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

Date of Decision : 18th December, 2015

+ W.P.(C) 5663/2014

AJAI KUMAR YADAV

..... Petitioner

Through : Mr. Abhijat, Mr. Abhishek Gupta,
Mr. Rishabh Bansal, Advocates.

versus

REGISTRAR COOPERATIVE SOCIETIES & ANR..... Respondents

Through : Mr. Naushad Ahmad Khan, ASC
(Civil) for RCS/R1.
Mr. Ashok Kumar Navet, Asstt.
Registrar for RCS.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S. MEHTA

GITA MITTAL, J (ORAL)

1. Sh. Balram Singh Yadav, became a member of the Jawahar Lal Cooperative Group Housing Society Limited (hereinafter referred to as 'the society') and was granted membership No. 135 in the society. There is no dispute that all the amounts demanded from this member during his life time by the society were duly paid by him.

2. Unfortunately, on 4th July, 2005, this society member expired leaving behind three legal heirs being two sons namely Sh. Ajai Singh Yadav, the petitioner herein; and Sh. Vijay Singh Yadav as well as one daughter namely

Smt. Archana Yadav. Sh. Balarm Singh Yadav's wife. Smt. Krishna Yadav had predeceased him having expired on 20th February, 2004. It is an admitted position that the member had expired prior to the allotment of a flat.

3. The petitioner made a request to the society for transfer of the membership of the society in his name in the year 2007, which request was accompanied by no objections from his brothers and sister.

4. The writ petition discloses that the request for transfer made on 21st December, 2009 was accompanied by Indemnity Bonds and the 'No Objection Certificates' of all the legal heirs of the deceased member.

5. The managing committee of the society scrutinized the application for request of transfer of membership of the petitioner and documents and by a resolution dated 1st February, 2010 accepted the request of the petitioner for transfer of membership as well as for allotment of a flat.

6. The society duly forwarded the same under cover of its letter dated 24th February, 2010 to the office of the Registrar of Cooperative Societies for processing of his name for allotment of the flat.

7. Inasmuch as, no action was taken on the request made by the society, it sent reminders to the office of the Registrar of Cooperative Societies (hereinafter referred to as 'the RCS') on 3rd April, 2011 and 22nd June, 2011. It is also noteworthy that the society had informed the office of the Registrar of Cooperative Societies that out of 112 flats in the society, a single flat being flat No. F-172 of the society had been left un-allotted and the petitioner was the only claimant for it.

8. In response, the office of the RCS addressed a letter dated 7th July, 2011 to the President/Secretary of the society seeking certain documentation

relating to Sh. Balram Singh as well as the managing committee resolution approving the transfer of the membership of the petitioner and 'no objections' in his favour from the other legal heirs of the deceased member.

9. These documents were also submitted by the petitioner and were forwarded by the society to the office of the RCS vide its letter dated 26th September, 2011. On 3rd November, 2011, the society communicated the verification certificate in terms of clause (17) of schedule VII of the Delhi Cooperative Societies Rules, 2007 and reiterated the request to the RCS to allot the said flat to the petitioner.

10. Despite these compliances and reminders from the society, the RCS still did not proceed forward in the matter, and instead by a letter dated 5th March, 2012, a fresh demand for original records pertaining to membership of deceased member were sought. The original records were duly produced by the society before the office of the RCS on 4th April, 2012 and verified by it. The same was confirmed by the society in letter dated 11th May, 2012. Despite compliance of every requirements, the conduct of the office of the RCS as brought out from the present record displays a shocking state of affairs.

11. The petitioner has placed before us a copy of the letter dated 18th July, 2012 addressed by the Assistant Registrar in the office of the RCS, this time, calling from the society to furnish three years' residence proof of the deceased member before the date of his enrolment as member in the society.

12. We find substance in the grievance of learned counsel for the petitioner that despite having satisfied all the requirements of law, the matter was being unreasonably delayed and unwarranted fresh demands were being

made upon the petitioner, each time for furnishing fresh documents. The petitioner appears to have submitted even this belated and unreasonable demand which was forwarded to the office of RCS under letter dated 24th July, 2012.

