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

+ **WRIT PETITION (CIVIL) NO. 6966/2018**

Date of decision: 9th July, 2018

**BHATNAGARS' COOPERATIVE HOUSE BUILDING SOCIETY
LTD.** Petitioner

Through Mr. Sanjay Kumar Pathak, Ms. K.
Kaomudi Kiran Pathak & Mr. Sunil Kumar Jha,
Advocates.

versus

SANDEEP BHATNAGAR & ANR. Respondents

Through Mr. Jawahar Raja, ASC, GNCTD & Mr.
Rajat Kumar, Advocate.

**CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR**

SANJIV KHANNA, J. (ORAL):

In this writ petition filed on 31st May 2018, Bhatnagars' Cooperative House Building Society Limited (Cooperative Society, for short) has challenged order dated 29th September, 2015 passed by the Financial Commissioner in Case No. 99/2013. The impugned order dismisses the revision filed by the Cooperative Society against the order passed by the Registrar of Cooperative Societies dated 24th January, 2013.

2. The present writ petition has been filed after a long delay of nearly three years. On being questioned, learned counsel for the Cooperative Society explaining the delay submits that the respondent, Sandeep Bhatnagar son of late Brij Nath Swarup Bhatnagar, had filed an appeal/application under Section 28(1) of the Delhi Cooperative Societies Act, 2003 (2003 Act, for short) before the Registrar, Cooperative Societies for transfer of membership in his name on death of his father. By order dated 26th February, 2018, the prayer was allowed. This period should be excluded. We are not satisfied with the aforesaid explanation and justification. Aforesaid explanation has no connect and does not justify delay of nearly three years in challenge to order dated 9th September, 2015. Proceedings initiated by the respondent under Section 28 were in nature of execution and for effective and complete implementation of the order dated 29th September, 2015. Cooperative Society in-spite of order dated 29th September, 2015 had failed to act in accordance with law.

3. The facts exposit that one Prakashwati had become member of the Cooperative Society on 11th October, 1955. Prakashwati in 1958 had purchased a residential property. On 25th January, 1967, Prakashwati had made an application for transfer of membership to her son-in-law Late Brij Nath Swarup Bhatnagar. On 27th February, 1967, request for transfer of membership in favour of Late Brij Nath Swarup Bhatnagar was accepted. Thus, Parakashwati ceased to be a member of the Cooperative Society and Late Brij Nath Swarup Bhatnagar became a member.

4. In 1975, land was allotted to the Cooperative Society and plots were developed and carved out. Late Brij Nath Swarup Bhatnagar made payments

towards development and cost of land. Cooperative Society had accepted the payments. On 3rd October, 1981, plot No. 85 was allotted to Late Brij Nath Swarup Bhatnagar and registered sub-lease deed was executed.

5. On 12th December, 1986, a show cause notice was issued by the Cooperative Society to Late Brij Nath Swarup Bhatnagar why the sub-lease deed of the plot should not be cancelled as Prakashwati had incurred disqualification when she had purchased residential plot in 1958 and, therefore, transfer of membership in favour of Late Brij Nath Swarup Bhatnagar in 1967 was illegal. Subsequently, it was observed and resolved by the Cooperative Society that transfer of membership in favour of Late Brij Nath Swarup Bhatnagar was bad and reference was made to Registrar, Cooperative Societies and Delhi Development Authority for approval of cessation of membership and cancellation of the sub-lease deed of the plot.

6. In these circumstances, Late Brij Nath Swarup Bhatnagar had filed a petition under Section 87 of the 2003 Act, before the Registrar, Cooperative Societies, which was accepted vide order dated 18th January, 2013.

7. Cooperative Society had then preferred a revision petition, which vide the impugned order dated 29th September, 2015 has been dismissed by the Financial Commissioner.

8. Counsel for the Cooperative society relies on Rule 25(1)(c) of the Delhi Cooperative Societies Rules, 1973 and states that Prakashwati had incurred disqualification as no person could have continued as a member of a cooperative society if he or she, spouse or dependent children were owner a residential house. Reliance is placed on *Ishwar Nagar Cooperative*

Housing Building Society versus Parma Nand Sharma and Others, (2010) 14 SCC 230.

9. Late Brij Nath Swarup Bhatnagar was enrolled as a member in 1967. This enrollment by transfer had taken place before enactment and enforcement of the Delhi Cooperative Societies Rules, 1973. Decision in the case of ***Ishwar Nagar Cooperative Housing Building Society*** (supra) would not be applicable to the case at hand in the said factual background.

10. Counsel for the petitioner submits that model bye-laws also had a clause stipulating that no person shall be a member unless he would sign a declaration that he/she, spouse or any of his/her dependants did not own a dwelling house or plot in Delhi and was not a member of any other cooperative society. It is submitted that these bye-laws should have been applied when the transfer in 1967 was made. We are not impressed with this argument for the simple reason that the Cooperative Society could have inducted Late Brij Nath Swarup Bhatnagar as a member in his own right as on 27th February, 1967. Late Brij Nath Swarup Bhatnagar had not incurred any disqualification under the bye-laws or the Rules. Correct facts were always known and it is not alleged that facts were concealed. Cooperative Society after deliberation and consideration had enrolled Late Brij Nath Swarup Bhatnagar as a member.

12. We do not think the Cooperative Society should be allowed to go back in time by 20 years as the issue of membership of Late Brij Nath Swarup Bhatnagar was questioned for the first time in 1986. This was after payments made by Late Brij Nath Swarup Bhatnagar from 1967 till 1981 towards cost and development of the plot had been accepted. Cooperative

Society should not be allowed to unsettle the settled issues. This would not be fair and just.

13. In the aforesaid background and factual matrix, we are not inclined to entertain belatedly and delayed challenge by the Cooperative Society to the order dated 29th September, 2015 passed by the Financial Commissioner. Facts of the present case do not justify overlooking or ignoring three years delay. This litigation should be closed and brought to an end.

14. The writ petition is dismissed on the ground of delay and laches. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 09, 2018
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