* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 15.12.2023
% **Judgment delivered on: 06.03.2024**

\+ **W.P.(C) 12991/2019**

RAVI MOHAN KAUL ..... Petitioner

Through: Petitioner in person.

versus

STATE / GOVT OF NCT OF DELHI & ORS ..... Respondents

Through: Mr. Vanshay Kaul, Adv. for Mr. Sameer Vashisht, ASC (Civil), GNCTD
Ms. Prabhsahay Kaur, Standing Counsel with Mr. Bir Inder Singh Gurm, Adv. for DDA.
Mr. Neeraj Grover and Mr. Kashish Sethi, Advs. for R3.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J.

CM APPLN 60837/2023

1. This is an application filed on behalf of respondent No.3 society seeking condonation of delay of 07 days in filing reply to the Review Petition No. 217/2023.

2. For the reasons stated in the application, the application is allowed and the delay of 07 days in filing reply to the Review Petition No. 217/2023 is condoned.

REV PET 217/2023

3. This is a Review Petition filed on behalf of the petitioner under section 114 and Order XLVII Rule 1 of CPC read with Article 226 of the Constitution of India for review/recall of the order dated 22.02.2022 seeking grant of permanent membership of the Vasant Vihar Club (hereinafter referred to as the "Club") run by the Govt. Servants Co-operative House Building Society. By way of the present Review petition, the petitioner seeks the following prayers:

"a) Review/recall order dt 22.02.2022 passed In W.P.(C) :12991/2019 titled Ravi Mohan Kaul vs State &Ors and set aside malafide demand note of 26.11.2021 by R-3/Society for refundable security deposit of Rs24,750/- and fresh application from the petitioner as invalid since the petitioner at this stage is entitled to retrospective exemption for grant of permanent club membership.

b) Office of RCS be directed to have a forensic audit carried out on accounts of Society so as to ascertain if cause of action exists on appearing malpractices narrated @ para 14 which may involve misappropriation of public money by the past and present Secretaries.

c) impose exemplary costs on R-3 Secretary, Society for preparing documents with the sole objective of depriving the Petitioner his fundamental and statutory rights causing harassment, mental agony and inordinate delay to an eligible senior citizen member petitioner for his permanent club membership."

BRIEF BACKGROUND OF THE CASE

4. The petitioner is a resident of C-1/20, Ground Floor, Vasant Vihar, New Delhi-110057Respondent Nos.1 is the State and respondent No.2 is the Registrar, Co-operative Societies respectively. Respondent No.3 is the housing society (Govt. Servants Co-operative House Building Society) and respondent No.4 is Delhi Development Authority (hereinafter referred to as "DDA").
5. Mr. P.N. Kaul, the father of the petitioner was the absolute owner of the property bearing No. C-1/20, Vasant Vihar, New Delhi-110057(hereinafter referred to as "subject property").By virtue of the said ownership, Mr. P.N. Kaul was enjoying all the benefits of the respondent No.3 housing society. During his lifetime, he had executed a registered will dated 21.07.1997 thereby bequeathing the subject property to the petitioner and his elder brother (Mr. Hira Kaul), apart from giving life estate in the property to his wife, i.e the mother of the petitioner (Ms. Prabha Kaul).
6. The father and mother of the petitioner passed away on 24.08.1997 and 09.07.2012. After the death of his father, the petitioner filed a Probate

Petition being PC. No. 44/2014 in respect of will dated 21.07.1997, which was duly probated. The elder of brother of the petitioner also passed away on 13.03.2016, leaving behind his class I legal heirs.

7. After the demise of petitioner's father, mother and the elder brother, an application for transfer of membership rights, share and interest from father to the petitioner, was moved by the petitioner with the housing society (respondent No.3) on the grounds of inheritance. This application met with no response and hence, the petitioner filed W.P. (C) No.12991/2019 seeking the following prayers:

   "a) Issue of a writ , order or direction in the nature of Mandamus commanding the Respondent Nos.2 and 3 to grant the membership with voting rights, and transfer of interest in the Share Certificate No.3394 to the Petitioner alongwith access to social rights and full facilities, amenities, to the same extent as are usually provided in the club to other owner members of Respondent no. 3 and defined/outlined under Section 4(a to e) of Club Rules,2014 and Section II.3(3) of Society bye-laws,2015 respectively.

   b) Give orders for exemplary cost against the Respondent No. 3 as deemed fit for unnecessary harassment caused to the senior citizen Petitioner for its failure to act, and for their deliberate, intentional, illegal continuous, adamant stand for preventing the membership rights to the Petitioner."

