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

\+ W.P.(C) 8829/2014 & CM No. 27667/2015

SUNIL KANT SAINI ..... Petitioner

Through: Mr. R.K. Gupta, Advocate.

versus

REGISTRAR COOP. SOCIETIES & ANR. ..... Respondents

Through: Ms. Isha Khanna, Advocate for Ms. Nidhi Raman, Advocate for R-1 alongwith Mr. Thakur Dayal, RCS. Mr. J.N. Gupta, Advocate for R-2. Mr. B.S. Dhir, Advocate alongwith Ms. Gurmeet Kaur, Advocate for DDA.

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

O R D E R

% **23.02.2016**

The petitioner grievance is that the Registrar of Cooperative Societies and the Delhi Cooperative Tribunal wrongly rejected his complaint/application seeking reinstatement of his disputes under Section 70/71 of Delhi Cooperative Societies Act, 2003.

The petitioner contends that in the draw-of-lots held by the Delhi Development Authority in the presence of officials of the Registrar of Cooperative Societies on 15.09.2002, his name was included and that he be allotted Flat no. A-602 constructed by Mayank Cooperative Group Housing Society (hereinafter referred to as *"the Society")*. The petitioner relies upon several letters exchanged with the Society whereby he demanded that the possession of the flat be handed over. Ultimately, he moved the Registrar of Cooperative Society under Section 70 of the Act claiming various reliefs. This included:- (1) provision of details of payment made by the petitioner to the Society, (2) direction to the Society to accept payment of dues by the petitioner and issue consequential directions to the Society to drop expulsion proceedings. The Registrar by order dated 25.03.2010 rejected the demand for arbitration. It was held that the Society had contested the petitioner's assertion that payments were made to it. Apparently, the petitioner's brother is an erstwhile office bearer of the Society and according to it had wrongly included his name.

The Deputy Registrar's order discusses this aspect as follows:-

> *"3.4 It has been stated that the version of the petitioner regarding cash payment to his brother without any documentary proof is false and illogical. The petitioner in his rejoinder stated than the respondent society never enquired into the matter and never sought any explanation from its previous office bearer i.e. Sh. S.K. Saini regarding the receipt of payment given by the petitioner. I find this a little strange. The petitioner claims to have paid amount in cash on different dates to his brother who was the office bearer of the respondent society at the relevant time for depositing the same in the account of the respondent society. However, he has no proof with respect to the same. Furthermore, after having realized that the amount allegedly given by him on various dates to his brother has not initiated any action against his brother. He however expects the society to call for the examination of its previous office bearer. Even the details of the amount paid by the petitioner to his brother have not been mentioned in the petition or even in the*

rejoinder. This version of the petitioner is highly improbable. I therefore hold that this objection of the respondent society is sustainable. The respondent society is not expected to seek explanation from its previous office bearer on the basis of these averments of the petitioner especially when the petitioner has never discussed the amount allegedly paid nor has he initiated any action against his own brother."

The order rejecting the petitioner's contention thereafter went on to state as follows:-

"5. Having discussed the preliminary objections, I proceed to examine the prayer clause in the petition. The prayer clause with respect to directing the respondent society to drop the proceedings of expulsion against the petitioner cannot be referred to the arbitrator because the same have to be decided by the competent authority under section 86 of the Act. As regards direction to the respondent society to provide the details of payment made by the petitioner to the respondent, it has been stated by the respondent society that the petitioner has not made any attempts to contact the office of the respondent society to know about the details. It has further been clarified by the respondent society that cost of construction of the flat has not been paid. I may add here that the petitioner has also not come out clearly on the amount paid by him to the society. Proceedings u/s 70/71 of the Act are meant to settle disputes between the various parties but cannot be invoked for the purpose of merely extracting information from the respondent for which section 139 of the Act should be resorted to. In this view of the matter, the present petition is not admitted".

It is submitted on behalf of the writ petitioner that the Cooperative Tribunal did not consider the relevant facts but merely abdicated its responsibility in considering whether the fact disputed existed and whether the petitioner was wrongly excluded from the benefits of the membership of the Society. Learned Counsel contended that since the petitioner and his brother did not have a good relationship during later years, he was unable to produce documents such as receipts to establish that he was a *bona fide* allottee. He also relied on the allotment sheet.

This Court notices that the petitioner contended firstly that invalid expulsion proceedings had been drawn against him. On this aspect, the Deputy Registrar, after considering the materials on record i.e. especially the Society's response that in fact no expulsion proceedings had been initiated, was of the view that the relief was incapable of being granted.

On the substantive issue, the Deputy Registrar recorded his findings in para 5 of the office order. This was not upset by the Tribunal. This Court is unpersuaded by the petitioner's submission that he is a *bona fide* member and has been wrongly kept away from the benefits of membership. The draw-of-lots, in this case, concededly took place on 15.09.2002. Nowhere in these proceedings-or even before the Deputy Registrar as well as the Tribunal did the petitioner disclose any primary evidence to establish *prima facie* that payments were made by him to the Society. He apparently relied upon receipts which were said to have been issued by his late brother then an erstwhile office bearer. If indeed the petitioner had deposited the amounts which were payable to the Society, it is inexplicable as to how he would have remained silent for 7 long years before invoking arbitration proceedings as he did in 2009. This delay itself draws a suspicion on a genuineness of his claim. On the other hand, the Court is of the opinion that by seeking the first relief of an injunction or a restraint against expulsion, the petitioner apparently sought substantive relief by way of involving the Society to admit somehow that he no doubt was a member. It is no doubt true that the Registrar has to either resolve the dispute himself in substantive proceedings or refer the dispute, if any, to Arbitration. Ordinarily, in the latter case, the merits of such disputes would not be gone into by the Registrar himself. At the same time, facially what has sought to be presented as a dispute is not a real one, or at least, not a genuine one which requires adjudication. It would therefore be within the domain of the Registrar to refuse to either adjudicate upon it or refer it for adjudication to the Tribunal. This is precisely what happened in the present case.

For the above reasons, the relief sought cannot be granted.

The writ petition is accordingly disposed of.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 23, 2016

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