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

+ W.P.(C) 2754/2017

HD TANEJA THROUGH LEGAL HEIRS Petitioner
Through Mr. Prakash Gautam, Advocate

versus

FINANCIAL COMMISSIONER AND ORS. Respondents
Through Mr. Devesh Singh, Additional
Standing Counsel for respondent Nos.
1 and 2

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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27.03.2017

The petitioners herein are legal heirs of Late H.D. Taneja.

Late H.D. Taneja became a member of Vikas Cooperative Group Housing Society Ltd. ('Vikas Coop. Society, for short) in the year 1975. At that time he was eligible for membership and was not disqualified under Rule 25 of the Delhi Cooperative Society Rules, 1973 (DCS Rule for short).

2. Late H. D. Taneja on 19.06.1978 purchased a property situated at 146, Kalyan Vihar, Delhi -110009 and had incurred disqualification under Rules 25 (1) (c) of DCS Rule, 1973 which is reproduced below:-

“25. Disqualification of membership:-

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

(a) XXXXXXXXXXXX

(b) XXXXXXXXXXXX

(c) In the case of membership of a housing society-

(i) Owns a residential house or a plot of land for the 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 his dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale:

Provided that disqualification of membership as laid down in sub-rule (1) (c) (i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq meters of land.”

3. Late H. D. Taneja had earlier professed that the property No.146, Kalyan Vihar, Delhi-110009 was purchased out of the funds made available by his father and that this property belonged to the entire family, and consequently his share was less than 66.72 sq. meter. However, this stand is not pressed and has been given up by the counsel for the petitioner. The counsel has stated that he was unable to substantiate and establish the said position. The purchase and acquisition of ownership rights in the property No.146, Kalyan Vihar, Delhi, vide documents dated 19.06.1978 is not disputed.

4. The contention raised and urged is that late H. D. Taneja had made an application for conversion of the property 146, Kalyan Vihar, Delhi -110009 into freehold and conveyance deed was executed on 27.10.1997. Reliance is placed on the proviso to Clause (c) to Rule 25 (1) of the DCS Rules, 1973 introduced w.e.f.

06.08.1997. The proviso reads as under:-

“Provided further that the said disqualification shall not be applicable 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 membership of the housing society concerned.”

5. The newly enacted proviso would not be applicable for the property No.146, Kalyan Vihar was purchased in 1978, whereas the proviso was enacted in 1997. Further, consequent to the purchase, Late H.D. Taneja stood disqualified as a member of the Vikas Coop. Society under Rule 25(1) (c) of the Rules. This is the mandate and ratio of ***Daulat Ram Mehndiratta v. Lt. Governor & Ors., AIR 1982 DEL 470***, in which a Full Bench of the Delhi High Court had determined the exact impact and effect of Rule 25(1)(c) of the DCS Rules, 1973 in view of the conflicting opinions expressed by two earlier Division Benches. The petitioner, therein, was a member of two co-operative societies and was also owner of four plots/ flats, since prior to enactment and enforcement of the DCS Rules, 1973. Reference was made to sub-Rule 2 of Rule 25 of the DCS Rules, 1973, which for the sake of convenience, is reproduced below:-

“**25(2):** Notwithstanding anything contained in the Rules or the bye-laws of the co-operative Society, if a member becomes or has already become, subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.”

The Full Bench held that once a member incurs disqualification, he ceases to be a member from the date when such disqualification was incurred. In view of the said legal position, Late Sh. H. D. Taneja became disqualified and ceased to be a member of the Vikas Coop. Society when he acquired property bearing No.146, Kalyan Vihar, Delhi-110009 in 1978.

6. Secondly, the enacted proviso states that the disqualification stipulated in Rule 25 (1) (c) of the DCS Rules, 1973 shall not be applicable to a person who has acquired property on power of attorney or through agreement for sale and on conversion of the said property from leasehold to freehold i.e. by execution of the conveyance deed. In such cases, this person can apply and can be enrolled as a member of the Housing Society concerned, notwithstanding the disqualification and requirements stipulated in Rule 25 (1) (c) of the DCS Rules, 1973. This clause would be applicable to late H. D. Taneja with reference to property No.146, Kalyan Vihar, Delhi-110009. On conversion and execution of the conveyance deed, late H. D. Taneja could apply for membership of the Cooperative Society in which property No. 146, Kalyan Vihar, Delhi-110009 was located. Property No.146 Kalyan Vihar, Delhi was not allotted by the Vikas Coop. Society. The proviso does not stipulate or state that late H.D.Taneja would not incur disqualification under Rule 25 (1) (c) in respect of his membership in another cooperative society, in this case the Vikas Coop. Society. The petitioner had incurred disqualification under sub clause (1) (c) of Rule 25 and had ceased to be a member of the Vikas Cooperative

society the moment he had acquired the property No. 146, Kalyan Vihar, Delhi-110009.

7. Learned counsel for the petitioner has submitted that in 2003 the petitioner had executed a Gift Deed and had transferred property No.146, Kalyan Vihar, Delhi-110009 in favour of his son, respondent No.4-Rajat Taneja. This transfer is consequential. The disqualification under Rule 25(1)(c) had immediate effect and this transfer would not revive the cancelled/ceased membership.

8. The petitioner – late H.D.Taneja had made an application for including his wife Smt. Pushpa Taneja as a co-member in the respondent No.3 society on 02.02.1982, which was accepted. The show notice dated 10.02.2004 was issued in the name of H.D. Taneja and not in the joint names of the petitioner and his wife. Exclusion and failure to mention Pushpa Taneja's name has not made any difference or caused prejudice, especially when late H. D. Taneja had appeared and was represented by a counsel.

9. In the aforesaid background, the impugned order passed by the Tribunal does not require interference. Pertinently, no flat was allotted to late H. D. Taneja. Obviously, another person who is entitled to membership would be allotted the flat to which claim is made by the petitioner.

10. It is open to the petitioners to ask for refund of money deposited and if any such request is made, the same would be considered in accordance with law. It appears that the petitioner has not been asked for the interest. If any claim for interest is made, the same would be examined, again as per law. The respondents would be

equally entitled to rely on this order and Rule position, when such claim is made.

11. With the aforesaid observations, the writ petition is dismissed with no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 27, 2017
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