8. The respondents filed a counter affidavit denying claims of the petitioner. On 05.02.2021, this Court directed respondent No.3 to pass a

resolution accepting membership of the petitioner and forward the same to DDA.

9. During the pendency of Writ Petition, the petitioner filed another C.M. No.9454/2022 seeking some other reliefs (reproduced in the order below).

10. *Vide* order dated 22.02.2022 (hereinafter referred to as the "impugned order"), this Court dismissed C.M. No. 9454/2022 and disposed of W.P. (C) No.12991/2019. The order reads as under:

> *"**C.M. No. 9455/2022***
>
> *1. Exemption allowed, subject to all just exceptions.*
>
> *2. The application stands disposed of.*
>
> ***C.M. No.9454/2022***
>
> *3. By this application, the petitioner seeks the following reliefs:*
>
> *"a) to provide Permanent Membership 0-3956 of the Club to the Petitioner without raising any demand note for security deposit as he is entitled to retrospective exemption.*
>
> *b) to provide an acknowledgment and their clear note for nominations made by the Petitioner and widow of his late brother*
>
> *c) impose penalty costs on R-3 Secretary/Society for causing deliberate and inordinate delay."*
>
> *4. The reliefs sought in this application, in our view, are beyond the scope of the writ petition.*
>
> *5. The application is, accordingly, dismissed leaving it open to the petitioner to pursue his remedies independently.*

W.P.(C) 12991/2019

6. Learned counsel for the respondent society states that a communication would be issued to the petitioner informing him of the nomination made by the petitioner being recorded in the records of the society. Let the said communication be issued within a week under recorded delivery.

7. With the passage of time, on account of several orders passed by us- which have been complied with by the respondent society, this writ petition stands satisfied. It is disposed of accordingly."

11. As per the petitioner, his prayers in the petition were not addressed in the order dated 22.02.2022, hence the petitioner has filed the present Review Petition.

GROUNDS FOR FILING THE REVIEW PETITION

12. The respondent No.3 has acted in a *mala fide* and arbitrary manner by not giving a well-reasoned order/letter dated 26.11.2021. The same is based on insufficient evidence and by adopting a biased and pick and choose policy. The order/letter dated 26.11.2021 reads as under:

"***Govt. Servants Co-operative House Building Society Limited***
Kalyan Kendra, 9, Paschimi Marg, Vasant Vihar, New Delhi-110057
Phone No. 26142366/26145229 Email:gschbsltd@gmail.com

Ref.No.C-1/20. *26.11.2021*

Mr. Ravi Mohan Kaul

Mrs.Hansi Kaul
Ms. Richa Kaul
Mr. Karam Kaul
C-1/20, Vasant Vihar,
New Delhi - 110057.

Sub: ***<u>Mutation of property No.C-1/20. Vasant Vihar</u>***

Dear Sir/ Madam,

Consequent to the mutation of the aforesaid property done by DDA vide their letter dt.08.04.2021 and subsequent amended letter dt.04.10.2021, and on your completion of formalities for admission as members of the Society, necessary changes have been carried out in the records of the Society. The sub-lease rights in the plot now stand in the joint names of Mr. Ravi Mohan Kaul, Mrs.Hansi Kaul, Ms.Richa Kaul and Mr. Karam Kaul.

Please collect the duplicate share certificate duly endorsed jointly in your favour from the Society office. In case, you are unable to do so please give an authorization letter to someone to collect the share certificate on your behalf. Excess amount of Rs.10/-, paid by you in cash for duplicate share certificate, is returned herewith, as there is only one share certificate issued against one property.

The enclosed form for Permanent (Owner) membership of the Vasant Vihar Club for restoration and change of your Club membership (0-3956) category may please be furnished.

Further, since, the amount of refundable security deposit has been enhanced from Rs.250/- (initially) to Rs.10,000/- and thereafter w.e.f 15.12.2020 to Rs.25,000/-, you are requested to please deposit an amount of ***Rs.24,750/-*** *by cheque in favour of* ***Govt.Servants Co-Operative House Building Society Ltd****, on account of additional security deposit after adjusting Rs.250/-, already paid, for restoration & change of your Club membership category.*

Thanking you,

Yours faithfully,

(Sumant Mathur)

Secretary

Encls:as above.

Copy to: GM, Vasant Vihar Club."

13. The Secretary of Society, during the proceedings in W.P. (C) 12991/2019, has remained silent through their counter affidavit on this issue of Club membership at prayer clause (b) of the main petition.

