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

+ **W.P.(C) 2111/2014**

GULSHAN KUMAR Petitioner
Through : Sh. Awanish Kumar, Advocate.

versus

REGISTRAR COOPERATIVE SOCIETY AND ORS

.... Respondents
Through : Sh. Naushad Ahmed Khan, ASC with
Ms. Astha Nigam, Advocate, for GNCTD, for
Respondent No.1.
Sh. Sanjeev Rajpal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

ORDER

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08.03.2016

The petitioner's complaint is with respect to unjustified omission of his name from the draw of lots, for the purposes of allotment of a flat constructed by the respondent society. He asserts to his being a member of a cooperative society (hereafter "the society") – the membership for which was applied as far back as in 1977. He relies upon receipts, statements of bank accounts statements, copies of share certificates, the tripartite agreement dated 29.06.1988 with the LIC Housing Finance Ltd. and the society for funding the housing loan, and various other documents.

The rationale for excluding the petitioner's name, according to the Registrar Cooperative Societies (RCS) is that he did not produce

the proof of having fulfilled the essential requirements of continuous residence in the Union Territory of Delhi within three years prior to the date of his application. Learned counsel for the petitioner relies upon a decision of the Division Bench of this Court in *Naresh Kumar Gupta v. Registrar Cooperative Societies and Ors.* W.P.(C) 1904/2008, decided on 14.09.2009. The Division Bench had considered the effect of various circulars dated 16.12.1992, 24.02.1994 and 05.12.2001 and concluded that the requirement of proof of residence was dispensed with.

This Court has considered the submissions. The claim in this petition is that the petitioner applied for membership of the society in 1977. At that time, the relevant criteria spelt out by law was embodied in Rule 24 of the DCS Rules, 1973 [hereafter “1973 Rules”]. The relevant provisions – as applicable at that time are as follows:

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

1. No person shall be admitted as member of a co-operative society unless-

(i) he has applied in writing in the form laid down by the co-operative society or in the form specified by the Registrar, if any, for membership along with a declaration on oath that he is not a member of any other co-operative society having similar objects;

(ii) his application is approved by the committee of the co-operative society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body may in pursuance of the powers conferred on it in that behalf from time to time pass, and in the case of nominal, associate, or sympathiser member by an officer of the society authorised in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down in the Act, the Rules and the Bye-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trust or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership, and the sanction of the Lt. Governor has been accorded.”

The requirement of three years' residence at the time of submission of an application for membership of cooperative society was introduced by notification no. F.47/Legal/Policy/Co-op/92/1594-1605 dated 22.04.1997. The same reads as follows:

“(v) in case of a Co-operative Housing Society, he has been a resident of the National Capital Territory of Delhi for a minimum period of three years at the time of applying for a membership in such society.”

It is quite evident from the above discussion that the residence requirement as it were, was in fact introduced *subsequent* to the application said to have been made by the petitioner on 14.04.1997 for membership of the society. Neither are the rules made retrospective nor is there any indication in the old Act [*Delhi Cooperative Societies Act, 1972*, (now repealed) and replaced by the *Delhi Cooperative Societies Act, 2003*] that any rule framed under the said old Act could be given retrospective effect. As a result, the respondents cannot rely upon the minimum three years' residence criteria at the time the application was submitted by the petitioner, to

exclude his name.

The RCS is hereby directed to examine the petitioner's documents said to have been furnished to the society and such other documents he may possess, and pass orders in respect of inclusion of his name in the list of eligible persons. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

R.K. GAUBA, J

MARCH 08, 2016

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