



2024:DHC:5803-DB



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

+ **W.P.(C) 11236/2022**

WING COMMANDER B.M. AGRAWAL (RETD.) & ORS...Petitioners

Through: Mr. Saurabh Upadhyay, Ms. Tavishi Jain, Ms. Hardika, Advocates for P-1.
Ms. Nitya Sharma, Advocate for P-2 & P-3.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ANR ...Respondents

Through: Mr. Karn Bhardwaj, ASC for GNCTD with Mr. Shubham Singh, Mr. Rajat Gata, Mr. Saurabh Dahiya, Advocates.
Mr. Anuj Dhir, Advocate for R3 Society.
Mr. Sonam Sharma, Ms. Riddhi Jain, Mr. Rehan Verma, Advocates.

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Date of Decision: 26th July, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking a writ in the nature of mandamus

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directing the respondents to regularize the allotment of flats to the petitioners through self-draw dated 5th January, 2005 in the Mandakini Co-operative Group Housing Society/respondent Society.

2. Petitioners claim that on 30th March, 2004, the then Managing Committee of the said Society held a meeting where applications of the present petitioners, i.e., Wing Commander B.M. Agrawal (Retd.) (petitioner no.1), Shri Anurag Marwah (petitioner no.2) and Smt. Shobha Marwah (petitioner no.3) alongwith Shri Dheeraj Kapoor, Shri Suresh Kumar and Shri Chander Kaul were considered and approved for membership and the details of the newly enrolled members were forwarded to the respondent no.1/Office of the Registrar of Cooperative Societies (RCS). Additionally, the Managing Committee resolved to deposit the necessary documents with respondent no.2/Delhi Development Authority (DDA), for allotment of flats with a request to hold the draw of lots, which was so held on 25th April, 2004.

3. It is stated that as the petitioners were not allotted flats in the draw so held by respondent no.2/DDA, on 5th January, 2005, a Special General Body Meeting was held by the then Managing Committee of the respondent Society wherein a self-draw was conducted to give memberships to the petitioners herein along with some other members. A letter was also sent to the respondent no.1/RCS on 21st January, 2005, apprising about the self-draw so conducted.

4. Subsequently, on 18th February, 2009, a Show Cause Notice was issued by the respondent no.1 to the then Managing Committee of the



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respondent society premised upon a complaint issued by one member of the Society to the respondent no.1 raising issues of mismanagement of the Society by the then Managing Committee, wherein it was also stated that some flats have been allotted to certain members without following the due procedure stipulated under the Delhi Co-operative Societies Act, 2003 (hereinafter referred to as “*the Act, 2003*”). Respondent no.1 disposed of the said Show Cause Notice dated 18th February, 2009 *vide* order dated 14th May, 2012, premised on the following twofold reasons: (i) that the Show Cause Notice was issued to the erstwhile Managing Committee and no member from the then Managing Committee is part of the present Managing Committee, and (ii) that the regularization of the self-draw conducted shall be subject to the final outcome of W.P.(C) No. 519/2012 titled “*Manohar Lal & Anr. Vs. The Registrar, Co-op. Group Housing Society and Ors.*” pending before this Court at the relevant time.

5. The said writ petition bearing W.P.(C) No. 519/2012 came to be disposed of *vide* order dated 5th May, 2015, passed by this Court thereby upholding the notification dated 17th October, 2011, issued by the Lieutenant Governor, NCT of Delhi, in exercise of the powers under Section 127 of the Act, 2003, giving a one-time exemption with regard to the self-draw conducted by the subject 26 Societies, from applicability of Section 77(1) of the Act, 2003.

6. Petitioners claim that pursuant thereto, three out of the eight members seeking regularization of their respective flats in the respondent Society approached this Court in W.P.(C) No. 9505/2019 titled as ***Chander***



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Kaul and Ors. Vs. Registrar of Cooperative Societies and Anr., which was allowed *vide* order dated 10th March, 2022, directing the respondent no.1 to regularize the flats allotted to the said three (3) members through self-draw in the event all the other requisite conditions of eligibility are met.

