

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

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Date of Decision: May 24, 2023

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W.P.(C) 1480/2017

BHARAT JAGRITI COOPERATIVE GROUP HOUSING

SOCIETY LTD.

..... Petitioner

Through: Mr. Rakesh Munjal, Sr. Advocate with
Mr. Ankur Arora and Mr. Lokesh
Kumar, Advocates and Mr. S. L.
Meena, Office Bearer Society.

versus

MAHA SINGH AND ORS.

..... Respondents

Through: Mr. Ranbir Singh Yadav and
Mr. Yogesh Yadav, Advocates for
Respondent Nos. 1 & 2.
Mr. Satyakam, ASC with Ms. Pallavi
Singh, Advocate for Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. This petition has been primarily filed with the following prayers:

*“(i) Issue a Writ/ Order or Direction in the nature of
Certiorari or any other appropriate Writ/ Order or
Direction for Quashing/ Setting aside the Order dated
04.06.2012 as passed by The Registrar Cooperative
Societies in Case No. RCS/023/08/CND: and
(ii) Issue a Writ/ Order or Direction in the nature of
Certiorari or any other appropriate Writ/ Order or
Direction for Quashing/ Setting aside the Order dated*

06.09.2016 as passed by The Court of Financial Commissioner in Case No. 288/2012.”

2. The learned Financial Commissioner has in his order dated September 06, 2016, stated as under:

“5. RCS in impugned order dated 04.06.2012 directed the society to transfer the membership of Late Shri Ram Singh Yadav to its legal heir as the society failed to justify the amount received from Late Shri Ram Singh Yadav as a loan. Before this Court petitioner society again tried to prove that the sum received from Late Shri Ram Singh Yadav was not for membership fee, cost of land or construction money but was a loan to the society. Society contended that R-2 and R-3 do not have any documentary evidence in support of membership of the society such as receipt of payment on account of admission fee, or share money or share certificate etc. But on its end society failed to produce any document regarding reason for taking loan from Late Shri Ram Singh Yadav, resolution for accepting the loan, loan agreement or interest paid/due on the loan amount. Moreover receipt No.1368 and 1511 dated 06.01.2001 and 27.05.2002 respectively issued by the society for receiving the amount as Land Money Deposit, not for the amount received as loan to society.

6. Considering the above facts, I do not find any reason, to interfere with the impugned order dated 04.06.2012. Accordingly, the revision petition is dismissed as devoid of any merit. No order to cost.”

3. Mr. Rakesh Munjal, learned Senior counsel appearing for the petitioner Society, has referred to Page No. 81 of the paper-book which is a revision petition, filed by the Society before the Financial Commissioner, more specifically, grounds ‘B’ and ‘D’, which read as under:

“B. Because the Registrar has miserably failed to exercise the jurisdiction vested in it. It is settled law that

as and when any person is enrolled as member of the society it is to be seen as to whether that particular time:-

(i) Whether there was any vacancy in the society and whether the procedure prescribed under Rule 24 of the DCS Rules, 1973 had been followed?

(ii) Whether any application has been moved for enrollment by such person?

(iii) Whether the procedure prescribed under rule 30 of the DCS Rules has been followed?

(iv) Whether the procedure prescribed under rule 30 of the DCS Rules has been followed?

(v) Whether any communication was made by the society to the concerned person conveying him with regard to acceptance of his application for enrollment as member of the society?

(vi) Whether the society had ever demanded any money including any share money and admission fee?

(Vii) Whether the concerned person i.e. Late Shri Ram Singh Yadav paid any amount towards admission fee and share money?

(viii) Whether the said Shri Ram Singh Yadav had annexed any receipt or receipt towards admission fee or any other amount?

In the instant case, the applicants/ respondent no.2 8,3 have failed to produce any receipts of any payment on account of admission fee and share money and therefore, it cannot be held that Shri Ram Singh Yadav have ever been enrolled as Member of the society.

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D. Because the Registrar - Respondent No.1 wrongly exercised the jurisdiction to entertain the application Annexure-P/2 as the same has already become time barred as per provision provided under Rule 30 (7) of DCS Rules, 2007. Even no application for condonation of delay has been moved.”

4. According to him, learned Financial Commissioner, except stating that Society has failed to produce any document regarding reason for taking loan

from late Sh. Ram Singh Yadav; resolution for accepting the loan; loan agreement or interest paid / due on the loan amount, has not dealt with the other grounds urged by the petitioner Society before the Financial Commissioner.

5. In other words, his submission is that the grounds in paragraphs 'B' and 'D' of the revision petition have not been dealt with. According to Mr. Rakesh Munjal, membership granted to Ms. Kavita Malhan was on the basis of her enrollment in terms of the application submitted by her on April 01, 2002, whereby she was issued a Share Certificate. She had also paid admission fee and share money. According to him, these aspects have not been considered by the learned Financial Commissioner.

6. We have heard Mr. Ranbir Singh Yadav, learned counsel appearing for respondent Nos. 1 and 2, who draws our attention to the receipts at page Nos. 405 & 408 for an amount of Rs.2,10,000/- and Rs.45,000/- respectively, which have been paid / deposited on January 06, 2001 and May 27, 2002 respectively, to contend that the deposits have been made as land money deposit, which surely depicts that the amounts deposited were for the membership of the Society.

7. We find from the impugned order that learned Financial Commissioner has not accepted the stand taken by the Society that the amount deposited was as a non-member. In any case, the grounds which have been urged by the petitioner Society have not been considered / dealt with by the learned Financial Commissioner.

8. Since, those grounds which have been urged would determine the

membership aspect of late Sh. Ram Singh Yadav, from whom respondent Nos. 1 and 2 are claiming rights, we deem it appropriate to set aside the order passed by learned Financial Commissioner and remand the matter back to the learned Financial Commissioner with further direction to decide the revision filed by the Society afresh after hearing the counsel for the parties within a period of two months from the date of first hearing, i.e. July 04, 2023, as an outer limit.

9. If, the Financial Commissioner is of the view that membership has to be granted to the predecessor in interest of respondent Nos. 1 and 2, which shall result in the transfer of membership in favour of respondent Nos. 1 and 2, the Financial Commissioner shall also consider the manner in which the benefit thereof can be bestowed to respondent Nos. 1 and 2, as it is the case of the petitioner Society that there is no flat/vacancy available.

10. It is made clear that all the contentions of the parties, both on facts and in law, are left open to be agitated before the learned Financial Commissioner.

11. Accordingly, we fix the date of hearing before the Financial Commissioner as July 04, 2023.

12. Petition stands disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 24, 2023/R