

\$~3&4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **DECIDED ON: 28.03.2016**

+ **W.P. (C) 2908/2014, CM APPL.6024/2014**

SANJAY BAJAJ Petitioner

versus

REGISTRAR COOPERATIVE SOCIETIES Respondent

W.P. (C) 3641/2014

GOPAL BANSAL & ANR Petitioners

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ANR
..... Respondents

Appearance: Mr. Sanjay Kumar Pathak with Ms. Komudi Kiran Pathak, Mr. Sunil Kr. Jha and Ms. Shreya Kasera, Advocates for petitioner in W.P.(C)2908/2014.

Mr. C. Hari Shankar, Sr. Advocate with Mr. S. Sunil and Mr. N. Jagdish, Advocates for petitioners in W.P.(C)3641/2014.

Mr. Gursharan Singh, Advocate for respondents with Mr. Ashok Kumar, Asst. Registrar, in W.P. (C) 2908/2014.

Mr. Naushad Ahmad Khan, Standing Counsel (Civil), GNCTD with Ms. Astha Nigam, Advocate for Resp-1/RCS in W.P.(C)3641/2014.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. These two writ petitions urged common grievances. The petitioner in W.P.(C) 3641/2014 is a member of the Belur Cooperative Group Housing Society Ltd. (respondent in the proceedings). The petitioner in W.P.(C)2908/2014 is a member of

the Chinara Cooperative Group Housing Society Ltd.

2. The facts in both cases are brief; criminal proceedings were initiated against both petitioners - who are members of the respective Cooperative Group Housing Societies. Consequent upon investigation, in the case of Sanjay Bajaj, member of Chinara Cooperative Group Housing Society, charges were framed; however, the criminal proceedings were stayed by the Supreme Court. In the case of Gopal Bansal, the petitioner, a member of the Belur Cooperative Group Housing Society, charges have not yet been made. Their grievance is that the Registrar of Cooperative Society ("RCS") has refused to process and forward their names for consideration and eventually allotment of a flat constructed by it, to the DDA. The RCS relies upon the policy/decision of the Lieutenant Governor ("LG") in respect of 26 Societies dated 17.10.2011. The same is extracted below: -

"However the member and other office bearers of CBI investigated societies who have been charge-sheeted by CBI shall not get the benefit of such regularization and their names shall not be sent to DDA till the criminal cases pending against them are finally decided as in the case of other CBI investigated CBI Societies"

3. It is argued by the writ petitioners that the directions sought to be relied upon by the Registrar cannot be applied blindly and that it is applicable only in the cases of members of Societies who were given the benefit of draw of lots wherever there was a self draw. In the present case, however, no "self draw" was conducted and the petitioners claim to be entitled to allotment of a flat on the strength of

their memberships. Learned counsel also relies upon the Delhi Cooperative Societies Act and the Rules framed thereunder to submit that barring Rule-90, which expressly stipulates that such members who indulge in any irregularity in respect of draw of lots are not permitted to contest election in any office in the Society, and there is no disqualification. Counsel relies upon Section 22 and Rule 20.

4. Counsel for the respondents, on the other hand, submits that having regard to the large scale irregularity - in some cases even suggestive of criminality - a conscious approach has been adopted. Consequently, the impugned Circular was issued in public interest. Section 22 and Rule 20 which are relevant for the purposes of these proceedings read as follows: -

**Rule-20 OF THE DELHI CO-OPERATIVE SOCIETIES
RULES, 2007**

20. Disqualification of membership

(1). No person shall be eligible for admission as a member of a co-operative society if he:-

(a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or

(b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence, or 16

*(c) In the case of membership of a co-operative housing society,
(i) owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of*

dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale: Provided that above clause shall not be applicable,

(a) in case of co-sharers of property whose share is less than 66.72 sq. metres of land; or if the residential property devolves on him by way of inheritance;

(b) in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the transfer of membership of the housing society concerned;

(ii) deals in purchase or sale of immovable properties either as principal or as agent in the National Capital Territory of Delhi; or

(iii) his spouse or any of his dependent children is a member of any other cooperative housing society.

(2). Notwithstanding anything contained in the rules or the bye-laws of the co- operative society, if a person becomes, or has already become a member, subject to any disqualification specified in sub-rule (1), he shall cease to be a member from the date when the disqualifications were incurred. However, before disqualifying a member, the Registrar shall give an opportunity of personal hearing to the concerned member and the society.

(3). A person who ceases to be a member of a co-operative society under sub-rule (2), shall not be entitled to exercise rights of memberships or incur liability as member with effect from the date of order passed by the Registrar referred to in sub-rule (2) but as from the date he becomes a creditor of the co-operative society in respect of the amount due to him on account of paid up share capital, deposit, cost of land deposited or any other amount paid by him to the co-operative society as its member. As from the date of his ceasing to be a member of

the society under sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative society within three months and if the co-operative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative society.

(4). If any question as to whether a member has incurred any of the disqualification referred to in sub-rule (1) arises, it shall be referred to the Registrar for decision. The decision of the Registrar in this behalf shall be final and binding on all concerned. The Registrar shall not delegate this power to any other person appointed to assist the Registrar.

SECTION-22 OF THE DELHI CO-OPERATIVE SOCIETIES ACT, 2003

22. *(1) No person shall be admitted as member of a co-operative society except the following, namely -*

(a) an individual competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);

(b) any other co-operative society;

(c) the Government;

(d) a firm, a joint stock company, or any other body corporate constituted under any law; and

(e) such class or classes of persons or association of persons as may be notified by the Government in this behalf :

Provided *that the provisions of clause (a) shall not apply to an individual seeking admission to a co-operative society exclusively formed for the benefit of students of a school or college :*

Provided *further that no individual shall be eligible for admission as a member of any financing bank or federal*

co-operative society except as provided in clause (m) of section 2.