7. Thereafter, the petitioners claim that they approached the Lieutenant Governor, NCT of Delhi seeking his indulgence for regularization of allotment of flats through self-draw of the petitioners on the strength of the order dated 10th March, 2022, passed by this Court in W.P.(C) No.9505/2019. The representation of the petitioners dated 2nd April, 2022, was forwarded by the Lieutenant Governor, NCT of Delhi, to the respondent no.1 in order to take appropriate action. Thereafter, a letter dated 28th April, 2022, was issued by the respondent no.1 to the Managing Committee of the respondent Society seeking detailed comments of the Committee so that further action may be taken by the respondent no.1.

8. However, no action has been taken by respondent no.1 till date, constraining the petitioners to approach this Court by way of the present writ petition.

9. Mr. Saurabh Upadhyay, learned counsel for petitioner no.1 at the outset submits that it is an admitted position that a Coordinate Bench of this Court *vide* order dated 10th March, 2022 in W.P.(C) 9505/2019 titled as ***Chander Kaul and Ors. vs. Registrar of Co-operative Societies and Anr.*** allowed the petition in relation to persons similarly situated as the petitioners herein. He further submits that another Coordinate Bench of this Court in W.P.(C) 6379/2022 titled as ***Dheeraj Kapoor vs. Registrar of Co-***



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operative Societies and Anr., by relying on the aforementioned order dated 10th March, 2022, had extended the benefit of relief to the petitioner therein too. Learned counsel urges that all the eight (8) members i.e., the petitioners herein as well as the petitioners in W.P.(C) No. 9505/2019 and W.P.(C) 6379/2022 have identical cases for regularization and stand on parity with each other and thus, prays for same relief to be granted in favour of the petitioners herein.

10. To the assertion of disqualification of petitioner no.1 as alleged by the respondent Society in its impleadment application, learned counsel for petitioner no.1 submits that the membership which is in the name of petitioner no.1's spouse, Mrs. Shashi Agarwal in the Air Force and Naval Officers Cooperative Group Housing Society Ltd. solely belongs to the spouse and the same does not concern the petitioner in any manner whatsoever. He further urges that the same has been acquired by her with the help of her Stridhan and other inheritance received by her, and is therefore wholly self-acquired. It is submitted that the membership in the name of petitioner no.1's wife belongs to her only, and is not held as "*Benami*" by petitioner no.1. He submits that the petitioner no.1 being a qualified member, is entitled to the relief granted to similarly situated members.

11. Next, learned counsel argues that having given membership to petitioner no.1 as far back as in the year 2004; made allotments of flat thereafter; and supported endeavours to regularise the self-draw which petitioner no.1 was a part of, the respondent Society is estopped from



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objecting to the petitioner no.1's membership at this stage, after almost eighteen (18) years. He submits that in any case, additional grounds are being raised at this stage for cessation of membership under Section 87 of the Act, 2003. By referring to Proviso to Rule 100 of the Delhi Co-operative Societies Rules, 2007 (hereinafter referred to as "*the Rules, 2007*"), he submits that there is a legislative injunction against raising additional grounds for cessation of membership after a period of three (3) years, thus, the respondents are barred from challenging the membership of the petitioner no.1 after a long lapse of eighteen (18) years.

12. Ms. Nitya Sharma, learned counsel for petitioner nos.2 and 3 submits that the cases of petitioner nos.2 and 3 stand on a different footing as there is no allegation of disqualification against them. Being simpliciter cases of parity, she prays that benefit of the relief as granted to the petitioners in W.P.(C) No. 9505/2019 and W.P.(C) 6379/2022 be granted and a direction be passed for regularizing the memberships and allotment of flats in favour of the petitioners.

13. *Per contra*, Mr. Anuj Dhir, learned counsel for the respondent Society vehemently opposes the contentions of petitioner no.1 and submits that petitioner no.1 is already in occupation of and has obtained another membership in the name of his spouse, Mrs. Shashi Aggarwal in the Air Force and Naval Officers Co-operative Group Housing Society Ltd. He further states that petitioner no.1 has violated Rule 20(1)(c) of the Rules, 2007, which prohibits owning of a residential house or a plot of land for construction of residential house in any of the approved or un-approved



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colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of dependent children, on leasehold or freehold basis or on power of attorney or on agreement for sale. He thus submits that in view of such violation, the petitioner no.1 stands disqualified.