13. Two reminders of the society dated 16th September, 2012 and 12th December, 2012 also were of no avail. The petitioner has placed before us an extract of the note-sheets from the office of RCS obtained under the Right to Information Act. This contains a noting dated 4th January, 2013, the relevant extract whereof reads thus:-

“.....Further the note on page 5/N marked ‘X’ may kindly be seen in which it has been stated that “the Member of Parliament through from different States may be deemed to be residing in Delhi, if they have shown as such in affidavit” and the same was approved by the then Registrar, Cooperative Societies.....”(page 54)

“.....In view of above facts and as directed by Registrar, Cooperative Societies on the face of PUC at page 157/C, if approved, the case of Sh. Ajay Kumar Yadav (Membership No. 135) may be placed before the Rule 90 Committee for clearance of membership and forwarding the name of the Delhi Development Authority for draw of lots.”

14. Despite this noting, a different Assistant Registrar in office of the RCS issued a letter dated 16th January, 2013, addressed to the society that the transfer of the membership could not be cleared “*due to non-availability*

of Succession Certificate and Relinquishment deed". The letter states that the petitioner's request was placed before the members of the committee constituted under Rule 90 of the Delhi Cooperative Societies Rules, 2007 in the meeting held on 11th January, 2013. The issuance of this letter and rejection of the transfer of the membership to the petitioner conveyed thereby has been assailed by the petitioner before us.

15. In support of his challenge, Mr. Abhijaat, learned counsel for the petitioner draws our attention to Section 28 of the Delhi Cooperative Societies Act, 2003, Rule 90 and Schedule VII of the Delhi Cooperative Societies Rules, 2007 wherein, the legal requirements for transfer of membership have been made out.

For expediency, we extract hereunder the relevant portion of Section 28 (1) and Rule 90 sub Rule (1) which reads thus:

Section 28 (1) of DCS Act, 2003

28. Transfer of interest on death of member

(1) On the death of a member, a co-operative society shall transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or the bye-laws:

Provided that –

- (i) such nominee, heir or legal representative, as the case may be, may require payment by the co-operative society of the value of the share or interest of the deceased member ascertained as aforesaid; or*
- (ii) the co-operative society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and bye-laws for membership of the cooperative society, or on his application within one hundred and eighty days of the death of the deceased member to any person specified in the application who is so qualified; and*

- (iii) *no such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be.*

Rule 90(1) of DCS Rules, 2007

90. Allotment of plots, flats or houses through draw of lots-

(1) *The Registrar shall recommend the name of such members to conduct draw of lots whose enrolment as a member of the co-operative society has been found proper as per provisions of the Act, these rules, and byelaws of the co-operative society after obtaining the **information mentioned in Schedule VII.***

Provided that the Registrar shall recommend the names of members to conduct draw of lots after seeking prior approval of the following Committee:-

<i>Secretary (Cooperation)</i>	<i>Chairman;</i>
<i>Registrar Coop. Societies</i>	<i>Member;</i>
<i>Addl. Secretary (Finance)</i>	<i>Member;</i>
<i>Jt. Secretary (law)</i>	<i>Member; and</i>
<i>Jt. Registrar/ Addl. Registrar Coop. Societies</i>	<i>Member.</i>
<i>(Emphasis supplied)</i>	

16. Mr. Naushad Ahmad Khan, learned ASC has pointed out that it was under the above rule, which the, committee had met on 11th January, 2013 and rejected the case of the petitioner. Therefore, in view of above, as the interest of the deceased member has to be transferred to his legal heir or representative, hence the Assistant Registrar by letter dated 16th January, 2013 sought submission of Relinquishment deed and succession certificate.