(2) Notwithstanding anything contained in sub-section (1), the Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any co-operative society or class of co-operative societies by general or special order, published in the official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing as member or shall be eligible for membership only to a limited extent of any specified co-operative society or class of co-operative societies, so long as such person is or such persons are engaged in or carrying on that profession, business or employment, as the case may be.”

5. The petitioners have relied upon two orders of the Supreme Court dated 05.12.2008 (*S.P. Saxena v. Registrar, Cooperative Society & Ors.*) and a later order of 31.03.2009 (in the same case). The Court had referred the entire issue to a Committee constituted by this Court and permitted the respondent (i.e., the members, who are facing criminal proceedings) to be considered for purposes of allotment; the relevant portion of the order reads as follows: -

“Accordingly, let this matter be listed on 5th February, 2009. Apart from usual service, let notice be served, in addition, by way of dasti.

In the meantime, the Committee constituted by the High Court in the impugned judgment, shall not proceed and the respondents will be entitled to continue to process with the applications made for allotment of flats under

Rule 90 of the Delhi Cooperative Societies Rules, 2007, but shall not make any final allotment till the disposal of this matter. Pursuant to this order, the Rule 90 Committee shall also consider the petitioner's application for allotment."

6. The order of 31.03.2009 confirmed the previous order even while disposing of SLP in the following manner: -

"On 5th December, 2008, when the special leave petition was initially taken up for consideration and notice was issued, we had observed that as some of the respondents had not been served, we were not in a position to dispose of the same. In fact, an ad-interim order was made on that date, which in effect, virtually disposed of the special leave petition.

Now when the parties have been duly served, we make the said interim order absolute. The special leave petition is disposed of accordingly.

This order will also govern SLP(C) No. 512 of 2009, where the same order was passed. Consequently, the process of allotment shall continue."

7. This Court had thereafter on 12.09.2013 in a subsequent writ petition filed by the same litigant S.P. Saxena (W.P.(C)5588/2013) directed as follows: -

"The first prayer in the present Writ Petition is for issuance of a writ, order or direction in the nature of certiorari thereby quashing/setting aside the minutes of the meeting dated 11th August, 2010 recorded by the Committee constituted under Rule 90 of the Delhi Cooperative Societies Rules, 2007 in so far as the same relate to the refusal by the said Committee to recommend the name of the Petitioner to DDA for allotment and consequently declare the order dated 26th July, 2013 as

null and void and inoperative. The second prayer of the Petitioner is for a direction to the Respondent No.1 to recommend the name of the Petitioner to DDA for holding draw of lots for allotment of a draw in favour of the Petitioner.

On the last date of hearing we had issued notice to the Respondent No.1, Registrar of Cooperative Societies and directed him to be present in person today. The Registrar is present in person today and states that in view of the orders of this Court and of the Hon'ble Supreme Court dated 5th December, 2008 passed in CC No.15738/2008 which orders were made absolute on 31st March, 2009, the application made by the Petitioner for allotment of flat shall be considered under Rule 90 of the Delhi Cooperative Societies Rules, 2007 and the name of the Petitioner in case the Petitioner is found eligible, will be recommended for allotment to DDA.

Learned counsel for the Petitioner states on instructions from the Petitioner who is present in Court today that the Petitioner is satisfied with the aforesaid statement made by the Registrar Cooperative Societies since the final allotment has been stayed by the Hon'ble Supreme Court.

In view of the aforesaid statement of the Registrar, Cooperative Societies which is taken on record, nothing further survives to be considered in the instant petition, which is accordingly disposed of."

8. This Court is of the opinion that the tenor of the impugned notification/order dated 17.10.2011 clearly suggests that the allotment of flats to members in the 26 listed societies where self draws were conducted was a subject matter of consideration. The L.G. exercising powers under the Act directed that the self draw would not be regularised in the cases of those charge-sheeted by the CBI. The entire impugned order clearly states that it is only in the cases of self

draw where the issue of regularisation arises. For purposes of that benefit, the names of the members - who were given allotment otherwise than in accordance with the Act and Rules - would not be considered if any of them are charge-sheeted. However, one cannot infer or deduce that the said order is *per se* applicable to all situations. In other words, if a member who is otherwise qualified is entitled to be considered in accordance with the provisions of the Act and Rules and is not subjected to any of the disqualification set out in either Section 22 or Rule 20 (particularly Rule 20 (i) (b) which talks of conviction in criminal proceedings as a bar, the entitlement to be considered in a draw of lots cannot be ruled out at all. This Court is fortified by the conclusion further on account of the fact that that Rule 90 spells out only one consequence, i.e., that the concerned individual is not permitted to contest the elections. In other words, barring a conviction after completed proceedings in a duly conducted criminal trial, a member who is merely charge-sheeted cannot be precluded from participation in the draw of lots. Any other interpretation would be contrary to the Act and even the Rules. It is well settled that even the rule making authority cannot exceed the parent enactment. In this case, the rule making authority clearly envisioned only one circumstance, i.e., disqualification upon conviction of a member. Clearly, that situation has not arisen and some of the members, i.e., the present petitioners are named in a charge-sheet. In the case of one petitioner apparently even charges have not been framed.

9. For the above reasons, the petitions have to succeed. The

respondent/Registrar of Cooperative Societies is directed to process the claims of the petitioners for consideration of allotment in accordance with law.

10. The writ petitions are allowed to the above extent.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MARCH 28, 2016
/vikas/