14. Mr. Karn Bhardwaj, learned counsel for respondent no.1 argues that the embargo under Rule 100 of the Rules, 2007 will not apply to the case in hand as the allotment so conducted by the respondent Society was done by an *ad hoc* self-draw, and not in consonance with the Act, 2003. He submits that the respondent Society *ex post facto* sought regularization of the allotment by filing a writ petition. Thus, petitioner no.1 is not entitled to raise the argument with regard to Rule 100 of the Rules, 2007. He also submits that once it is evident that the allotments conducted by the respondent Society were not in terms of the Act, the embargo under Rule 100 of the Rules, 2007 will not apply and a challenge can be laid against petitioner no.1 with regard to his disqualification due to violation of Rule 20(1)(c) of the Delhi Co-operative Societies Rules, 2007.

15. Learned counsel for respondent no.1 fairly submits that though the petitioners appear to be similarly placed as the petitioners in W.P.(C) No. 9505/2019 and W.P.(C) 6379/2022, yet, the Coordinate Bench of this Court in W.P.(C) 9505/2019 while passing the order dated 10th March, 2022, made a specific observation in para 11 that those cases were examined in the light of the facts and circumstances arisen therein and it was made clear that the said decision was taken in peculiar facts of those cases. As such, it



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would not constitute a binding precedent on respondent no.1. On this basis, learned counsel urges that the present case ought to be considered as per its own merits too. However, he submits that if the Court is inclined to pass the same directions in favor of the petitioners, an exemplary cost be imposed upon the petitioners for violation of Section 19 of the Act, 2003.

16. In rejoinder, Mr. Upadhyay, learned counsel for petitioner no.1 submits that despite the observations made in W.P.(C) 9505/2019, the Coordinate Bench of this Court in the case of ***Dheeraj Kapoor*** (*supra*) had indeed granted benefit of the same relief on the ground of parity. Learned counsel invites attention to Para 14 of the order dated 10th March, 2022 passed in W.P.(C) 9505/2019 whereby a cost of Rs. 1,00,000/- has been imposed upon the petitioners therein to be contributed in Prime Minister's Relief Fund, and to order dated 25th July, 2022 in W.P.(C) 6379/2022 whereby a cost of Rs. 65,000/- has been imposed upon the petitioner therein to be contributed towards the Victims Compensation Fund operated by the DSLSA. He prays for the same order to be passed qua the present petitioners as well.

17. This Court has heard the arguments of the learned counsel for the parties, considered the documents on record and examined the judgments referred to.

18. It is not doubted by learned counsel for the respondents that this Court had, in the cases of ***Chander Kaul*** (*supra*) and ***Dheeraj Kapoor*** (*supra*) directed the respondent Society to forward the cases of the petitioners therein to the respondent no.1/RCS for regularization. There



appears to be no challenge laid to those judgements. In fact, the same were implemented too. There is no dispute that the present petitioners are similarly placed residents of respondent Society and their draw of lots was also undertaken alongwith that of Chander Kaul and Dheeraj Kapoor. It would be apposite to extract the relevant paragraphs of the judgement of this Court in **Chander Kaul** (*supra*) hereunder:

“...12. In these circumstances, in our view, it would not be fair at this late stage to upset the petitioners and to require them to vacate the flats so that a fresh process for enrolment of members could be undertaken in compliance of Rule 19 of the Delhi Cooperative Societies Rules, 2007.

13. In our view, we can still create deterrence for non-compliance of Rule 19 in future by directing each of the petitioners to deposit costs, which would have a deterrent effect.

14. We direct the petitioners to forward to respondent Registrar of the Cooperative Societies, through their Cooperative Society all the relevant documents for verification of their membership in terms of the provisions of the Act and the Rules, as were enforceable on the date when they made the applications for their membership. In case, it is found that each of these petitioners were otherwise qualified to become members on the date when they made their applications by reference to the provisions of the Act and the Rules as they were operating on the date when such applications were made, the Registrar of the Cooperative Societies shall proceed to regularise the membership. However, before doing so the petitioners shall deposit the amount of Rs.1 lakh each in the Prime Minister's Relief Fund and shall also provide copies of the receipts while forwarding their applications for verification of their membership to the Registrar of the Cooperative Societies. The process of verification should be completed within six weeks of the relevant documents being forwarded by the cooperative societies.

