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

+ **W.P.(C) 10916/2016 & C.M. APPL. No. 42744/2016 (stay)**

VIJAY SINGH

..... Petitioner

Through: Mr. Rakesh Munjal, Senior Advocate
with Mr. Rakesh Kumar with petitioner in person.

versus

**NAV JAGRITI COOPERATIVE GROUP HOUSING SOCIETY
LTD AND ORS.**

..... Respondents

Through: Mr. S.K. Sharma and Mr. Vishal Thakre,
Advocates for R-1/Society.

Mr. Rahul Sharma and with

Mr. C.K. Bhatt, Advocates for R-2/RCS.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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25.08.2017

1. The present petition has been filed by the petitioner, who had superannuated on the post of Director in the Ministry of Agricultural, Govt. of India on 31.5.2008, assailing an order dated 29.7.2016, passed by the learned Financial Commissioner, Delhi dismissing his revision petition filed under Section 80 of Delhi Co-operative Societies Act, 1972 (in short '**the Act**') against the order dated 21.10.2008, passed by the respondent No.2/Registrar of Cooperative Societies (in short '**RCS**').

2. The brief facts of the case are that a complaint was lodged by Sh. Bharat Singh, a member of the Management Committee of the respondent No.1/Society with the respondent No.2/RCS to the effect that

that the petitioner had managed to acquire the membership of the Society by concealing material facts to the effect that he owned a property bearing No. 8A, Kundan Nagar situated at village Khureji Khaas, Shahdara, Delhi (hereinafter referred to as the subject property) and was therefore ineligible for enrolment in the Society. On receiving the subject complaint, a notice to show cause dated 27.2.2007 was issued by the respondent No.2/RCS to the petitioner referring to the provisions under Rule 25 of Delhi Cooperative Societies Rules, 1973 (in short '**DCS Rules, 1973**') which contemplates that *“any member who is stated to have incurred disqualification under the provisions of Rule 25 of DCS Rule, 1973 shall be deemed to ceased to be a member from the date when the said disqualification incurred”* and calling upon the petitioner to explain as to why his membership in the respondent No.1/Society should not be ceased.

3. The petitioner submitted a reply to the aforesaid show cause notice dated 27.2.2007, taking some ambiguous pleas therein without denying the facts stated in the said notice that the subject premises stood in his name, as was verified by the Area Inspector from the records of the Municipal Corporation of Delhi. On receiving his reply, the respondent No.1/Society filed a rejoinder thereto. Later on, the petitioner submitted an additional reply on 17.4.2008, stating *inter alia* that the premises in question was acquired by his father through a power of attorney executed in his favour, by disposing of an ancestral property owned by him in Ghaziabad; that the subject property was purchased by his father jointly in his name along with his younger brother and it was finally disposed of in the year 2003, by executing a sale deed. The sale proceeds of the subject property were

distributed between the petitioner and his brother, as was desired by their father.

4. The gravamen of the plea taken by the petitioner in this petition is that the subject property measuring 100 sq. yds. having been acquired through a power of attorney and that too from the sale proceeds of the petitioner's father's ancestral property situated at Ghaziabad, which was subsequently sold and said sale proceeds divided between him and his younger brother, at best, his share therein would have been 50 sq. yds. which is much below the prescribed limit of 66.72 sq. yds. of land under Rule 25 of DCS Rules, 1973 and therefore, it cannot be urged that the petitioner had incurred any disqualification under the Act and Rules.

5. After considering the replies of the parties, the respondent No.2/RCS had passed an order dated 21.10.2008, holding that at no stage had the petitioner denied the fact that he had purchased the subject property in the year 1978 whereas, he had acquired the membership in the respondent No.1/Society much later, on 21.5.1987; nor was he able to demonstrate that the property that was purchased by him in the year 1978, from one Smt. Pritam Kaur, was under joint ownership along with his brother and that his share was less than 66½ sq. yards therein. As a result, the petitioner was declared ineligible for the membership of the respondent No.1/Society, in terms of Rule 25(1)(c)(i), DCS Rules, 1973.