Hence to raise a demand letter for a refundable security of Rs. 24,750/- is in violation of rules and bye laws.

14. It is nowhere stated in the Club Rules of 2014 that for upgradation of Club membership, there has to be a fresh refundable security deposit or even a fresh application.

15. "Upgradation" is defined as only a change of form or character and there is no justification for holding that a fresh security deposit rule of year 2020 is applicable to the case of the petitioner. The demand of refundable security deposit from the petitioner who was already a Nominee Member for 17-18 years previously enjoying the same benefits is invalid and meant to harass the petitioner.

16. The seniority of an existing Nominee Member is simply convertible and eligible for upgradation under Rule 5(b) of Club Rules, 2014. It reads as under:

> *"**b) Nominee Member (NM)***
>
> *This category is for Nominee(s) of the Permanent Member (PM-O) excluding Resident Associate Members: first-degree blood relations, viz. father, mother, son(s), daughter(s), and grand-children [the erstwhile 'nominal Owner, 'green card' and 'blue card' members]. They may not yet own any plot or dwelling unit in Vasant Vihar/ Shanti Niketan, but have been nominated/sponsored by the Permanent Member, on approval of their application and payment of the prescribed fee. They would be eligible to change their category from 'Nominee' to*

'Permanent' membership after inheriting a plot or a dwelling unit and completing the formalities for the mutation of plot or dwelling unit as the case may be.

The surviving spouse of a Permanent Member's deceased son or daughter (till he/she remarries) may become a Nominee Member on condition that his/her application for membership is sponsored by the Permanent Member concerned on payment of the prescribed admission fee. Their continued membership is solely at the discretion of the sponsoring member, subject to approval of the Society.

Dependant Members (sons/daughters) will remain as such members until the age of 21 years. They can opt for Nominee membership between the ages of 21 and 25 years, after which daughters can remain Dependant members until they marry, while sons must compulsorily apply for Nominee membership to continue using the Club.

***Nominee Members do not have voting rights**."*

17. Despite petitioner's two representations dated 17/31 August 2018, the society did not move a resolution until this Court *vide* order dated 01.02.2021 directed them to do so. The orders passed in W.P.(C) 12991/2019 show that the petitioner could obtain the membership with the society only after intervention of this Court.

18. It is stated that all the above aspects have not been considered by this Court in passing the impugned order dated 22.02.2022.

REPLY ON BEHALF OF RESPONDENT NO.3 TO THE REVIEW PETITION

19. Mr. Grover, learned counsel for the respondent No.3 submits that members/joint members and their children/dependents are eligible to become members of the Club under various categories like Permanent Owner member, Nominee Member, Dependent Member, etc. He further submits that the membership of the Club can be availed by filing an appropriate application, depositing applicable refundable deposit, admission fee and paying further continuous applicable annual subscription year after year.

20. Learned counsel for respondent No.3 has also given a brief background as under:-

    i. The petitioner was granted a Nominee Membership of the Club in the year 1999 on the sponsorship of his mother. At that stage, the applicable admission fee and refundable security deposit was Rs. 250/- each. The petitioner had deposited Rs. 500/- towards availing of the benefits of the Club facilities without any voting rights, since Nominee Members are not entitled to vote. Hence, the petitioner was admitted as Nominal Members of the respondent No.3 society on deposit of Rs. 10/-.

    ii. On expiry of the mother of the petitioner who was the owner member of respondent No.3 society, the Nominee Club membership of the petitioner, sponsored by his mother became liable to be suspended. However, the Managing Committee of respondent No.3 society grants extensions to such Nominee Members to bring themselves on the record of DDA as legal heirs and maintain the membership up to 3 years. The Club membership of the petitioner was extended by the respondent No.3 society till the year 2018 as a special case. On account of non-completion of formalities for acquiring membership of the society, the Club membership of the petitioner was suspended in 2018.

iii. *Vide* order dated 09.03.2021 passed in the present Writ Petition, the DDA mutated the property jointly in the name of the petitioner and his sister-in-law/nephew/niece. Pursuant thereto, on requisite formalities being completed, a Joint Share Certificate was issued by respondent No.3and it was intimated to the petitioner *vide* order/letter dated 26.11.2021.

iv. Since the petitioner was now entitled to become Permanent Owner Member of the Club by virtue of such joint membership of the society, a fresh membership form was attached with the letter dated 26.11.2021. It was informed that as per the applicable fee structure w.e.f. 15.12.2020, the refundable security deposit had been enhanced to Rs. 25,000/- for all category of memberships. Thus, the petitioner was requested to pay Rs. 24,750/- after adjusting the earlier deposit of Rs. 250/- lying with the Club for restoration and upgradation of his Club membership from Nominee Membership to Permanent Owner Membership.