15. The petition stands disposed of accordingly.”

19. Thus, so far as petitioner nos.2 and 3 are concerned, the respondent no.3/Society is directed to forward all the relevant documents to the



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respondent no.1/Registrar of Societies for verification of their membership in terms of the provisions of the Act and the Rules. In case it is found that petitioner nos.2 and 3 were otherwise qualified to become members on the date of their applications as per the Act and the Rules, the respondent no.1/RCS shall proceed to regularize their membership. However, petitioner nos.2 and 3 are directed to deposit a sum of Rs.65,000/- as costs with the “*Victims Compensation Fund*” constituted under Clause 3 of Delhi Victims Compensation Scheme, 2018 operated by the Delhi State Legal Services Authority (DSLISA), within four weeks from today and provide a copy thereof alongwith the application for verification of their membership to the respondent no.1/RCS. The process of verification shall be completed within six weeks of the relevant documents being forwarded by the respondent Society.

20. So far as the case of petitioner no.1 is concerned, learned counsel for respondent no.1/RCS and respondent no.3/Society had raised objections regarding violation of Section 87 of the Act, 2003 and Rule 20(1)(c) of the Rules, 2007. By way of an application bearing CM APPL. 37832/2022, the respondent Society sought impleadment under Order 1 Rule 10 read with Section 151 of CPC, 1908 which was allowed by this Court. Alongwith the said application, the respondent Society had filed certain documents viz. an affidavit dated 24th September, 2004 submitted by the petitioner no.1 to it, seeking membership. In the said application, the respondent Society has averred that on inspecting its records on 26th August, 2022, the Society found certain documents in the nature of affidavit of petitioner no.1 as well



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as his spouse indicating false declarations. The affidavit dated 7th August, 1996 was submitted by the petitioner no.1 indicating his membership no.384 in Air Force Naval Officers CGHS Ltd. deposing that at the relevant time, neither he, nor his wife, nor any of his dependant relations were members of any other Cooperative House Building/Group Housing Society in Delhi/New Delhi/Delhi Cantt. Petitioner no.1 further deposed that none of them owned either in full or in part, on leasehold or freehold basis, any plot of land or a house in Delhi/New Delhi/Delhi Cantt. It appears from a further perusal of the said documents that the said membership was transferred to the wife of petitioner no.1 on 12th September, 1996, according to the affidavit of the wife. While the membership was being held in the name of wife of the petitioner no.1 in Air Force Naval Officers CGHS Ltd., the petitioner applied for membership of the respondent Society in 2004. According to his affidavit dated 24th September, 2004 filed with the respondent Society, his membership number is 374. In the said affidavit too, the petitioner no.1 has given an identical declaration. This, *prima facie*, appears to be violative of the provisions of Section 87 of the Act, 2003 and Rule 20(1)(c) of the Rules, 2007.

21. Since in the present writ petition under Article 226 of the Constitution of India, disputed questions of fact cannot be either agitated or decided by this Court, we deem it appropriate to direct respondent Society to forward the application seeking regularization of membership of petitioner no.1 alongwith all the documents in its possession relating to the



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aforesaid facts as noted, to respondent no.1/RCS. The respondent no.1/RCS is directed to consider the eligibility or otherwise of the petitioner no.1 keeping in view all the relevant documents submitted by the respondent Society, within a period of six weeks from the date of receipt of such application in accordance with the Act and the Rules. In case the petitioner no.1 too is found eligible then costs of Rs.1,00,000/- be deposited with the “*Victims Compensation Fund*” constituted under Clause 3 of Delhi Victims Compensation Scheme, 2018, operated by the Delhi State Legal Services Authority (DSLISA), within two weeks from the date of order finding petitioner no.1 eligible for membership. A copy of the receipt of deposit of aforesaid cost be submitted with the respondent no.1/RCS before regularization is granted.

22. Needless to state that a reasoned order shall be passed by the respondent no.1/RCS *qua* the petitioner no.1. The respondent no.1/RCS is at liberty to decide the case of petitioner no.1 on its own merits. Petitioner no.1 is at liberty to raise all the contentions before the respondent no.1/RCS.

23. With the aforesaid directions, the petition stands disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 26, 2024/rl

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