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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision : 1st December, 2015

+ W.P.(C) 7057/2013
KIRAN ARORA

..... Petitioner

Through : Ms. Amita Gupta, Mr. Abhimanyu K.
Singla, Advocates.

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES & ANR.

..... Respondents

Through : Mr. Santosh Kumar Tripathi, ASC for
GNTD-RCS/R1.
Mr. R.K. Gupta, Advocate for R2.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. The facts giving rise to the instant petition are within the narrow compass and to the extent necessary are noted hereunder. One Smt. Shanti Devi applied for the membership of Jyoti Cooperative Group Housing Society Limited (hereinafter referred to as 'society')
2. On 1st April, 1979, Smt. Shanti Devi made a payment of Rs.110/- for the membership of respondent No.2-society. Smt. Shanti Devi was inducted as an original member of the respondent-society and a share certificate was duly issued to her on 25th March, 1980.
3. Unfortunately, Smt. Shanti Devi expired on 30th January, 1987. So far as the relationship of the petitioner with Smt. Shanti Devi is concerned, it is

submitted that she is the child of the daughter of Smt. Shanti Devi namely Smt. Naresh Kumari. The petitioner/Ms. Kiran Arora is thus the grand-daughter of Smt. Shanti Devi.

4. We are informed that Smt. Naresh Devi was the only child of Late Smt. Shanti Devi. Inasmuch as, the siblings of the present petitioner were not interested in acquiring the rights of the deceased in the society, the petitioner made an application for transfer the membership in the society to her name. As required by the society, the petitioner surrendered the original share certificate and submitted all the required documentation with the respondent-society. It is an admitted position before us that from 1982 to 2003, the respondent-society accepted the validity of the entitlement of the petitioner to transfer of the membership of Smt. Shanti Devi in favour of petitioner who has made all the payments to the respondent-society towards the said membership. Between this period, the petitioner has paid a sum of Rs.6,22,900/- (Rupees Six Lacs Twenty Two Thousands and Nine Hundred) against the cost of the flat to be allotted against the share certificate apart from the payment of other ancillary charges against various demands raised by the society.

5. On 6th January, 1999, the petitioner was informed by the society that a category 'C' flat stood allotted to her and was asked to deposit certain documents vide a communication dated 5th January, 2005. On 3rd October, 2005, the petitioner deposited the required documents with the respondent-society. However, neither the formal share certificate was issued nor possession of the allotted flat was given to her, despite the payment of all the charges and participation in all activities including the general body meetings by the petitioner.

6. In these circumstances, the petitioner was compelled to raise a claim before the Registrar of Cooperative Societies which was referred to arbitration under Section 70 of the Delhi Cooperative Societies Act. It appears that the society took a stand that it was supporting the membership of the petitioner and that she had not submitted the required documents. Consequently, by an order dated 13th March, 2008, the arbitrator directed the petitioner to complete all the formalities and if, the petitioner's case was not cleared thereafter, an opportunity was given to the petitioner to file a fresh petition.

7. As this also did not culminate in a favourable order, the petitioner sought adjudication afresh by way of petition under Section 70 of the Delhi Cooperative Societies Act, 2003 filed on 11th September, 2008 seeking a direction to the society to inform her about the requisite documentation and formalities. This was disposed of on 10th March, 2009 with the observation that the issue already stood decided and no fresh orders were required.

The petitioner's appeal to Delhi Cooperative Tribunal was similarly disposed of on 7th October, 2011.

8. Despite the above, during the period after 10th February, 2013, the petitioner has been receiving fresh demand letters from the respondent-society requiring her to make further payment and accordingly the petitioner has made further payments.

9. Finally frustrated by the failure of respondent to do justice to her and to hand over the possession of the allotted flat, the present writ petition has been filed complaining that tremendous monetary loss is being suffered by the petitioner on account of failure of respondents to hand over possession of the flat despite all payments compelling the petitioner to reside in a rented

accommodation. It is submitted that the flat in question has been kept vacant and is still has not been allotted to any third person.

10. In response to the notice to show cause, the respondent-society has taken a stand that it had accepted the validity of transfer of membership of Smt. Shanti Devi in favour of the petitioner in the society, who has completed all formalities for the purpose. The respondent has placed on record a letter dated 8th September, 2000, issued by the office of the Registrar of Cooperative Societies informing the respondent-society that 15 members had been detained from inclusion in the draw of lots which included the petitioner's name at Serial No. 6. It is submitted that so far as the society was concerned, it had recommended the name of the petitioner for inclusion in the draw of lots.

11. Ms. Amita Gupta, learned counsel for the petitioner draws our attention to the reason stated in this communication. The office of the Registrar of Cooperative Societies has stated that the petitioner had not filed the complete transfer documents.

12. The petitioner's claim for succession to Smt. Shanti Devi's membership on account of her relationship with the deceased member stood accepted by the society (page 82). It is not premised on any commercial transaction. We find that even the Secretary (Cooperation) of the Government of NCT of Delhi had recorded a note to this effect pointing out towards the petitioner as the applicant, who was seeking to replace the original share holder and was not seeking possession as a transferee of the rights of a member.

13. The instant case had to be considered in accordance with the provisions of the Delhi Cooperative Societies Act, 1972 and the Delhi

Cooperative Societies Rules, 1973 which were applicable when the petitioner's case had to be considered. Our attention is drawn to Section 26 of the Delhi Cooperative Societies Act, 1972. For the sake of convenience, we extract the relevant portion thereof, which reads thus :-

“Section 26

Transfer of Interest on Death of Member

(1) On the death of a member a co-operative society may 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 not 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 bye-laws:-

Provided that—

- (i) in the case of a co-operative society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;*
- (ii) in the case of a co-operative society with limited liability, the 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 society or on his application within one month of the death of the deceased member to any person specified in the application how is so qualified;*

(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.*

(2) *A co-operative society shall, subject to the provisions of Section 36 and unless within six months of the death of member prevented by an order of a competent Court, pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the society.*

(3) *All transfers and payments made by a co-operative society in accordance with the provisions of this Section shall be valid and effectual against any demand made upon the society by any other person.”*

14. From a bare perusal of the Section 26, it is explicit that the managing committee of the society may appoint any such person who appears to be heir or legal representative of the deceased member in the place of deceased member to succeed to his membership.

