall hear the parties concerned in the manner prescribed and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and compel them to give evidence on oath, affirmation or affidavit and to compel production of documents by the same means and as far as possible in the same manner as provided in the case of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) and the order under this section so passed by the Registrar, shall be final with a right for appeal before the Tribunal.

(4) Any party aggrieved by the order of the Registrar or deemed approval of expulsion, as the case may be, under sub-section (3) may, within sixty days from the date of such order, appeal to the Tribunal”

“99. Expulsion of a member

(1) The cooperative housing society may in accordance with the provisions of sub-section (1) of Section 86, expel a member. However, before passing a resolution for expulsion of the member, the committee shall have to deliberate the case of expulsion in the committee's meeting and shall have to approve the proposal for issue of notice for the expulsion of a member setting out therein full details of the grounds with supporting documents In all at least three registered notices shall be served on the concerned member with an opportunity to defend his case in writing and also in person to the committee. Each notice should be served on the concerned member with an

interval of thirty days. After the expiry of thirty days period of the final notice, the committee shall consider the reply, if any, received from the concerned member in its meeting and three-fourths of the members of the committee present and entitled to vote at the meeting, shall approve the proposal for expulsion and pass a resolution.

(2) Subject to the provision 86 of the Act a co-operative housing society, which has been allotted land, before expelling a member shall give final opportunity by publishing the notice in the leading Hindi and English newspaper in the National Capital Territory of Delhi informing the affected member to be present in person or through the authorized representative before the Registrar on the date fixed for the final hearing.

(3) The Registrar shall decide the expulsion case within the period of one hundred eighty days from the date of the receipt of the resolution for expulsion of a member from the cooperative housing society and shall convey his decision in writing to such member. If the resolution of the co-operative housing society for expulsion of a member is not approved by the Registrar within the said period of one hundred eighty days, the resolution for expulsion of the member shall be deemed to have been approved and the committee shall convey this decision of expelled member and the Registrar within a period of thirty days after the expiry of one hundred eighty days time limit through the registered Post. If the approval of the deemed expulsion is not conveyed to the members and the Registrar within the above period of thirty days, thereafter, the resolution of expulsion shall be null and void.

(4) Aggrieved member shall have the right to file an appeal to the Tribunal within sixty days from the date of order of the Registrar or intimation of deemed expulsion."

11. To be a member of any Group Housing Society is a valuable right of such a member and this valuable right cannot be taken away without strict adherence to the procedure prescribed under the Act and Rules framed therein. Prior to the enactment of the Delhi Cooperative Societies Act, 2003 the procedure for expulsion of a member was provided under

Rule 36 of the Delhi Cooperative Societies Rules, 1973. There was no deeming clause either in the statute or under the rules prior to the enactment of the Act. The present Act and Rules provide for “deemed expulsion” under Section 86(3) and Rule 99 (3), respectively. Now dealing with Rule 36 of the Delhi Cooperative Societies Rules 1973, the Division Bench of this Court in the case of ***R.K. Aggarwal v. Registrar Cooperative Societies, Delhi & Anr.*** in ***LPA No.97/1983 decided on 29.07.1991***, took a view that Rule 36 has to be strictly complied with and adhered to by a Cooperative Society before it chooses to expel a member. It further held that Rule 36 is not directory and it is incumbent upon the society to follow the letter of law and to meticulously comply with the provisions of Rule 36 of the Delhi Cooperative Societies Rules 1973. The relevant paras of the said judgment are reproduced as under:

“By removing the name of a person from the membership, a valuable right is taken away from him. Moreover, the consequences of expelling a member are serious as is evident from perusal of sub-rule (5) of Rule 36, which provides that when a member is expelled, he cannot be re-admitted to the membership of that Society, at any point of time and nor can he become a member of any other society of the same class for a period of three years from the date of such expulsion. Grave consequences, therefore, ensue when a member is expelled.

Under these circumstances, Rule 36 has to be strictly complied with and adhered to by a cooperative society before it chooses to expel a member. We are not in agreement with the learned

Counsel for the respondents that Rule 36 is directory. In our opinion, it is incumbent upon the Society to follow the letter of law and to comply meticulously with the provisions of rule 36. This admittedly has not been done in the present case. Even if it be assumed though it is denied by the appellant that show cause notices dated 10th August, 1974 were served on the appellant, the infirmity is not cured. The notice was required to be of not less than 30 days before but not such notice was given. The learned Single Judge did not advert to this requirement of Rule 36 and has merely proceeded to decide the question as to whether the notice dated 10th August, 1974 was served on the appellant or not. Having come to the conclusion that the notice dated 10th August, 1974 was served on the appellant, the learned Single Judge should have then proceeded to decide whether such service fulfilled the requirement of Rule 36 or not. In our opinion, the laudatory requirement of 30 days as provided by Rule 36(2) was not fulfilled. Therefore, the action taken by the respondent society was non est."

12. It cannot be disputed that in every society the defaulter member puts the society to ransom, because, it is due to the default of such members that the entire project is delayed at the cost of others who regularly pay their share as per the demand raised. However, it is equally true that neither the society, nor the Registrar Cooperative Societies can arbitrarily expel any member of the society without strictly following and adhering to the procedure laid down under Section 86 of the said Act and Rule 99 of the said Rules.

