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

+ **W.P.(C) 5594/2024 & CM APPL. 23072/2024**

RAKESH YADAV

..... Petitioner

Through: **Mr. R.S. Tomar, Advocate**

versus

**REGISTRAR CO-OPERATIVE SOCIETIES
& ORS**

..... Respondents

Through: **Mr. Divyam Nandrajog, Panel
Counsel with Mr. Jatin Dua,
Advocate for R-1**

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Date of Decision: 23rd April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. This petition has been filed seeking setting aside of the order dated 19th December, 2023, passed by the Financial Commissioner in Review Petition bearing Case No. 174/2022, order dated 08th September, 2022, passed by Financial Commissioner in Revision Petition bearing Case No. 337/2018 and the order dated 18th June, 2018 passed by the Registrar Cooperative Societies ('RCS') in Case No. 20/2013.
2. The RCS vide order dated 18th June, 2018, had dismissed the claim of the Petitioner herein holding that the membership no. 106 of Respondent No. 2 i.e., Om Satyam Cooperative Group Housing Society ('the society'),



standing in name of Respondent No. 3 herein is benami for and on behalf of the Petitioner. The RCS held that Respondent No.3 is a valid member against membership no. 106 in Respondent No.2 society. Subsequently, the revision petition and review against the revision petition filed by the Petitioner have been dismissed by the Financial Commissioner vide order dated 08th September, 2022 and 19th December, 2023 respectively, upholding the said order of the RCS.

3. It is the Petitioner's case that since the construction work for developing dwelling units in Respondent No.2 society was allotted to the company of Petitioner's brother, he was given an offer to take membership (benami) in the Society in the name of any third party. He states that he elected to nominate his employee i.e., Respondent No. 3, as a member of the Society to hold the membership benami for and on behalf of the Petitioner. The Petitioner claims that it was him, who made entire payments towards admission fee, share money, land cost and cost of construction of Respondent No.2 society and not Respondent No.3 herein. He claims that thus, the flat in Respondent No. 2 society should have been allotted in his name against membership no. 106 and not in favour of Respondent No.3.

4. Learned counsel for the Petitioner relies upon the finding of the Financial Commissioner in the order dated 19th December, 2023, at paragraph 11 to contend that the bank statements of the Petitioner and Respondent No. 3 clearly evidence that the monies used by Respondent No. 3 to make payment to the Society were all credited in his bank account by the Petitioner herein.



5. Having heard the learned counsel for the Petitioner, we find no merits in the present petition filed under Article 226 of the Constitution.
6. The Petitioner admits that the entire payment made to the Society for membership no. 106 was made from the personal bank account of Respondent No. 3. These payments include payments towards admission fee, share money, land cost and cost of construction. In view of this admission, the finding of the RCS and the Financial Commissioner upholding the membership of Respondent No. 3 does not merit any interference in this petition.
7. The contention of the Petitioner that the RCS should examine the source of the funds in the bank account of Respondent No. 3 held with ICICI Bank and Bank of Maharashtra is without any merit and has no basis in law. The satisfaction recorded by RCS on the basis of the bank statements of Respondent No. 3 held with ICICI Bank that all payments were made to the Society directly by Respondent No. 3 is in accordance with law.
8. On the contrary, the contention of the Petitioner that he made payments to Respondent No. 3 for acquiring the membership of Respondent No. 2 and towards the cost of the flat for the benefit of Petitioner, if accepted would mean that the pleaded transaction is a benami transaction. The Petitioner's claim to enforce any right in respect of the membership and the concerned flat is hit by Section 4(1) of the Prohibition of Benami Property Transactions Act, 1988. Thus, the RCS and the Financial Commissioner have rightly rejected the claim of membership and entitlement to a flat made by the Petitioner herein.



9. The Petitioner has relied¹ upon the bank statements of his accounts in Bank of Maharashtra, ICICI Bank and Axis Bank to assert that it was the funds transferred by him to the bank account of Respondent No. 3 which formed the basis of the consideration amount paid to the Society towards the membership and the flat. Though, there is no finding in favour of the Petitioner by the Financial Commissioner confirming that payments were indeed made by the Petitioner to Respondent No. 3, assuming the same to be correct, the only remedy available to the Petitioner is to file appropriate proceedings for recovery of the amounts advanced in accordance with law. However, the Petitioner cannot maintain a claim of ownership to the flat.

10. We, accordingly, find no merit in the present petition and the same is dismissed along with pending application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 23, 2024/msh/aa

Click here to check corrigendum, if any

¹ In the Review Petition bearing Case No. 174/2022