17. The statutory scheme manifests that the transfer of interest on death of member envisages that the transfer of interest of the deceased member can only be to a nominee in accordance with the Rules. In case, no person has been so nominated, the transfer has to be effected to heir or legal representative of the deceased member. The statute has required compliance with the stipulation about eligibility requirements under the statute. So far as the requirement of supportive documentation is concerned, clause (iii) of the proviso to Section 28 (1) of the Delhi Cooperative Societies Act, 2003

provides that the transfer of membership or payment towards membership shall be made only with the consent of the nominee, heir or legal representative. No other stipulation has been made in the statute.

18. In the present case, the petitioner appears to have placed a Certificate dated 19th October, 2006 issued by the office of the Sub-Divisional Magistrate (Etawah) giving the details of the legal heirs of Sh. Balram Singh Yadav, s/o Sh. Mahendra Singh Yadav (Balram Singh Yadav) who resided in Etawa. Also on record before us is a copy of a public notice published on 1st March, 2008 in the national daily 'The Statesman' This notice was got published by the society and contains the complete list of valid members of the society. The society has published the name of the petitioner as a valid member of the society in the said public notice.

19. After receipt of the requisite documents with regard to the membership of the deceased member, the society accepted the request for transfer of the membership of Sh. Balram Singh Yadav to the petitioner. The society had duly accepted the validity of the request of the transfer of the membership of deceased member Sh. Balram Singh Yadav to the petitioner. The society has stated that affidavits with no objection of the siblings of the petitioner were received prior to the finalization of the list of members which was published in 2008 and forwarded to the office of the RCS.

20. Mr. Abhijaat, learned counsel for the petitioner has drawn our attention to a letter dated 13th May, 2013 issued by the office of the RCS with regard to another member of the same society while considering the writer's request for transfer of the membership to him of a deceased member. Qua this request, the office of the RCS has informed the applicant as follows:

“.....In this regard, it is submitted that since the matter of transfer of membership is in the prerogative of Managing committee of the concerned society, this office has no role in this matter at this stage.....”

21. Given the above narration of fact, we find substance in the grievance of the petitioner that he has been singled out for the treatment which has been meted out to him by the office of RCS. Given the steps which stood taken by the society to ensure compliance with the requirements of the statute, there was no need for unnecessarily dragging the matter and issuing repeated objections to the transfer of the membership which were not even envisaged by the statute.

22. The petitioner has contended that each time, the petitioner complied with the requirement communicated to him, a fresh request for documents were being communicated to him without any justification by the office of the RCS. This is clearly manifested from the above.

23. In any case, the rejection premised on want of relinquishment deed and Succession Certificate has no basis in law. It is also noteworthy that so far as late Sh. Balram Singh Yadav is concerned, no allotment of immovable property stood made in his name. He has expired at a stage, when he was making payments towards allotment of the flat. The list of members was also finalized long after his demise. In these circumstances, the demand for ‘relinquishment deed’ qua a proposed allotment was contrary to law and completely illegal.

In view of above, we direct as follows:

- (i) A direction is issued to respondent No. 1 to issue necessary for approval for the proposal

of the society as contained in its letter dated 24th February, 2010.

(ii) Inasmuch as there is a single flat being flat No. F 172 available for allotment and the petitioner is the only remaining claimant, the respondent No. 1 shall issue the necessary recommendation for allotment of the same to DDA within two weeks from today.

(iii) The DDA shall ensure allotment of the said flat to the petitioner within a period of four weeks and complete the requisite formalities.

(iv) Inasmuch as, the office of the RCS is represented in court today and stands apprised of the order through counsel, officially no separate communication is necessary for proceeding with compliance of this order.

(v) A completely unnecessary litigation has been unreasonably initiated in the manner the matter has been dealt with by the office of the RCS. Given the unreasonable and illegal stand on the part of the RCS, we impose a costs of Rs.10,000/- which shall be paid within a period of two weeks from today to the petitioner.

(vi) The copies of the communications from the office of the RCS to the society as well as from DDA shall be forwarded to the petitioner as well.

(vii) This writ petition is allowed in the above terms.

Dasti.

**GITA MITTAL
(JUDGE)**

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

DECEMBER 18, 2015

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