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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29.01.2019

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W.P.(C) 8992/2018

SH. VINOD KUMAR GUPTA

..... Petitioner

Through: Mr. Bhavtosh Sharma with Mr.
Yogesh Verma, Advs.

Versus

ROOPVILLA CGHS LTD. AND ORS.

..... Respondent

Through: Mr. Dhananjaya Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE YOGESH KHANNA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition to assail the order dated 15.05.2018 passed by the Delhi Co-operative Tribunal in Appeal No. 116/2013/DCT against the order dated 30.08.2013 passed by the Special Registrar of Co-operative Societies. By the said order dated 30.08.2013, the Registrar of Co-operative Societies had approved the expulsion of the petitioner and one Sh. Ankit Saxena, who were expelled from the membership of Roopvilla CGHS Ltd. under Rule 99 of the DCS Rules, 1999.

2. The Tribunal, by the impugned order, has dismissed the petitioner's appeal against the said order passed by the Special Registrar.

3. The submission of learned counsel for the petitioner, firstly, is that there was non-compliance of Rule 99(2) of the Delhi Co-operative Societies Rules, 2007. Evidently, this submission was not even raised by the petitioner before the Registrar of Co-operative Societies. Pertinently, the order dated 30.08.2013 records that no procedural infirmity has been alleged by the petitioner herein on the part of the society. Sub Rule (2) of Rule 99 requires the housing society to give final opportunity by publishing the notice in the leading Hindi and English newspaper in the National Capital Territory of Delhi before expelling a member, so as to inform him to remain present in person, or through the authorised representative, before the Registrar on the date fixed for final hearing.

4. It has been noticed by the Special Registrar, as well as by the Delhi Co-operative Tribunal, that the petitioner had adequate notice of the proceedings. He even participated in the proceedings in pursuance of the notice that he had. Not having raised the aforesaid issue before the Special Registrar or the Delhi Co-operative Tribunal, we cannot permit the petitioner to raise the said issue at this stage since it involves disputed questions of fact. In any event, the petitioner had notice of the proceedings which is evident from the two orders dated 30.08.2013 and the order dated 15.05.2018 – impugned herein.

5. The next submission of learned counsel for the petitioner is that the allegation against the petitioner was, inter alia, with regard to the enrolment of members in the Society unauthorisedly, and without complying with the provisions of the law. The submission is that the membership of those

enrolled members had been upheld by the Registrar of Co-operative and they have been made allotment of flats.

6. The Delhi Co-operative Tribunal, in the impugned order, has taken note of the award passed by the Arbitrator in the cases pertaining to the said enrolled members, relevant extracts of which have been set out in the impugned order itself.

7. A perusal of the impugned order shows that so far as the petitioner is concerned, his conduct as the President of the aforesaid co-operative society was found to be illegal, and the enrolment of the said members was found to be irregular. However, with a view to save the said members, who had invested their monies for allotment of flats, their claims were allowed subject to conditions – including payment of equalisation charges to the Society in addition to Rs. 25,12,510/- till the date of possession of the flats. The petitioner cannot seek to rely only on the fact that the membership of those newly enrolled members was protected by the Arbitrator. Since he places reliance on the Arbitral Award, he must also take with that conclusion, all the observations made by the Arbitrator in the said award which indicts him for his conduct.

8. The further submission of learned counsel for the petitioner is that the contractor was in league with the members of the present management. The contractor had applied his locks so that the records of the society are not released to the managing committee. He submits that the petitioner had no role to play in withholding of the records of the society. On this aspect as well, we find that the Tribunal has extensively discussed the factual position.

As a matter of fact, the SDM, Najafgarh had to pass orders on 25.08.2011 pursuant to which the records were retrieved by the management of the society.

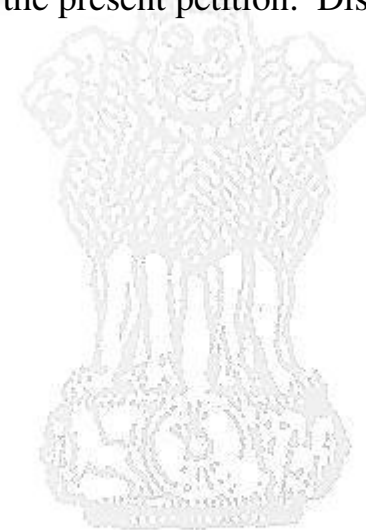
9. The submissions now sought to be advanced by the petitioner, to the contrary, are all factual. In judicial review, we are not called upon to determine the questions of facts on which the Special Registrar and the Delhi Co-operative Tribunal have already returned findings.

10. We find no merit in the present petition. Dismissed.

VIPIN SANGHI, J.

YOGESH KHANNA, J.

JANUARY 29, 2019
N.Khanna



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