21. Mr. Grover states that upon the letter dated 26.11.2021 being issued, the petitioner again started raising grievances without realizing that irrespective of the fact that his Nominee membership stood suspended since 2018, every time a member seeks change in category of membership, he is required to pay applicable security deposit and the Managing Committee of the society had no discretion in exempting anyone from such requirement.

22. He further states that the grievance raised by the petitioner in CM No. 9454/2022 sought to expand the scope of the present Writ Petition and thus was rightly dismissed *vide* order dated 22.02.2022.

ANALYSIS/CONCLUSION

23. We have heard the petitioner-in person and learned counsel for the respondents.

24. It is a settled principle that the scope of Review is narrow and restricted. The scope of a Review has been clarified time and again:[1]

> "*20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
>
> *20.1. When the review will be maintainable:*
>
> *(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
>
> *(ii) Mistake or error apparent on the face of the record;*

[1] Kamlesh Verma v. Mayawati [(2013) 8 SCC 320]

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

> *(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
>
> *(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
>
> *(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

25. In the present case, the Writ Petition was originally filed seeking permanent membership of the respondent No.3 society and transfer of share certificate to the petitioner.
26. Pursuant to various orders passed by this Court, the DDA on 09.03.2021, mutated the property jointly in the name of the petitioner and his sister-in-law, nephew and niece.
27. On mutation of the property and on completion of requisite formalities, joint share certificate was issued to the petitioner by the respondent No.3 society *vide* letter dated 26.11.2021. Hence, the prayers as sought for in the original writ petition stood satisfied on this date.
28. Subsequently, the petitioner moved another application being C.M. No. 9454/2022 seeking to challenge the order/letter dated 26.11.2021 and more particularly, where the respondent No.3 society sought Rs. 24,750/- to be deposited by the petitioner for becoming a permanent owner member of the Club.

29. The Managing Committee of the respondent No.3 society independently runs a Club (Vasant Vihar Club) which is governed by its own independent rules. To become a member of the Club is purely optional for the members of the respondent No.3 society and membership/ joint membership of the respondent No.3 society only makes a member eligible for applying as a permanent owner member of the Club.
30. According to the Club rules, membership can be availed on deposit of applicable refundable security deposit and admission fee. Since the petitioner became eligible for Permanent Membership of the Club only after 09.03.2021 (when the DDA mutated the property in favour of the petitioner) and the rules of Vasant Vihar Club stood modified on 15.12.2020**,** according to us, there is no infirmity in the letter dated 26.11.2021 demanding Rs. 24,750/- for becoming eligible for permanent membership of the Vasant Vihar Club. The demand has been made as per the modified Club rules which were the rules applicable to the petitioner on the date of his eligibility.
31. Hence, we are of the view that the prayer in the Writ Petition was already satisfied and C.M. No. 9454/2022 was seeking to expand the scope of the Writ Petition. The same was duly recorded in the impugned order dated 22.02.2022.
32. Even otherwise, pursuant to the liberty granted in paragraph 5 of the order dated 22.02.2022, the petitioner filed a complaint against the respondent No.3 society before the learned Registrar of Cooperative Societies challenging the letter dated 26.11.2021.

33. The learned Registrar of Societies dismissed the complaint of the petitioner vide order dated 23.01.2023. The order of the learned Registrar of Societies is assailable before the learned Financial Commissioner by way of an appeal/ revision. Hence, the petitioner having chosen to exercise his right to challenge the letter 26.11.2021 and having failed, cannot maintain the present Review Petition.

34. In view of the reasoning given above, we are of the view that the petitioner has failed to demonstrate any grounds which would entitle him to seek review of the order dated 22.02.2022. The petitioner has failed to show that there is discovery of any new material or evidence which was not in his knowledge at the time of passing the order dated 22.02.2022. The impugned order was passed in the presence of the petitioner. The petitioner has further failed to show that the impugned order suffers from any material irregularity on account of a mistake or error apparent on the face of the record.

35. For the aforesaid reasons, we find no merit in the review and hence, the same is hereby dismissed.

(JASMEET SINGH)
JUDGE

(V. KAMESWAR RAO)
JUDGE

MARCH 06th, 2024/ st