

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 23rd September 2015.

+

W.P.(C) 3436/2014 & CM No. 7052/2014

R.S. AGARWAL

..... Petitioner

Through : Mr. K.P. Gupta, Mr. Susheel Sharma,
Advocates.

versus

THE REGISTRAR COOPERATIVE SOCIETIES AND ANR

..... Respondents

Through : Mr. Satyakam ASC of GNCTD with
Mr. Ashok Kumar Navet, Advocate
for R1.
Mr. M.K. Vashisht, Advocate for R2.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. The petitioner in the instant case became a member of The Friends Central Government Employees Housing Building Society Limited at Surya Niketan/respondent No. 2 herein (hereinafter referred to as the 'society'). The petitioner claims allotment to an unallotted plot No. 147 lying vacant in Surya Niketan colony, New Delhi being at serial No. 1 in the waiting list of persons holding valid membership in the society. The petitioner relies on a letter dated 25th June, 2006 received by him from the respondent No. 2-society offering him the said plot.

2. The respondent No. 2-society admits the validity of the membership of the petitioner as well as the allotment made to him. It is also an admitted position that the petitioner has submitted all the required documents and paid the required sum of Rs.1,77,469.83 as back as on 5th July, 2006 as the final payment required by him.
3. The respondent No. 2-society has fully supported the claim of the petitioner and on 20th July, 2006 forwarded his case for clearance of allotment of the said plot to him. A further request was made by respondent No. 2-society to the office of the Registrar of Cooperative Societies to request the Delhi Development Authority, Vikas Sadan, New Delhi to execute the sub-lease of the plot in favour of the petitioner.
4. The respondent No. 1 also appears to have favourably considered the said recommendation initially. On 14th August, 2006, the Registrar of Cooperative Societies vide its letter No. F.47/2195/GHB/Coop/East/1165 asked the respondent No. 2-society to submit relevant documents relating to the petitioner's case for processing as per rules. As a result, the respondent No. 2-society also submitted the verification certificate submitted by the petitioner on 20th November, 2006 to the office of the Registrar of Cooperative Societies on 22nd November, 2006.
5. It is only thereafter that on 1st February, 2007, the respondent No. 1 informed the respondent No. 2 that the documents of the petitioner forwarded through it were not complete. Reference was made to a circular dated 30th September, 2005.
6. The record before us would show that respondent No. 2 suitably replied to the queries/objections made by the respondent No. 1. At this stage on 16th April, 2007, the respondent No. 1 took a stand that the case of the

petitioner was covered under the provisions of the circular dated 30th September, 2005 and called upon the respondent No. 2-society to complete the documentation as per the directives contained in this circular dated 30th September, 2005 to be read along with the provisions of circular dated 9th November, 2004.

7. We are informed that the circular dated 9th November, 2004 relates to compliance with the provisions of Rule 24(2) of the Delhi Cooperative Societies Rules, 1973. For reasons of expediency, we extract hereunder the requirement of Rule 24(2) of the said Rules which reads thus:-

“24. Conditions to be complied with for admission to membership:-

“.....2. In case of vacancy in a housing society including group housing society where layout and building plans have been approved by the competent authority, the same shall be filled by the committee by notifying it in leading daily newspaper of Delhi in Hindi and English. In case the number of applications are more than the notified vacancies the membership shall be finalised through draw of lot in the presence of authorised representative of the Registrar.....”

8. Learned counsel appearing for the petitioner submits that the provisions of Rule 24(2) of the Delhi Cooperative Societies Rules, 1973 are not applicable to the case of the petitioner since he is an admitted member of the society since 2nd September, 1978 and has also made full payment as and when demanded. He had also submitted all the requisite documents as required by the respondent No. 2. The submission is that Rule 24(2) applies

only to a “vacancy” in the membership of the society and relates to filling up of a vacancy and inducting a new member against it.

9. It is submitted that way back in the year 1981, while disposing of C.W. No. 661/1980 entitled *The Friends Central Government Employees Coop. Housing Building Society Limited v. The Registrar of Cooperative Societies*, this court by its order dated 22nd May, 1981 had directed that all the 270 members of the society (respondent No. 2 before us) at that time would constitute the final list of members eligible for allotment of plots according to the seniority in enrolment in chronological order, subject to their submitting the requisite affidavits and payment of dues as may be demanded by the society and fulfilment of other conditions. The petitioner's name at that time appeared at serial No. 255 in that seniority list.

10. Therefore the validity of the petitioner's membership as well as his seniority stands approved by this court in C.W. No. 661/1980. The petitioner insists that with regard to the non applicability of the requirement invited by Rule 24(2) of the Delhi Cooperative Societies Rules, the respondent No. 2 vide letter dated 18th April, 2007 replied to the point-wise query raised by respondent No. 1 in its letter dated 16th April, 2007.