13. In ***Jai Kishan Khanna since deceased through LR Rajeev Khanna v. Shantnu Appt. Coop Group Housing Society Registration***

No.1111, W.P. (C) 2900/2014, decided on 22.05.2014, a Division Bench of this Court while dealing with these provisions, held that Sub-section (3) of Section 86 of the Act stipulates that on the receipt of the resolution for expulsion, the Registrar shall take cognizance of the said resolution within 30 days and pass a final order either approving or rejecting the proposal for expulsion within a period of 180 days. The Court also took the period of 180 from the date of issuance of the letter sent by the society seeking explanation of a member and to count 180 days period from the said date. Relevant para of the said judgment is reproduced as under:

“Sub-Section (3) of Section 86 stipulates that on the receipt of the resolution for expulsion, the Registrar shall take cognizance of the said resolution within 30 days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of 180 days. The said provision further stipulates that if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved. The period of 180 days from the issuance of the letter dated 19.08.2013 expired on 15.02.2014 and immediately thereafter, on 28.02.2014, the petitioner filed the appeal under Section 86(4) read with Section 112 of the said Act. Sub-Section (4) of Section 86 clearly entitles any party aggrieved by the order of the Registrar or “deemed approval” of expulsion, as the case may, to file an appeal within 60 days from the date of such order. The starting point of limitation of the deemed approval of expulsion would have to be reckoned from the date on which the period of 180 days expired. In the present case, the said period expired on 15.02.2014.”

14. Under Section 86 (3), the Registrar has to take cognizance of such resolution within 30 days and this 30 days period will commence from the date when the resolution for expulsion has been received by the Registrar. After the cognizance is taken by the Registrar then the Registrar has to pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of 180 days, however, if the matter is not decided by the Registrar within a period of 180 days then expulsion of such a member shall be deemed to have been approved. For better appreciation, the ingredients of Section 86 (2) & (3) of the Act can be enumerated as under:

- i. There is a receipt of resolution for expulsion in terms of Section 86 (2) of the Act.*
- ii. Registrar shall take cognizance of such resolution within a period of 30 days,*
- iii. Registrar shall pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of 180 days and*
- iv. If the matter is not decided by the Registrar within the aforesaid period of 180 days, the consequence is that the expulsion of such a member shall be deemed to have been approved.*

15. As can be seen from the clear and unambiguous language used in the said Section of the Act, the total period envisaged in the said section is 180 days during which the Registrar has to pass a final order either approving the expulsion or rejecting the proposal for expulsion and, if for

any reason, the Registrar fails to take any decision, then the necessary consequence is that the expulsion of such a member shall be deemed to have been approved. The period of 30 days which has been prescribed for taking cognizance on the resolution for expulsion is not a period over and above the period of 180 days but the same is inclusive of the period of 180 days. It is during this period that the Registrar must apply his mind and take cognizance and it is not left to the choice or wish of the Registrar to take cognizance as and when he so wishes to do so. Rule 99 of the said Rules also clearly envisages that the Registrar shall decide the expulsion case within a period of 180 days from the date of the receipt of the resolution for expulsion of a member from the Cooperative Housing Society and if the same is not approved by the Registrar within a period of 180 days, the resolution for expulsion of a member shall be deemed to have been approved and the committee shall convey its decision to the expelled member and the Registrar within a period of 30 days after the expiry of 180 days time limit through the registered post. Rule 99 (3) is also in conformity with section 86 (3) of the said Act, as here also the maximum period for Registrar to take decision on expulsion is 180 days and therefore, a combined reading of the said provisions makes the

position explicitly clear that the mandate of the law is that it is incumbent upon the Registrar to take cognizance on the resolution for expulsion within a period of 30 days and to decide either way on such a request within a period of 180 days.

16. Reverting back to the facts of the case, since the Registrar failed to take cognizance on the resolution of expulsion sent by the Petitioner-Society within a period of 30 days as envisaged under Section 86 (3) of the Act, therefore, the impugned order dated 03.03.14 passed by the learned Tribunal remanding the matter back to the Registrar Cooperative Societies for a fresh decision as per law with a further direction that a period of limitation of 180 days shall be computed from the first date of hearing before the Registrar Cooperative Societies, is set aside.

17. We also hold that the said direction given by the learned Tribunal for computing the period of limitation of 180 days from the first date of hearing before the Registrar Cooperative Societies is *ex-facie* illegal and violative of Section 86 (3) of the Act.

18. In so far as the order dated 10.04.2012 passed by the Registrar Cooperative Societies is concerned, the same shall also not sustain in the absence of cognizance taken by the Registrar Cooperative Societies

within the period of 30 days as envisaged under Section 86 (3) of the Act.

19. We accordingly set aside the impugned order dated 03.03.2014 passed by the learned Tribunal and also the order dated 10.04.2012 passed by the Registrar Cooperative Societies.

20. The Writ Petition is accordingly disposed of.

21. No order as to costs.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

MAY 29, 2015

v