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

\+ W.P. (C) 2081/2000

V.K. JAIN ..... Petitioner

Through: Mr. Gaurav Prakash, Advocate.

versus

A.P.M.C.COOP.GROUP HOUSING SOCY.LTD & ORS.

..... Respondents

Through: Mr. R.S. Tomar, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **21.01.2016**

The petitioner is aggrieved by an order of the Financial Commissioner as Revisional Authority under Section 80 of the Delhi Cooperative Societies Act, 1972. By the impugned order, the petitioner's revision application was rejected.

The petitioner joined the first respondent Society as a Member in 1984. Being a housing cooperative, he was apparently called upon to deposit certain amounts. On 23.10.1994, the petitioner was expelled from the society on the ground that he had defaulted. As was mandated by Rule 36 framed under the Act, the expulsion was inoperative till approval of the Registrar of the Cooperative Society was secured. The society accordingly forwarded the expulsion resolution to the Registrar who issued notice to the petitioner and heard him. On 08.02.1996, the Registrar by an order, approved the expulsion. The petitioner contended that he was aggrieved and contended that due opportunity had not been given to him to represent against the proposal for expulsion. He sought the intervention of the Financial Commissioner under Section 80 of the Act. On 30.08.1996, the Financial Commissioner accepted the petitioner's plea and remanded the matter for fresh consideration. On 30.11.1997, the Registrar made a fresh determination upholding the expulsion. This was challenged yet again before the Financial Commissioner who on 20.07.1998 made the following order: -

> *"Without going into the merits of the case, I find that no speaking order has been passed by the Registrar, Cooperative Societies; even though the contentions of both the parties simply reiterated, these have not been discussed by the Registrar in his order."*

In these circumstances, the matter was remitted a third time to the Registrar. The Registrar noticed by the last Award dated 19.11.1999 after issuing notices that: -

> *"The original order is a consent order passed by my predecessor and involved 22 other members and opportunity had been given to the petitioner to redeem his membership in the society my (sic) making payments due towards the society. However, not only had the petitioner failed to make the payment to the society, he has also failed to substantiate the reasons for his failure to do so within the stipulated period. In a co-operative movement, every member is equally and severally responsible for his contributions towards achieving the objective for which the society had been formed, in the instant case, the objective being a flat for himself. Since a society has no inherent source for generating funds of its own it is solely*

dependent on the contributions of its members, failure on part of one of the members has a cascading effect of all other regular paying members for no fault of theirs. Merely stating that a substantial amount has been paid by the petitioner does not absolve him of his liability of paying the dues within the stipulated period. The petitioner has failed to justify the delay in making the payment and merely reiterated that the proposal is not maintainable. However, in my opinion the petitioner cannot be allowed to re-open the proceedings of the General Body at this juncture as neither is it feasible nor in accordance with the rule of law as the same is an afterthought and should have been taken as a stand during the preliminary hearings while the orders were being passed on 8.2.1996 by my learned predecessor. Even otherwise the member who had been enrolled has already made the payment of the entire dues and has become eligible for allotment of flat."

The petitioner moved the Revisional Authority yet again. This time he did not meet with success. The Financial Commissioner took note of the fact that since there was default in fulfilling the demands of the Society and make timely payments, the society was justified in expelling the petitioner.

It is contended by the petitioner that the impugned order is in error of law. Learned counsel relies upon Rule 36 to contend that the mandatory procedure of issuing notice and publishing in newspaper besides affording appropriate opportunity did not follow before expulsion. He also contends that the petitioner was deemed to have made payment of ₹2,58,550/- given that a loan had been sanctioned.

This court notices that the matter has been examined and re-examined many times over. Undoubtedly, the petitioner was successful in complaining that opportunity was not given or that his contentions did not receive proper attention by the Registrar on two occasions, but on the third occasion, the Registrar did look into the records and found that the approval proceedings were based upon consent. The petitioner did not ever dispute this position. More importantly the petitioner complained that he paid the requisite amount but in none of the proceedings care to support the submission. Even the pleadings in these proceedings are silent - nor is there any documentary support for the contention that all payments were made in a timely manner.

This Court was informed that during the course of proceedings, since there was no stay of the impugned order, another member had been inducted instead of the petitioner and that the amounts deposited by the petitioner have not yet been refunded. In these circumstances, it is open to the petitioner to seek refund of the amounts which might have become payable or refundable to him in view of his expulsion. The society shall look into this and make appropriate refund within six weeks from today.

The writ petition is dismissed but in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 21, 2016
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