11. The respondent No. 1 vide its letter No. 1254 dated 13th June, 2007, again asked the respondent No. 2/society to submit the case of the petitioner in compliance of directives given in circular dated 30th September, 2005. Thereafter in various letters, the respondent No. 1 continued with their stand of resorting to the Rule 24(2) of the Delhi Cooperative Societies Rules.

12. The respondent No. 2 vide letter dated 9th July, 2007 suitably replied to the respondent No. 1 and again requested it for writing to DDA for execution of sub-lease of Plot No. 147 in favour of the petitioner. A copy of

the same was also marked to the petitioner. The petitioner wrote a letter dated 17th October, 2007 to respondent No. 1 with a copy to respondent No. 2 requesting it to pursue the matter with respondent No. 1.

13. On 31st October, 2007, the respondent No. 2 sent a reminder to respondent No. 1 with copy of the same marked to the petitioner on 7th November, 2007. The respondent No. 1 again advised the respondent No. 2 to submit the documents pertaining to the petitioner's case on the terms mentioned in their earlier letter dated 1st February, 2007 in compliance of circular dated 30th September, 2005. A reminder on the same terms was again sent vide letter dated 26th November, 2007.

14. Vide letter No.29-30, the respondent No. 1 asked the respondent No. 2 to submit information about petitioner's case in compliance with provisions of Schedule VII of the Delhi Cooperative Societies Rules, 2007. The respondent No. 2 vide letter dated 10th February, 2008 submitted the complete information as sought by the office of respondent No. 1 in compliance of Schedule VII of Delhi Cooperative Societies Rules, 2007.

15. The petitioner also pursued his case with the Joint Registrar submitting a representation and subsequent reminder-letters dated 4th March, 2008.

16. The respondent No. 1 directed the respondent No. 2 to appear before him with the complete original record of petitioner for scrutiny on or before 11th April, 2008. In compliance of the directions of respondent No. 1, the respondent No. 2 appeared before him on 10th April, 2008 and showed the complete original record. Nothing happened even thereafter.

17. It is aggrieved by the action of respondent No. 1 in not clearing the petitioner's name for allotment of plot No. 147 in the respondent No. 2-

society, the present writ petition has been filed seeking directions to this effect to the respondent No. 1.

18. With the consent of both the parties, the writ petition has been taken up for consideration.

19. Mr. Satyakam, learned Additional Standing Counsel for Government of NCT of Delhi appearing on behalf of respondent No. 1 has very fairly drawn our attention to the statutory scheme and points out that the requirement of Rule 24(2) of the Delhi Cooperative Societies Rules is to be complied with only in the case of “vacancy which would result for any reasons for non availability of a valid member, for instance demise of a member”.

20. This very issue has arisen for consideration before this court on two prior occasions. Learned counsel for the petitioner has placed reliance on the pronouncement of Division Bench of this court reported in **2007 VI AD Delhi 345** in **Rajib Mukhopadhyaya & Ors. v. Registrar Cooperative Societies**, wherein the Registrar of Cooperative Societies was denying the rights of the writ petitioners. The constitutional validity of Rule 24(2) of the Delhi Cooperative Societies Rules was also assailed. Rejecting the challenge thereto, the court had clarified the manner in which the Rule 24(2) would be worked in the following terms-

“ 12. Consequently, we uphold the constitutional validity of Rule 24(2) of the DCS Rules subject to the above interpretation of the law submitted by the learned Additional Solicitor General, which we accept and declare. The bye laws of the Society shall be fully followed in entertaining the claims of memberships set

up by those applying through the medium of Rule 24 (2) of the DCS Rules. Thus, if the society has any existing requirements in its bye laws about the characteristics required to be possessed by an intending member, only such persons possessing the requirements as stipulated in the existing bye laws and regulations of the Society are entitled to apply pursuant to Rule 24(2) of the DCS Rules. We also make it clear that if the Society has any existing members who have still not got the allotment of a plot/flat, such members, in accordance with the bye laws, shall be first allotted the vacant plot/flat/premises before resort to Rule 24(2) of the DCS Rules. It is only when all such existing members awaiting allotment have been allotted the premises/plot/flats, shall the operation of Rule 24 (2) of the DCS Rules come into being.”

(Emphasis supplied)

21. This issue arose again for consideration before the Division Bench of this court and vide the judgment reported as **173 (2010) DLT** in ***Rahul Kathuria v. The Registrar of Cooperative Societies and Another***, the court reiterated the above principles laid down in ***Mukhopadhyaya*** and has summed up its conclusion in para 13 in the following terms:-

“ 13. In view of the above, the following conclusion emerge on the record :-

(i) The provision of Rule 24 (2) is constitutionally valid and was upheld in the Rajib Mukhopadhyaya's case. Only those persons were given protection, in spite of falling in the net of the Rule 24(2), were those who were existing members of the Cooperative Society who were awaiting the allotment i.e. those who are already valid existing members of a Cooperative Society on 2.7.2007 being in the waiting list, but, for one reason or the other were not allotted flats.