15. Rule 35 of the Delhi Cooperative Societies Act, 1973 puts in the requirement that on a member's death, the society shall put up a public notice exhibited at the office of the society inviting claims/objections for proposed transfer of the share or interest of deceased member within the time specified in the notice. In this regard, we extract the relevant portion of Rule 35 (6) of the Delhi Cooperative Societies Rules, 1973 which reads thus:-

“Rule 35 (6) (i) Where a member of co-operative society has not made any nomination, the society shall, on the member's death, by a public notice exhibited at the office of the society invite claims or objections for

the proposed transfer of the share or interest of the deceased with the time specified in the notice.....”

(ii) After taking into consideration the claim or objections received in reply to the notice or otherwise, and after making such inquiries as the committee considers proper in the circumstances prevailing, the committee shall decide as to the person who in its opinion is the heir or the legal representative of the deceased member and proceed to take action under Section 26, subject to any appeal which may be filed to the Registrar by any person claiming the share, or interest of deceased member within 30 days of the decision of the committee. The orders of the Registrar on such appeal shall be final and binding upon all concerned. “

16. The factual narration laid before us would show that no objections were received by the society, when it was processing the request of the petitioner in accordance with the requirements of the then extant Section 26 of the Delhi Cooperative Societies Act, 1972 and Rule 35 of the Delhi Cooperative Societies Rules. There was therefore, no prohibition to transfer the share or interest of possession to the heir or legal representative of Smt. Shanti Devi.

17. A noting dated 12th September, 2002 by the then Secretary (Cooperation) reads thus:-

“I have perused the case of Jyoti Cooperative Group Housing Society Ltd. (No.498-GH). I agree with the contention made by the Jt. Registrar at page 58-59/N and the Registrar of Societies at page 60/N. What is required is removal of a technical flaw in counting the

applicants as original shareholders and not as transferees. In the meantime, they have also represented to the Lt. Governor and undersigned requesting for inclusion of their names as original shareholders and include their names for draw of flats. The file may be transmitted onward for approval of Hon'ble Lt. Governor.

*Sd/-12.09
(G.S. PATNAIK)
SECRETARY (COOPERATION)
12.9.2002”*

This noting was approved by the then Minister (Cooperation) on 24th June, 2003, who recorded the following note and thereafter placed the matter before Lt. Governor. But unfortunately in the order dated 7th July, 2003, without specifying the basis thereof, the Lieutenant Governor observed that the petitioner's case was “prima facie in-eligible”. The order dated 7th July, 2003 of Lieutenant Governor further notes that the petitioner failed to satisfy the laid down criteria of membership. The order dated 7th July, 2003, of the Lieutenant Governor reads thus:-

“I fail to understand why a case which is prima facie in eligible should be put up to me for clearance of membership in the garb of an exemption on technical grounds. Actually this is a case for grant of membership to a category of persons who are otherwise ineligible since they failed to satisfy the laid down criteria of membership. For the existing vacancies the prescribed procedure for issue of public notice inviting applications from the eligible persons and draw of lots should be adopted. I have learnt from the R.C.S. that the High Court has, while disposing the

petition filed by the persons whose proposal for membership has been put up on the file did not agree to intervene.

*Sd/- Vijay Kapoor,
Lieutenant Governor,
7.7.2003”*

18. We find that the exclusion of petitioner's name in the draw of lots was completely unjustified and without basis in the above facts and circumstances of the case. Clearly, the petitioner was entitled to the transfer of the membership of her grand-mother Smt. Shanti Devi, consequential allotment by inclusion of her name in the draw of lots and possession of the flat.

19. In view of above, the order dated 8th September, 2000 of the Registrar of Cooperative Societies withholding /detaining the name of the petitioner and the order dated 7th July, 2003 of the Lt. Governor of Delhi are not sustainable in law and are hereby set aside and quashed.

20. The petitioner shall ensure that the documents required by the letter dated 5th January, 2005 (page 81) required to be filed by the society are submitted within a period of two weeks from today. The same would be scrutinized and forwarded by the society to the office of Respondent No. 1/Registrar of Cooperative Societies within a further period of two weeks thereafter.

In case there is any discrepancy, the same shall be brought to the notice of the petitioner, who may clear the same within a further period of one week thereafter.

21. The office of respondent No. 1/Registrar of Cooperative Societies

shall take a view in the matter within a period of two weeks of the receipt of the recommendation from the respondent No.2-society.

22. Given the fact that the petitioner is agitating her claims since the year 1980 after the death of Smt. Shanti Devi on 25th March, 1980, the respondent shall process the case in the light of the statutory provision which prevailed prior to 8th September, 2000, when the petitioner's name was recommended by the society.

23. The petitioner shall within a week submit an Indemnity Bond indemnifying respondent No. 1 in respect of any claim received by it from any other person towards the membership of Smt. Shanti Devi.

24. We are also persuaded by the important fact that no other person had raised a claim in the instant matter and the approval by the respondent-society to transfer the membership to her, it is made clear that this order is passed in the peculiar facts and circumstances of the instant case therefore this order shall not be treated as precedent.

25. The writ petition is disposed of in the above terms.

Dasti.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

DECEMBER 01, 2015

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