



\$~26

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

+ **W.P.(C) 4423/2024**

SANKARA SUBBU

..... Petitioner

Through: **Mr. Tarun Kumar Agarwal, Advocate**

versus

REGISTRAR OF COOPERATIVE SOCIETIES AND ORS

..... Respondents

Through: **Mr. Udit Malik, ASC for GNCTD
with Mr. Vishal Chanda, Advocate**

%

Date of Decision: 22nd March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The Petitioner herein is a non-member resident of Delhi Hindustan Mercantile CGHS i.e., Respondent No. 3 ('Society').
2. The present petition has been filed seeking a direction to the Registrar Cooperative Societies i.e., Respondent No. 1 ('RCS') to act upon her complaints dated 25th February, 2021, 20th September, 2022, 08th October, 2022 and 07th July, 2023 with respect to her disputes with the Managing Committee ('MC') of the Society. The Petitioner further seeks a writ of mandamus to the RCS and Government of NCT of Delhi ('GNCTD') i.e., Respondent No. 2 to set up an online grievance redressal mechanism to



resolve disputes between the resident non-members and the MC of the Society.

3. It is stated that the Petitioner herein had initially in the year, 2011 purchased an apartment bearing no. A-31, Kailash Apartments ('Apartment') located in the Society, which has been transferred by her in favour of her daughter by gift. It is stated that however, the Petitioner is residing in the said Apartment as a non-member. It is stated that from the year 2021, the Petitioner herein has had conflict with the MC of the Society with respect to charges raised by them, which continue to remain unresolved.

4. Learned counsel for the Petitioner states that the office of the RCS is limited to receiving complaints and grievances only from the members of the housing societies. He states that persons similarly placed as the Petitioner who are though the residents of the Society, however being a non-member have no redressal mechanism against the demands of the MC of the Society. He states that the absence of this mechanism has resulted in neglect of a significant class of residents of the Society who are non-members.

4.1. He states that acknowledging the difficulty faced by the non-members, the Government of Maharashtra in partnership with Maharashtra State Cooperative Housing Federation Ltd. has launched an online portal by the name of '**Sahakar Samwad**' which is a dedicated online platform for receiving and resolving complaints. He states that this Court may similarly direct Respondent Nos. 1 and 2 set up an online platform.

5. Having heard the learned counsel for the Petitioner, we are of the opinion that the reliefs sought by the Petitioner are not maintainable.

6. The prayer (a) in the writ petition seeking a direction to RCS for adjudicating the complaints of the Petitioner is on her own showing not



maintainable as she is admittedly not a member of the Society. The Petitioner admits that under the extant law the RCS is responsible for receiving and adjudicating the complaints of members and not the non-members. We may note that the nature of disputes raised by the Petitioner in her representation dated 07th July, 2023 are with respect to the charges raised by the Society on each of the Apartment owner for the capital and revenue expenditure incurred by the Society for the upkeep of the complex. In view of the fact that the Petitioner's daughter is the owner and member of the Society in case of disputes with respect to the charges payable by each Apartment owner, the Petitioner's daughter has the remedy of raising the said issues in her independent capacity as the member. There is no explanation in the petition for the lack of initiative by the Petitioner's daughter who has the statutory right. It is therefore apparent that Apartment owner has a remedy but, in this case, the member has elected not to exercise it. The Petitioner therefore cannot maintain the direction sought at prayer (a) as there is no statutory duty of the RCS to receive and adjudicate claims of the resident non-members.

7. With respect to the prayer (b) seeking a direction to the RCS and GNCTD to set up an online grievance redressal mechanism between the Society and the resident non-members on the model adopted by the State of Maharashtra we are not inclined to pass any such direction. It ought to be kept in mind that to set up such an online grievance redressal portal, variety of factors will have to be considered by the administrative authorities and which could consequently necessitate amendments to be made to the extant law. We are of the opinion that the said relief by way of writ of mandamus is not maintainable. It is well-settled that the Court in exercise of its



jurisdiction under Article 226 of the Constitution has no power to issue a writ of mandamus to a legislature to enact a law on a particular subject in a particular manner. In this regard, it would be appropriate to refer the judgment of Supreme Court in ***V.K. Naswa v. Home Secretary, Union of India*, (2012) 2 SCC 542¹** which reads as under:

“7. In Mallikarjuna Rao v. State of A.P. [(1990) 2 SCC 707 : 1990 SCC (L&S) 387 : (1990) 13 ATC 724 : AIR 1990 SC 1251] and V.K. Sood v. Deptt. of Civil Aviation [1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907 : (1993) 25 ATC 68 : AIR 1993 SC 2285], this Court has held that the writ court, in exercise of its power under Article 226, has no power even indirectly to require the executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner. The courts cannot assume to themselves a supervisory role over the rule-making power of the executive under Article 309 of the Constitution. While deciding the said case, the Court placed reliance on a large number of judgments, particularly Narinder Chand Hem Raj v. UT, H.P. [(1971) 2 SCC 747 : AIR 1971 SC 2399], where it has been held that legislative power can be exercised only by the legislature or its delegate and none else.”

(Emphasis supplied)

8. The Petitioner has made a reference to the online portal set up in Maharashtra, however as is apparent the said online portal was the initiative of the Government of Maharashtra. Further as noticed above, under the Delhi Co-operative Societies Act, 2003 the resident non-member has no right to seek adjudication of its disputes by the RCS. In the absence of an

¹ (2012) 2 SCC 542



existing legal right in favour of the Petitioner, the direction seeking setting up of the online portal has no legal basis.

9. Accordingly, the present petition is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 22, 2024/hp/MG