

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

Date of Order: September 22, 2018

+ **W.P.(C) 9971/2018 & CM 38855/2018**

DEEPAK TYAGI

.....Petitioner

Through: Mr. Shamshad and Mr.K.K.
Gautam, Advocates with petitioner
in person

versus

SUPREME COURT BAR ASSOCIATION MULTI-STATE CO-
OPERATIVE GROUP HOUSING SOCIETY LTD. (REGD) &
ORS.

.....Respondents

Through: Mr. V.K. Garg, Senior Advocate
with Ms. Noopur Dubey, Mr. R.K.
Rathore and Mr. H.A. Khan, Mr.
Shadab Hussain Khan and Ms.
Nigar Khan, Advocates No.1
Mr. A.K. De, Advocate/President
of respondent No.2-Society
Mr. Rakesh Munjal, Senior
Advocate with Mr. Aditya Pushkar
Khanna and Mr. Sanjay Yadav,
Advocates for respondent No.3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner seeks a mandamus to first respondent to delete his name from the Email of 26th March, 2018 sent by first respondent to second respondent. The deletion sought is regarding the name of petitioner being shown as 'Transferee'. According to petitioner, he is 'original allottee' of

a flat by second respondent-Society and so, he is not liable to pay the transferring fee of ₹1,63,000/-, as demanded by second respondent.

2. This writ petition was entertained with a rider that without prejudice to his rights, petitioner shall deposit the transferring fee of ₹1,63,000/-, with the Registrar General of this Court. Learned counsel for petitioner submits that the transferring fee of ₹1,63,000/- has been deposited Vide Diary No.24652 of 22nd September, 2018.

3. It is the case of petitioner that he is not liable to pay the transferring fee of ₹1,63,000/-, as he is the '*original allottee*' of flat by second respondent-Society. According to petitioner, he had received intimation about Email of 26th March, 2018 only in the first week of September, 2018 and he had made a Representation to respondents, which has not been responded to.

4. Upon notice, learned counsel for respondents have handed over copy of the Communication of 14th September, 2018, which discloses that petitioner is not '*original member*' of respondent-Society. During the course of hearing, it was not disputed that the Voters List for the election in question was finalized and displayed on 16th September, 2018.

5. Upon hearing and on perusal of material on record, I find that it is not within the domain of this Court to get into the disputed facts. Whether petitioner was a '*transferee member*' or as to whether the transferring fee is to be charged from petitioner or not, is a subject matter of dispute. The aforesaid dispute is required to be considered by the Registrar of Multi-State Co-operative Societies, which is located in Delhi. Undisputedly, petitioner is member of first respondent-Society, who had sent the Email

of 26th March, 2018 to second respondent, which is under dispute and so, it cannot be said that petitioner cannot invoke the jurisdiction of this Court.

6. In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition while permitting petitioner to seek his remedy against Communication of 14th September, 2018 by approaching the Registrar of Multi-State Co-operative Societies, within a week from today.

7. Supreme Court in *Shaji K. Joseph v. V. Viswanath & Ors.*, (2016) 4 SCC 426 has reiterated as under: -

“In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election programme on 27-1-2011 and more particularly when an alternative statutory remedy was available to Respondent 1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent 1 for contesting the election is concerned, though prima facie it appears that Respondent 1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed

without the court's order. Very often, for frivolous reasons, candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.”

8. So far as interim relief sought by petitioner is concerned, I find no justification to put on hold the elections of second respondent-Society, which is to take place tomorrow i.e. 23rd September, 2018. Restraint is required to be exercised in halting the election process particularly when it has begun.

9. Change of petitioner's name in the Voters List from '*transferee member*' to '*original member*' is an aspect, which is not required to be gone into the writ jurisdiction. Since petitioner has deposited the transferring fee of ₹1,63,000/-, without prejudice to his rights, with the Registrar General of this Court, therefore, it is deemed appropriate to direct that the transferring fee of ₹1,63,000/-, so deposited by petitioner, be transmitted to the Registrar of Multi-State Co-operative Societies, to facilitate the resolving of dispute regarding the status of petitioner being an '*original*' or '*transferee member*'.

10. During the course of hearing, it was brought to the notice of this Court by respondents that after scrutiny of the nomination papers, it was found that only one candidate had applied for the post of President and so, no election for the post of President is required to be held. Petitioner's

prayer for contesting the election for the post of President, as recorded in the last order, springs from the correction sought by petitioner in the Voters List. In the considered opinion of this Court, there is no impediment in permitting petitioner to contest the election for the post of President, as petitioner has already deposited the transferring fee of ₹1,63,000/-.

11. It is no longer *res integra* that concept of fair and free elections is *sine-qua-non* for a vibrant democracy. In a democratic process, an aspirant ought not to be denied an opportunity to participate in the election of second respondent, which is being conducted in a democratic way. In the peculiarity of this case, petitioner is permitted to contest the election for the post of President of second respondent-Society, which is slated for tomorrow, subject to his depositing the prescribed fee of ₹1,000/-. The said fee be transmitted to the Secretary of second respondent by Real Time Gross Settlement (RTGS) mode. Deposit or non-deposit of this fee of ₹1,000/- would not be an impediment in permitting petitioner to contest the election for the post of President, which is slated for tomorrow, as this fee of ₹1,000/- can be deducted from petitioner's Maintenance Account with second respondent, provided petitioner volunteers for adoption of such a course. It is made clear that any observation made in this order shall not be construed as an opinion on merits by the Registrar of Multi-State Co-operative Societies, while adjudicating upon the dispute raised by petitioner in this petition.

12. This petition and the pending application are disposed of in aforesaid terms.

Copy of this order be given *dasti* under signatures of the Court Master to learned counsel for the parties.

(SUNIL GAUR)
JUDGE

SEPTEMBER 22, 2018

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