6. Aggrieved by the said order, the petitioner had filed a revision petition before the learned Financial Commissioner under Section 80 of the Act which has been dismissed vide order dated 29.7.2016, with the following

observations:-

“7. I have considered all the facts, documents and heard both the parties at length. That Shri Vijay Singh acquired membership of the Society on 21.5.1987 is a matter of record. In this case the Society alleged that the Petitioner had obtained the membership in 1987 when he already owned a property at 8A, Kundan Nagar, Delhi, having purchased land measuring 100 sq. yards from Smt. Pritam Kaur in 14.8.1978. The copies of sale deed have been filed in support for the said allegations. It was further alleged that the petitioner also acquired Flat NO.42, MIG, 1st Floor, Pocket D, Sector 17 Dwarka, Delhi under Ambedkar Awas Yojna of DDA in the name of his wife Smt. Birma Wati and failed to inform the Society as required under law. In view of the fact that the Petitioner was already owner of a house referred above in Kundan Nagar, he was ineligible for membership in the Society (R-1).

8. It is a fact that the Petitioner has not categorically denied at any stage the fact, that he had purchased land/property at Kundan Nagar, Shahdara in 1978 and the same was sold by the petitioner to Shri Mahesh Jain vide registered sale deed dated 14.05.2003 as a sole owner. The plea of the petitioner that he purchased a house/flat in 1978 from Smt. Pritam Kaur, was a joint property and his share in land is less than 66 ½ yards, seems untenable and an afterthought.

9. In the light of above facts & the Petitioner's failure to prove that he did not own a flat/house at the time of grant of membership in 1987 clearly makes him ineligible from membership of the said Society as per provisions of Delhi Cooperative Societies Act and Rules.

10. The excuse that in 2003 a new membership was allotted that it was not a case of the old membership being restored as claimed by the Petitioner in person, was contradicted by his own Counsel who stated very clearly that it was a restoration. Therefore, even if he used the sale proceeds to pay the dues in respect of this

flat in 2003, he is debarred on the same grounds.

11. For these reasons, there is no cause to interfere with the order of the RCS. Accordingly, this Revision Petition is disposed of, no order as to cost."

7. Dissatisfied by the aforesaid order rejecting his revision petition, the petitioner has filed the present petition stating *inter alia* that the learned Financial Commissioner has failed to appreciate that the property bearing No. 8A, Kundan Nagar, situated at village Khureji Khaas, Shahdara, Delhi, was purchased by his father through a power of attorney executed in his favour, from out of the sale proceeds of an ancestral property situated at Ghaziabad and that on sale of the said property, the sale proceeds were distributed between him and his brother, wherein his share was only 50 sq. yards. Resultantly, the petitioner could not have incurred any disqualification under Rule 25 DCS, Rules 1973. It has been averred that no evidence was produced by the respondent No.1/Society which could establish that the subject property was purchased by the petitioner from his own resources and that the said property had already been sold in May, 2003 which event had taken place prior to the date when petitioner was assigned a new membership by the respondent No.1/Society, on 29.6.2003.

8. Mr. Munjal, learned Senior Advocate appearing for the petitioner states that though no such plea was specifically taken by the petitioner either before the RCS or the learned Financial Commissioner, it has subsequently transpired that the subject property had been actually acquired by the Govt. of India in the year 1970-71 vide Award No. 22/70-71 and therefore, it cannot be stated in law that it was owned by the petitioner.

9. The aforesaid argument is not only fallacious, but also untenable. It is

the petitioner's own case that he had purchased the subject property on the strength of a power of attorney executed by his father in his favour, on 14.8.1978. The said property had been mutated in the records of the civic authority exclusively in his name. Further, when the petitioner had applied for membership in the respondent No.1/Society, he was in actual physical possession of the subject property, which he had subsequently sold. No document whatsoever has been placed on record by the petitioner which could demonstrate that the subject property was acquired upon his father selling an ancestral property situated at Ghaziabad or that the said property had been jointly purchased by him and his brother.