(ii) The petitioners are not those persons who were „existing members“ on the waiting list of the respondent no. 2 who were/are awaiting allotment after being enrolled as members, but, came through the route of auction sale proceedings which is illegal and impermissible in terms of the [Delhi Cooperative Societies Act, 1972](#) and [Delhi Cooperative Societies Act, 2003](#).

(iii) The respondent no.1/RCS has rightly rejected the permission sought by the respondent no.2 society for enrolling the petitioners as members by its letter dated 21.9.2006 clearly specifying the violation of Rule 24(2) and which violation is that enrolment of petitioners as members without the due procedure of advertisement in newspapers and in terms of applicable rules.”

(Emphasis by us)

22. The principles laid down by this court in para 13 (i) squarely apply to the case of the present petitioner, who admittedly is an existing member of the respondent No. 2/society who is placed at serial No. 1 in the waiting list and has not been allotted any plot by the respondent No. 2/society. No objection to the validity of the membership or entitlement of the petitioner to

the plot in question has been pointed out, by the respondent No. 1.

23. Our attention is drawn also to the adjudication by the Division Bench with regard to the seniority list of the society in C.W. No. 661/1980 wherein on the issue of the final list of regular members of respondent No. 2/society, the court had held thus:-

“(v) All the 270 members mentioned in Annexure P/31 shall constitute the final list of members eligible for allotment of plots according to the seniority in enrolment in chronological order, subject to their submitting the requisite affidavit and payment of dues as demanded by the society and fulfilment of other conditions mentioned above;....”

We are informed that in the waiting list of the 270 members which was placed as annexure P 31, the name of the petitioner appears as serial No. 250.

24. In fact in the communication dated 10th February, 2008, the respondent No. 1 was informed by respondent No. 2/society as follows:-

“19.20.21.22....There is no fresh enrolment of Member in the Society for the allotment of Plots and thus does not attract publication in a newspaper. Mr. R.S. Aggarwal was admitted as a Member on 02.09.78 and paid all dues whenever demanded by the Society. Hence he has been a Member of the Society since 2.9.78 and thus eligible for allotment of plots as all other eligible persons senior to him have been allotted plots in the society. Moreover there is no draw of plots

involved in this case as only one plot No. 147 is available and the eligible member on the top Waiting List No. 2 has to be allotted this allotment needs your kind approval. It is pointed out that Execution of Perpetual Sub Lease in favour of Sh. S.C. Jain s/o J.P. Jain waiting List No. 1 had been done by the Lease Administration Officer of DDA on 15/5/2006 for Plot No. 61, Surya Niketan, Delhi-92. However copy of the waiting list showing the name of Mr. R.S. Aggarwal is enclosed for reference.”

(Emphasis by us)

25. In this background, the insistence by the respondent No. 1 on compliance of Rule 24(2) of the Delhi Cooperative Societies Rules as well as the production of the original application by the letter dated 16th June, 2008 is clearly unwarranted. The petitioner being an existing member who was at serial No. 1 of the waiting list is not required to comply with Rule 24(2) of the Delhi Cooperative Societies Rules, 1973.

26. We also find that apart from the requirement of the publication, the office of the respondent No. 1 is insisting on production of original documents of the petitioner in this regard, but vide its letter dated 11th April, 2008, the society has informed the respondent No. 1 that it was not having the original membership application of the petitioner, being an old record. A copy of the request for allotment of the plot dated 22nd March, 2006 was enclosed.

27. The society has addressed the detailed communication on 20th June, 2008 as well as on 20th September, 2008 informing the office of Respondent

No. 1 that the petitioner was enrolled as a member of the society as back as on 2nd September, 1979 and after expiry of so much time the original membership application of the petitioner was not available and that there was no challenge to the membership No. 293 of the petitioner.

28. In the given facts and circumstances of the case, the respondent No. 1 is bound by the communications of the respondent No. 2 with regard to the membership of the petitioner's plot. The membership of the petitioner as well as seniority of the petitioner stands validated by a judicial order of this court as well. For all these reasons, the relief prayed in the writ petition has to be granted.

29. It is accordingly directed as follows:-

(i) The respondent No. 1 shall forthwith clear the case of the petitioner for allotment of plot No. 147 in the respondent No. 2/society without requiring anything more.

(ii) The respondent No. 1 shall forthwith forward the case of the petitioner to the Delhi Development Authority, Vikas Sadan, New Delhi for execution of sub-lease in respect of plot No. 147 in favour of the petitioner under intimation to the petitioner as well as respondent No. 2-society.

(iii) The compliance of the directions at serial No. (i) and (ii) of this order shall in any case, be communicated to the petitioner and the respondent No. 2 within a period of two weeks from the date of receipt of the order of this court.

Let a copy of the order be given *dasti* to learned counsel for the parties to ensure compliance.

30. This writ petition is allowed in the above terms.

CM No. 7052/2014

In view of disposal of the writ petition, nothing survives for adjudication in this application. This application is disposed of accordingly.

**GITA MITTAL
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

SEPTEMBER 23, 2015

j