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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1530/2024 and CM APPL. 6359/2024, CM APPL. 6360/2024**

SH CHARANJIT GABA

..... Petitioner

Through: Mr. Anil Kumar Yadav, Advocate

versus

THE REGISTRAR COOPERATIVE SOCIETIES & ANR.

..... Respondents

Through: Mr. Udit Malik, ASC, GNCTD

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Date of Decision: 02nd February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India impugning the order dated 01st February, 2023 passed by the Delhi Co-operative Tribunal ('Tribunal') allowing the appeal filed by Respondent No. 2 Society by setting aside the award dated 05th October, 2010 passed by the Arbitrator in favour of the Petitioner.

2. Learned counsel for the Petitioner states that the Tribunal erred in allowing the appeal on the grounds of limitation in view of an earlier order dated 04th June, 2019. He states that, the minutes of the meeting dated 30th May, 1993 and the letter of resignation relied upon by Respondent No. 2



Society to allege that late Sh. Shanti Swaroop Gaba resigned, are forged. He states that the Tribunal failed to appreciate that the alleged meeting dated 30th May, 1993 was purportedly convened in contravention of the provision of Rule 65(3) of the Delhi Cooperative Society ('DCS') Rules, 1973 (as applicable on 30th May, 1993).

3. The Petitioner herein is the son of the original member late Sh. Shanti Swaroop Gaba. The original member passed away on 12th February, 1996. The Petitioner herein on 25th November, 2008 filed a claim petition under Section 70 of the Delhi Co-operative Societies Act, 2003 ('DCS Act') which was referred for adjudication under Section 71 of the DCS Act. The Respondent No. 2 Society opposed the claim petition on the grounds of limitation as well as on merits that the original member late Sh. Shanti Swaroop Gaba resigned from the membership in the year 1993 and accepted a refund of Rs. 40,000/- on 09th July, 1993. The claim petition was partly allowed by the Arbitrator upon a finding that though the status of late Sh. Shanti Swaroop Gaba was of a disinterested and a defaulter member, yet, he neither withdrew the membership nor was he expelled by the Society for default or for any reason. The Award of the Arbitrator is dated 05th October, 2010.

4. The Tribunal while allowing the appeal and setting aside the Award returned the following findings: -

- i. In view of Section 70(4)(a)(ii) of DCS Act, the claim raised in the petition could not have been filed beyond a period of six years. The concerned member having resigned prior to his death in 1996, the filing of the claim petition in the year 2008 is *prima facie* barred by



limitation and should not have been entertained.

- ii. The contention of the claimant that the resignation in the year 1993 relied upon by the Society are forged, and cannot be conclusively proved; as the said members or their successors appear to have made no contact with the Society up to the year 2008. The inaction of the claimant for 15 years weighed with the Tribunal to conclude that the concerned member had no concern left with the Chopra Co-operative Group Housing Society Ltd. ('Society').
- iii. Late Sh. Shanti Swaroop Gaba had not paid full amounts due towards his share as on the date of his resignation in 1993 and was therefore, a defaulter member.
- iv. In view of the law settled by this Court in several judgments¹, it is concluded that since the original member was a defaulter and the present claim had been made 15 years later, the said claim cannot be entertained as third-party rights have already been created.
- v. More specifically, in the case of the Petitioner, since he is a legal heir of late Sh. Shanti Swaroop Gaba and the death of the original member occurred prior to an allotment of the flat, it was held that in view of the judgment of this Court² no interest had devolved on the claimant to maintain the claim. It was held that no enforceable right or interest survived upon the claimant/Petitioner.

5. The Petitioner herein has alleged that a sum of Rs. 25,000/- was

¹ Anjuman CGHS Ltd. V. RCS & Ors., W.P.(C) No. 1064/2007, Modern CGHS v. RCS, 101 (2002) DLT 341.

² Gayatri Dey v. Mousumi Cooperative Group Housing Society, AIR 2004 SC 2271, Swayam Sidha CGHS v. Financial Commissioner, W.P.(C) No. 4209/2001, Manmohan Nath Puri v. Shri Madan Jha W.P.(C) 182/1990.



deposited by the original member late Sh. Shanti Swaroop Gaba in the year 1992 and an unspecified amount in cash. Late Sh. Shanti Swaroop Gaba passed away in the year 1996 and no claim was raised during his lifetime. The details of the deposit are completely vague and unspecific. The Petitioner has not disputed that in the year 2008 when the claim petition was filed third-party rights had already been created.

6. In view of the aforesaid facts and findings of the Tribunal, this Court finds that no grounds have been made out by the Petitioner warranting exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Petitioner in this writ petition, wants this Court to review the evidence which has been considered by the Tribunal for returning its findings as regards the tenability of resignation of late Sh. Shanti Swaroop Gaba in the year 1993. It is settled law that the Constitutional Court does not review the evidence upon which the Tribunal bases its findings. Even otherwise, this Court finds no infirmity in the conclusions drawn by the Tribunal. The Petitioner has been unable to explain the stoic silence maintained by him and the original member between 1992 and 2008 (for Sixteen (16) years) before agitating a claim for allotment. The Tribunal has returned a finding that the original member was a defaulter as on the date of his resignation and third-party rights have already been created. The findings of the Tribunal opining that the Petitioner cannot maintain the claim are in conformity with the law referred to in the impugned order and the Petitioner has been unable to point out any error in the inferences drawn.

7. Pertinently, though the impugned order of the Tribunal is dated 01st



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February, 2023, the present petition has been filed after an unexplained period of one (01) year on 24th January, 2024. This delay further evidences that the Petitioner is merely speculating in this claim looking for a windfall.

8. Accordingly, the present petition is without any merit and is dismissed along with application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 2, 2024/msh/sk

Click here to check corrigendum, if any