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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6627/2019

SMT. SARITA GUPTA

..... Petitioner

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

versus

**REGISTRAR OF CO-OPERATIVE SOCIETIES
AND ANR.**

..... Respondents

Through: Ms. Nidhi Raman, Advocate for R-1.

CORAM:

**JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

ORDER

19.09.2019

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Dr. S. Muralidhar, J.:

1. The Petitioner has in this writ petition challenged an order dated 15th July, 2016 passed by the Deputy Registrar of Cooperative Societies rejecting the Petitioner's claim under Section 70(1)(b) read with Section 70(2) of the Delhi Cooperative Societies Act, 2003 ('Act') by holding that there was no dispute which was required to be referred for a decision.

2. The Petitioner has also challenged an order dated 8th June, 2018 passed by the Delhi Cooperative Tribunal ('the Tribunal') dismissing the Petitioner's Appeal No. 54/2017/DCT against the aforementioned decision of the Deputy Registrar.

3. The facts in brief are that the Petitioner's husband Shri Anil Kumar Gupta was a member of the Respondent No. 2/Society. A draw of lots for allotment of flats in the Society was held on 9th July, 2002. Flat No. 705 was allotted to Shri Gupta by a letter dated 6th August, 2002. Between March, 2003 and 18th June, 2003 the Petitioner is stated to have received notices from the Society addressed to her husband seeking information about the utilization of a sum of Rs.56,23,877/- for the period between 1st April, 1993 and 8st June, 2000. The Petitioner's case is that her husband went missing since 7th May, 2003. She is stated to have given a complaint to the police nearly two years thereafter on 9th February, 2005. It appears that another DD entry was made with the police after a further period of two years on 26th March, 2007. A missing report was published in the newspaper on 30th October, 2009.

4. The Petitioner is stated to have produced a death certificate dated 12th September, 2013 of her husband issued by the Executive Magistrate, Civil Lines which stated that Shri Gupta had died on 7th May, 2003 at his residence in Kamla Nagar.

5. It appears that with the intervention of a local Member of Parliament, a settlement was arrived at between the Petitioner and the Society in terms of which the Petitioner agreed to pay the Society Rs.50,00,000/-. Upon such payment she got possession of two flats i.e. the aforementioned Flat No. 705 that was allotted to Shri Gupta and another flat which was gifted to the Petitioner by her brother-in-law.

6. It appears now that after getting possession of both the flats, the Petitioner has sold both the flats. While she sold the flat gifted to her for a sum of

Rs.92,00,000/- on 22nd February, 2013, she sold the flat allotted to her husband for a sum of Rs.1.04 crore on 22nd April, 2015.

7. The case of the Petitioner is that she was compelled to enter into the above settlement with Respondent No.2/Society only for getting possession of the flats and that she, in fact, did not owe the aforementioned sum to the Society. After selling both the flats, the Petitioner on 28th October, 2015 filed a claim/petition under Section 70 of the Act to which the Society replied on 10th March, 2016 pointing out that there was no dispute in existence in the first place since all issues had been settled amicably and that pursuant thereto, the Petitioner had paid the settlement amount and had taken possession of the two flats in question.

8. The Deputy Registrar passed the first impugned order dated 15th July, 2016 holding that there was in fact no dispute to be referred for a decision. Aggrieved by said order, the Petitioner filed Appeal No. 54/2017/DCT which by the second impugned order dated 8th June, 2018 was dismissed by the Tribunal.

9. Learned counsel for the Petitioner first urges that the Registrar has failed to decide the claim petition within a period of 90 days as mandated under Section 70(3) of the Act and therefore the dispute should be deemed to have been admitted under Section 70 of the Act and to have been referred for decision under Section 71 of the Act.

10. Learned counsel appearing for the Registrar of Cooperative Societies ('RCS') points out that one consequence under Section 70(3) of the Act, if

the petition is not decided within 90 days by the RCS, is that there is a deemed reference of the dispute for decision under Section 71 of the Act. Under Section 71(1)(a) of the Act, upon receipt of such dispute, the RCS himself is competent to decide the dispute. She states that the impugned order dated 15th July, 2016 was in fact a decision of the RCS in terms of Section 70(3) read with Section 71(1)(a) of the Act.

11. The Court notes that the Tribunal, in accepting the above submission on behalf of the RCS, has referred to the decision of this Court in *Shriniwas Puri Mitra Mandal Co-op G.H. Society Limited v. DDA (1997) 69 DLT 703 (DB)* which in turn followed the decision of the Supreme Court in *Nagar Palika, Mirzapur v. Mirzapur Electrical Supply Company Ltd. AIR 1990 SC 2273*.

12. In the present case it appears to the Court that the RCS himself was competent to decide the dispute which stood referred by virtue of Section 70(3) of the Act. Therefore, there is no merit in the above contention of learned counsel for the Petitioner.

13. Learned counsel for the Petitioner then submitted that it was incumbent on the RCS to have permitted the Petitioner to lead evidence and he could not have decided the dispute on merits without adverting to the four factors which were required to be first decided under Rule 84(4) of the Delhi Cooperative Societies Rules, 2007 ('Rules').

14. Rule 84 of the Rules requires a Registrar to first determine whether there is a dispute and that is precisely what was done by the Deputy Registrar

(who was duly authorised to exercise the powers of the RCS) in the present case. He answered the question in the negative. In other words, the Deputy Registrar came to the conclusion that there was no dispute in existence between the parties for being referred for a decision.

15. What was held concurrently on facts both by the Deputy Registrar as well as the Tribunal is that there was an amicable settlement of the disputes between the Petitioner and the Society. The Petitioner did not place on record any material to dispute the above fact. She also does not appear to have written to the Society at any point of time retracting from the settlement by contending that she was compelled to enter into it. It may be recalled that she raised the dispute after selling away the two flats which were handed over to her pursuant to the settlement. Consequently, the Court is not persuaded to hold that the Petitioner was forced to enter into the aforementioned settlement.

16. The Court also takes note of the fact that both the Deputy Registrar and the Tribunal found that the Petitioner had made inconsistent statements. On the one hand, the Petitioner had claimed that her husband went missing since May, 2003, whereas, on the other hand, she produced his death certificate which stated that he had expired at his residence in 78-B, Kamala Nagar, Delhi.

17. Learned counsel for the Petitioner sought to explain the above contradiction by claiming that seven years after her husband went missing he was presumed to have been dead. In such an event, the remedy

available to the Petitioner was to seek a declaration in a Court of law and not to produce a bogus death certificate stating that her husband had expired at his residence. This is very different from stating that somebody should be deemed to have not been alive seven years after such person went missing.

18. For the aforementioned reasons, the Court finds that no ground has been made out to interfere with the impugned orders of the Deputy Registrar and the Tribunal. The writ petition is dismissed but with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 19, 2019

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