10. On the contrary, in the course of arguments, it transpires that the property situated at Ghaziabad, which the petitioner has been describing as an ancestral property, was actually owned by his mother and that being the position, it could not have acquired the colour of an ancestral property in the hands of the petitioner. Further, the petitioner's claim that the sale proceeds of the subject premises were shared by him and his brother, is devoid of merits when the sale deed dated 14.5.2003 placed on record clearly states that it was executed solely by him in favour of one Sh. Mahesh Jain.

11. Learned counsel for the respondent No.1/Society submits that despite the order dated 21.10.2008, passed by the RCS declaring the petitioner as ineligible from holding membership of the Society, he has continued to retain the possession of the subject flat, allotted in the year 2004. We are further informed that the allotment made in favour of the petitioner, was cancelled by the DDA as long back as on 20.7.2009. Instead of surrendering the flat, the petitioner proceeded to let out the same from the year 2009 onwards. Learned counsel states that as the petitioner has clung on to the

said flat in the absence of any interim order operating in his favour from any fora or court, including the present proceedings, he ought to restitute the Society for the amounts illegally earned by him on letting out the flat when he ought to have vacated the same within a reasonable time from the date when the respondent No.2/RCS had passed the order dated 21.10.2008, declaring him ineligible for the membership of the respondent No.1/Society.

12. Having failed to point out any illegality or arbitrariness in the impugned order, the present petition is dismissed as being devoid of merits. The petitioner is directed to hand over the vacant physical possession of the allotted flat to the respondent No.1/Society within four weeks from today.

13. At this stage, learned counsel for the petitioner submits that if the petitioner has been called upon to vacate the flat and hand over possession thereof to the Society, then he ought to be refunded the entire amount deposited by him towards the allotment of the flat which as per him, was to the tune of Rs.9 lakhs, as in the year 2009.

14. The said figure has however been disputed by learned counsel for the respondent No.1/Society who states that the original cost of the flat was less than Rs.5 lakhs (approx.) and the additional amounts that the petitioner claims he has paid, were in fact on account of interest leviable on late payments.

15. In the course of arguments, we have enquired from the counsels for the parties as to whether the petitioner had submitted an affidavit in terms of Rule 6(1)(g) of DCS Rules, 1973, to the respondent No.1/Society declaring *inter alia* that he did not own any property within NCT of Delhi, for claiming eligibility for induction as a member of the Society. Learned counsel for the petitioner and the respondent No.1/Society state that

presently, they do not have clear instructions.

16. We deem it appropriate to direct the respondent No.2/RCS to conduct an inquiry so as to verify the nature of documents that were submitted by the petitioner at the relevant time, when he had applied for and acquired the membership of the Society and if the said documents are not in order, then initiate necessary action against him, as contemplated in law. Further, in order to compensate the Society for the monetary loss suffered by it on account of the petitioner having wrongfully retained possession of the flat after the said allotment was cancelled by the DDA in the year, 2009, the RCS is directed to assess the quantum of rent received by the petitioner on letting out the said flat, with effect from year 2009 onwards. For making a fair assessment, the petitioner is directed to produce all the relevant documents in his power and possession before the RCS, including copies of the lease deeds executed in respect of the flat and his Income Tax Returns along with the computations, from the year 2009 onwards. The respondent No.1/Society shall be duly represented before the RCS and it shall produce all the relevant records relating to the amounts deposited by the petitioner from time to time towards the cost of the flat and any other payments made by him, for the RCS to order refund of the cost of the flat to the petitioner after deducting the amounts payable by him to the Society. In the event the RCS is dissatisfied with the documents produced by the petitioner, as ordered above, he shall be entitled to call upon the Society to produce relevant contemporaneous documents that would demonstrate the rent fetched by similarly situated flats in the Society. The said enquiry shall be initiated within four weeks and be concluded within a period of three months therefrom. The decision taken by the RCS shall be duly

communicated in writing to all the concerned parties. If aggrieved, they shall be entitled to seek legal recourse.

17. The petition is dismissed along with the pending applications with costs of Rs.10,000/- imposed on the petitioner, to be paid to the respondent No.1/Society within four weeks from today.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 25, 2017

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