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

+ **W.P.(C) 6895/2018**

RENU BALA GUPTA

..... Petitioner

Through Mr. G.L.Verma, Advocate

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ORS

..... Respondents

Through Mr. Santosh Kumar Tripathi, ASC
(GNCTD) with Mr. Shashank Tiwari
& Mr. Arpit Bisht, Advocates for
Respondent No.1/RCS
Mr. Nirvikar Verma, Advocate for
Respondent No.2/DDA

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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18.11.2019

1. Aggrieved by the failure of the office of the Registrar of Cooperative Societies ('RCS') to confirm her membership and allotment and communicate it to the Delhi Development Authority ('DDA') Respondent No.2 herein, the Petitioner has filed the present petition.

2. The Petitioner was allotted a flat No.125, Shubham Apartments, I.P. Extension, Delhi-110092 by the Respondent No.3/Society on 1st July, 1996 with a possession letter dated 28th July, 1996 and certificate of self occupation dated 11th September, 1996. She was also issued share certificates.

3. On 26th July, 1996 the Petitioner sent a letter to the RCS intimating about her enrolment as member and about the allotment of the flat. It is stated that on 18th December, 1999 the society also issued a No Dues Certificate to the Petitioner.

4. By an application dated 13th January, 2000 made to the DDA the Petitioner sought conversion of her flat from leasehold to freehold. More than three years later on 17th February, 2003, the DDA informed the Petitioner that her plea could not be considered unless the allotment was confirmed by the RCS. On 6th May, 2003 the society informed the RCS about the Petitioner's membership.

5. Nevertheless, the DDA appeared to insist on the Petitioner's draw getting confirmed by the RCS by its letter dated 20th March, 2007. The society wrote a letter dated 9th June, 2009 to the RCS and sent another reminder on 8th March, 2010 seeking confirmation of the membership of the Petitioner. No action was taken by the RCS.

6. It was decided by the Lt. Governor (LG) of the National Capital Territory of Delhi (NCT of Delhi) that societies which had conducted a self draw prior to 2010 should also be given an opportunity for regularisation. By an office note dated 26th April, 2018, the Assistant Registrar (AR) (Policy) proposed that the said order of the LG would cover the present case.

7. The Petitioner contends that despite such clarity the RCS did not consider the fact that the Petitioner was a genuine member. It is stated that the

Assistant Registrar (Section-3) [‘AR (Section-3)’] skirted the office note prepared earlier and forwarded the proposal only in respect of Ms. Nayan Bharti, ignoring the Petitioner without any substantial reason. In other words, the AR bypassed the office note of AR (Policy) and moved a proposal on 15th May, 2018 exclusively to regularise the allotment made to one Ms. Nayan Bharti.

8. Thereafter, the AR sent a letter to the Deputy Director (Group Housing) of the DDA on 28th May, 2016 communicating the confirmation of the membership of Ms. Nayan Bharti. Despite legal notices sent by the Petitioner, the RCS did not respond. It is in those circumstances that the present petition was filed.

9. In response to the notice issued in the petition, a counter affidavit has been filed by the RCS where *inter-alia* it is stated in para 9 of the affidavit as under:

“9. In reply to Para 9, it is submitted that as per the Directive dated 31.5.1984 issued by the office of RCS under Rule 77 of the DCS Rules, 1973, the draw of lots was to be carried out by society after verification of the membership by the Cooperative Department. Considering self draw by societies, the cooperative department framed a policy dated 2.2.1996 and 13.3.1996 thereby giving one time relaxation to the societies who have conducted self draw for its regularization. In present case, the society carried out self draw on 28.7.1996 which was subsequent to the aforesaid date and thus not covered by the said policy. Thereafter, no policy as such has been framed except in case of 26 societies which had also conducted the self draw.”

10. As far as Nayan Bharti is concerned, her case is stated to be standing on

a different footing as she was allotted the flat in a self draw prior to 13th March, 1996.

11. In the rejoinder filed to the said counter affidavit, it is pointed out by the Petitioner that the denial of the allotment to her is discriminatory. It is pointed out that two criteria as set out by the LG for granting confirmation of membership and the allotment were fulfilled as under:

“(i) Draws were held with the consent of all members and the outcomes were accepted unanimously. In the instant case of the Petitioner, this condition is fully met with. There is nothing on record to prove contrary.

(ii) No irregularity other than procedural has been alleged. The instant case of Petitioner was a single case in isolation. Therefore, the ingredient of no irregularity other than procedure is fully satisfied in the case of Petitioner.”

12. As regards the reference to the Circular dated 13th March, 1996, it is submitted that this did not create a permanent bar against future confirmation of membership “particularly when the newly enforced Act of 2003 makes liberal provisions to allow membership to buyers on the basis of GPA.”

13. This Court has heard the submissions of learned counsel for the parties. There does not appear to be much distinction between the case of the Petitioner and that of Ms. Nayan Bharti even from the counter affidavit filed by the RCS. The mere fact that the policy covers only such of the members who are allotted flats in the self draw prior to 13th March, 1996 is not denied by the Respondents.

14. During the course of hearing, it was submitted that the Petitioner missed the deadline of 13th March, 1996 by a few months. The Court considers this to be an insufficient justification for not according to the Petitioner the same treatment accorded to Nayan Bharti in whose case the membership was confirmed as was the allotment.

15. The Court is of the view that even though there is a slight delay as far as the Petitioner is concerned, it is not so substantial as to deprive her of the benefit altogether. Nevertheless, the Court clarifies that this is in the peculiar facts noticed hereinbefore and the decision of this Court shall not create a precedent.

16. A direction is issued to the RCS to now formally issue a letter to the DDA recognising the Petitioner's membership and allotment. This is to be done not later than four weeks from today.

17. The writ petition is allowed in the above terms but with no order as to costs.

S.MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 18, 2019

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