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

+ **W.P.(C) 2408/2024 and CM APPL. 9914/2024**

SMT SUNITA DATTA Petitioner

Through: **Mr. Rohit K. Modi, Advocate**

versus

THE SUKHI PARIWAR CGHS LTD & ORS. Respondents

Through: **None**

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Date of Decision: 19th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India seeking to quash the award dated 22nd September, 2014 passed by the Registrar ('Arbitrator') as well as orders dated 3rd April, 2019 and 14th September, 2023 passed by the Delhi Co-operative Tribunal ('DCT') upholding the impugned award to the extent that it rejects the claim of the Petitioner for membership of the Respondent No.1, Sukhi Parivar Co-operative Group Housing Society Ltd. ('Society').

2. The facts of the case to the extent relevant for the present petition are that Petitioner claims to be a member of the Respondent No.1, Society in pursuance to a resolution dated 9th September, 2022, having deposited a sum of Rs 2,16,000/- towards membership fee, share money and cost of land etc.



It is asserted that Respondent No.1, Society had issued a Share certificate no. 423- A on 17th January, 2023.

3. It is stated that the disputes arose in 2003, when Respondent No.1, Society forwarded the list of the members to the office of the Registrar for verification and draw of lot for allotment of flats, however, as the name of the Petitioner was not recommended, therefore, the Petitioner had filed arbitration case no. 2480/AR/ARB/2002-03 against the Respondent No.1, Society. The Arbitrator has disallowed the claim of membership of the Petitioner holding that the membership was granted in violation of the applicable law. The appeal filed against the said award has been dismissed by the DCT. However, both the Arbitrator and DCT have directed the Society to refund the amount deposited by the Petitioner with interest from the date of the issuance of the award passed by the Arbitrator.

4. Learned counsel for the Petitioner states that the Arbitrator and DCT failed to consider the documents i.e., the application on the prescribed form, affidavit dated 17th December, 2002, receipt towards deposit of payment of Rs. 2,16,000/- towards membership fee, share fee and cost of flat as demanded by the Society as well as the share certificate dated 17th January, 2003 issued to the Petitioner. He states that the cheque for a sum of Rs. 2,16,000/- was duly encashed by the Society. He fairly states that there is no demand notice issued by the Society to the Petitioner calling upon her to deposit Rs. 2,16,000/-.

5. He states that it is a matter of record that seven other members were admittedly enrolled subsequently in the year 2003 and were allotted flats. He states that in view of the order dated 4th April, 2006 passed in W.P.(C) No. 5945-46/2004, the allotments made in favour of the junior members ought to



have been cancelled and the Petitioner was entitled to an allotment. He states that the handing over of possession to the subsequent seven members i.e., Respondent Nos. 2 to 8 is illegal.

6. In the alternative, he contends that the direction issued by the Arbitrator and DCT in its order dated 14th September, 2023 awarding interest at 24% per annum yearly compounded from the date of the award should be modified and instead it be directed that the interest shall be payable from the date of deposit i.e., 16th September, 2002.

7. We have considered the submissions of learned counsel for the Petitioner and perused the record.

8. The Arbitrator and the DCT have returned concurrent finding of fact to the effect: (i) the membership of the Petitioner is not in accordance with the Delhi Cooperative Societies Act, 1973 ('DCS Act, 1973') and the Delhi Cooperative Societies Rules, 1973 ('DCS Rules, 1973') and the bye-law 5(i)(b) of the bye-laws of the Society; (ii) no letter of approval of the application for membership in favour of Petitioner as mandated under Rules 24(1)(ii) and 30 of the DCS Act, 1973 has been placed on record; (iii) the deposit of the cheque dated 16th September, 2002 for Rs. 2,16,000/- was made by the Petitioner of her own accord without receipt of any demand letter from the Society; (iv) the DCT held that the Petitioner appears to have deposited the cheque on the basis of any informal communication from an office bearer; (v) the minutes of the meeting of the alleged meeting dated 9th September, 2002 are not available nor the meeting finds any mention in the meeting register and therefore, the resolution dated 9th September, 2002 relied upon by the Petitioner is not supported by the record of the Society; (vi) the application for membership relied upon by the Petitioner is undated



and the affidavit making declaration on oath as mandated under the Rules of the DCS Act, 1973 and bye-laws of the Society to accompany the application is dated 17th December, 2002, in these facts, the application for membership could not have been considered at the meeting dated 9th September, 2002 (without the affidavit); (vii) the name of a member of the Society has to be entered in the membership register maintained by the Society under Rule 33 of DCS Rules, 1973; however, no such entry in the membership register with respect to the Appellant was shown to the DCT.

9. Thus, upon perusal of the record, the Arbitrator and DCT have returned the fact finding that the membership of the Petitioner herein was not in compliance with the DCS Rules, 1973 and the bye-laws of the Society. The Petitioner has been unable to show any error in the aforesaid fact findings. The Petitioner cannot seek reappraisal of the said fact findings in the writ jurisdiction. The anomalies noted by the DCT in the documents of the Petitioner with the record of the Society are not disputed.

10. The Petitioner admittedly deposited Rs. 2,16,000/- with the Society of her own accord without receiving any formal letter of demand. The Petitioner is also unable to explain the furnishing of the mandatory affidavit dated 17th December, 2002 after the alleged approval granting her membership on 9th September, 2002. The Petitioner has not disputed that the application for membership could not have been maintained without the affidavit/declaration as mandated under Rule 24 (i) of the DCS Rules, 1973. It is also admitted that no further payments were made by the Petitioner towards the allotment of flat.

11. We therefore find no infirmity in the award passed by the Arbitrator and the order of the DCT holding that the membership of the Petitioner was



not in accordance with law.

12. With respect to the alternate prayer of the Petitioner seeking direction for payment of interest on the deposit of Rs. 2,16,000/- w.e.f. 16th September, 2002, we find that no ground for interference is made out in the writ jurisdiction especially, in view of the fact that the Society had tendered the refund of the amount of Rs. 2,16,000/- to the Petitioner in the year 2007, vide cheque No. 210157 dated 27th February, 2007, however, the said cheque was not encashed by the Petitioner.

13. Accordingly, the present petition along with application is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 19, 2024/rhc/ms

Click here to check corrigendum, if any