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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1346/2021 & CM APPL. 41730/2022, CM APPL. 58974/2023**

RAMAN KUMAR MEHTA

..... Petitioner

Through: Petitioner in person

versus

GOVT OF NCT THROUGH REGISTRAR CGHS & ANR.

..... Respondents

Through: Mr. Rishikesh Kumar, ASC, GNCTD
with Ms. Sheenu Priya, Mr. Atik Gill,
Mr. Sudhir Kumar Shukla and Mr.
Sudhir, Advocates for R-1

Mr. Rahul Madan, Advocate

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Date of Decision: 05th February, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present petition under Article 226 of the Constitution of India has been filed by an erstwhile tenant occupying Flat No. C-301 NPSC Society, Sector-2 Dwarka, New Delhi.

1.1 The Petitioner seeks a direction to the Respondent No. 2-Society to not charge (i) lift charges payable by a tenant at the time of shifting to the Flat (ii) separate lift charges other than maintenance charges during the period of occupation and (iii) higher maintenance charges from the tenants as compared to the owners.

2. The Petitioner, who appears in person states that he had taken the



subject Flat on rent vide agreement dated 22nd September, 2018 and was initially required to pay Rs. 5,000/- as lift charges for shifting to the Flat.

2.1 He states that the he was also liable to pay maintenance charges at Rs. 3,000/- per month to the Society. He states that subsequently, at the General Body Meeting held on 24th March, 2019, the monthly maintenance for owners/members was fixed at Rs. 2,500/- and for the tenants it was enhanced to Rs. 3,500/-.

2.2 He states that it was in the year 2019 that the he learnt about the differential charges of maintenance between owners/members and the tenants.

2.3 He states that the monthly maintenance charges have been further enhanced to Rs. 4,200/- by the Society with effect from 01st August, 2020. He states that the Society on 09th January, 2020 further communicated a revision of lift charges at Rs. 8,000/-. He states that the demand for lift charges separately from the maintenance charges is illegal as a lift is an essential service in a multi-storeyed Society.

3. Learned Standing counsel for Respondent No. 1-RCS states that as per Rule 102 (2) of the Delhi Cooperative Societies Rule ('DCS Rules'), 2007 ('Rules of 2007') the General Body of the Society is empowered to fix higher charges of essential services in respect of Flats which are let out by the owner/member and are in possession of the tenants.

3.1 He states that therefore, the Society is competent to fix the charges of the essential services (including lifts) in accordance with the Delhi Cooperative Societies Act, 2003 ('Act of 2003').

4. Respondent No. 2-Society has filed CM APPL. 58974/2023 to place



on record decree of possession dated 02nd August, 2023 passed by civil court against the Petitioner herein and in favour of the member/landlord, Mr. Abhishek Kumar.

4.1 It is stated that in pursuance to the said decree, the Petitioner herein has vacated the subject Flat.

4.2 Respondent No. 2 has challenged the locus standi of the Petitioner to maintain these proceedings after vacation of the tenanted flat and also considering the fact that he was merely a tenant.

5. We have heard the learned counsel for the parties and perused the record.

6. This Court is of the considered opinion that the issue of the authority of the Society to levy a higher rate of maintenance charge on tenants of a Flat in a cooperative Society is no longer res integra in view of the judgment of the Coordinate Bench of this Court in **Balraj Singh Malik v. Govt, of NCT of Delhi & Anr** passed in W.P.(C) 8302/2014 decided on 22nd December, 2014. The Division Bench after considering the provisions of the Act of 2003 and the Rules of 2007 conclusively held that the General Body of the Society is authorized to levy a higher rate of maintenance charge on tenants of the Flat. The relevant portion of the judgment reads as under:

“16. We repeat that no member of the Society has any grievance with such a decision. Rather, the members who have let out the flats joined / are deemed to have joined in taking the said decision. It is for the tenants of the said members to, if of the view that the rate at which they are paying the rent and at which they are required to pay the maintenance charges is not worth the facilities, amenities provided or the aggregate thereof is higher than the market rate, to quit the same. However, once the tenant has come into occupation of the property, he cannot be permitted to dictate qua the affairs of the Society. In fact, we had during the hearing, asked the counsel for the petitioner that if the petitioner is aggrieved from the said decision, the



remedy of the petitioner is to call upon his landlord who is a member of the Society to exercise his powers as a member and have the said decision reversed, if majority of the other members of the Society are willing for the same. The Supreme Court recently in **J.N. Chaudhary Vs. State of Haryana** (2014) 11 SCC 249 held that in judging the functioning of a Cooperative Society where the democratic process of election is adopted in pursuance to the Rule and a collective decision is taken by majority of the members of the entire body expressed in terms of a resolution passed by the General Body, then the same cannot be ignored and bypassed at the instance of handful of members. It was held that if a decision is taken by majority in terms of the Rule, it cannot be overruled by minority even on the ground of mala fide or fraud unless established through strict proof of evidence. It was reiterated that mala fide is always easy to allege but difficult to prove.

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20. Considering all the aforesaid factors, **we are unable to hold that the decision of the General Body of the respondent No.2 Society as permitted by the rules to levy a higher rate of maintenance charges on tenants of flats in Co-operative Society can be said to be inequitable.**

21. As far as the judgments cited by the counsel for the petitioner are concerned, we do not find the same to be having any application to the matter / issue at hand.

22. **Agricultural Market Committee and Kunj Behari Lal Butail** (supra) are on the proposition of essential legislative functions being non-delegable. The argument that the impugned part of Rule 102(2) is an essential legislative function and beyond the rule making power in Section 137(2)(zz) i.e. of making rules providing the guidelines for maintenance of essential services in a co-operative housing society. However the same ignores the other clauses of Section 137 which permit rules to be made qua the management of co-operative housing society (zy). Moreover, Section 88 under Chapter IX (supra) containing Special Provisions with respect to the co-operative housing societies vests the management of every co-operative society in its committee and Section 89 permits a co-operative society to from time to time with approval of the General Body frame regulations for maintenance. No limitation is placed on the power of the General Body in this regard and which is also indicative of there being no limitation on the right of co-operative society to levy higher maintenance charges on tenant vis-a-vis members.

23. As far as the reliance on **Amarendra Kumar Mohapatra** (supra) is



concerned, attention was invited to para 53 thereof, laying down the principles to be determined for judging equality. We have already hereinabove held that tenants cannot be said to be equally placed as members of a co-operative society in self occupation of their flats. The last three judgments are on the proposition of exercise of power, though prescribed to be exercised by making Regulations, without framing Regulations. We have already dealt with the said aspect hereinabove. The counsel, inspite of our prodding, could not state as to how the decision taken in the General Body meeting would not amount to framing Regulations.”

(Emphasis supplied)

7. In the above-said judgment, the Division Bench at paragraph 16 also took note of the fact that a tenant who finds the maintenance charges onerous is at liberty to quit the Flat or request the member/landlord to agitate the issue before the Society. We are of the considered opinion that in fact, a tenant has no locus standi to challenge the fixation of maintenance charges by the General Body of a Society. The right to challenge the decision of a General Body of a Society rests with the member/owner alone.

8. Moreover, in the facts of this case, as noted above, the Petitioner has ceased to be a tenant in the subject Flat and for this additional reason he has no subsisting interest in the reliefs sought in the present petition. Accordingly, we find no merit in the present petition and the same is dismissed. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 5, 2024/msh/sk

[Click here to check corrigendum, if any](#)