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

+ W.P.(C) 15913/2023 & C.M.No.64093/2023

IFUNA CO-OPERATIVE GROUP
HOUSING SOCIETIES LTD.

..... Petitioner

Through: None

versus

THE REGISTRAR, CO-OPERATIVE SOCIETIES,
GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Satyakam, ASC for GNCTD.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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06.02.2024

1. None is present for the petitioner. Even on the last date of hearing, none was present for the petitioner.
2. Mr.Satyakam, learned ASC appearing for the respondent submits that the issue at hand is covered by the judgment of this Court in ***T.N. Haokip vs. Registrar, Co-operative Societies & Ors., 2022 SCC OnLine Del 1360.***

The relevant portion of the said judgment is reproduced hereinbelow:-

“9. A perusal of this affidavit would reveal that the only ground why the matter of petitioner is not being processed for clearance of membership and regularization of self-draw conducted by the Society is that the petitioner has failed to submit proof of residence of NCT of Delhi for a period of three years prior to applying for enrolment in Sapna Ghar CGHS Ltd./respondent No. 3-society for which memos have been given to him. This plea taken by the respondent No. 1 cannot be substantiated as the petitioner had become a member of respondent No. 3/society on 30th September, 2003 when the requirement of being a resident of NCT of Delhi three years prior to applying for enrolment was not there. It may be noted that before coming



into force of the Delhi Cooperative Societies Act 2003, which received the assent of the Hon'ble President of India on 3rd March, 2004 and came into force on 1st April, 2005 and the Rules framed thereunder were made applicable from 2007, various circular were issued which governed the allotment of the flat in group housing societies.

10. The first circular in this regard was issued on 18th May, 1990 which reads as under:

“No. F.47/1852/NGH/Coop.

Dated the 18.5.90

Circular

The Bye-Law 5 have been amended by substituting a new bye-law to read as under:—

5(1) Any person shall be eligible to be a member of the society provided;

(a) He, at the time of enrolment as a member, is domiciled in the Union Territory of Delhi or has been resident of the Union Territory of Delhi for two years or more. Provided that this condition will not apply to officers of All India Services and employees of the Central Government and Public Undertakings of the Central Government & The Delhi Administration.

It is hereby clarified that this amendment will apply to all pending cases also. All cases of approval of memberships may be dealt with accordingly.

(KS Mehra)

Registrar Coop. Societies”

11. As noted above, this circular exempts the Central Government and Public Sector Undertaking employees of the Central Government or the Delhi Administration from the condition of being the resident for two years or more of the Union Territory prior to applying for the membership. This circular was further modified by the next circular issued on behalf of the Registrar Cooperative Societies dated 16th December, 1992 which reads as under:—

“it has been decided by the Government of National Capital Territory of Delhi to discontinue the requirement of proof of residence for membership of cooperative group housing societies with immediate effect. The cases which have been detained only on account of this reason may be examined in the light of these orders. In future the requirement of proof of residence in Delhi for



clearance of membership of cooperative group housing societies will not be insisted upon.”

12. It may be noted that thereafter a further notification dated 22nd April, 1997 was issued by the Registrar Cooperative Societies in exercise of its powers under Section 97(1) of the DCS Act, 1973 whereby Clause IV was introduced by way of amendment in Rule 24 of the DCS Rules 1973. As per the said amendment, the requirement of being a resident of NCT Delhi, prior to applying for membership in Group Housing Society was re-introduced without any exception for the Central Government employees however the said notification was never gazetted and thus did not come into force.

13. During the arguments respondent no. 1 has further relied on a notification dated 5th December, 2001 which reads as under:—

“(TO BE PUBLISHED IN THE DELHI GAZETTE PART IV EXTRAODINARY)

*GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
(COOPERATIVE DEPARTMENT) NOTIFICATION*

*NO. F. 47/LEGAL/POLICY/COOP./92/2305-2316 DATED :
05/12/2001*

In exercise of the powers conferred under Section 88 of the Delhi Cooperative Societies Act, 1972, the Hon'ble Lt. Governor of the National Capital Territory of Delhi is pleased to exempt the operation of the condition of Model Bye-law No. 5(1) (a) during the period from 16.12.1992 to 22.04.1997 with regard to the proof of residence in respect of the members of Group Housing/House Building Societies.

By order and in the name of the Lt. Governor of the National Capital Territory of Delhi

*(N. Diwaker)
Special Secretary (Cooperation)”*

14. Since the notification dated 22nd April, 1997 was never gazetted and thus did not come into force, the notification dated 5th December, 2001 clarifying the notification dated 22nd April, 1997 cannot have any force. The Delhi Cooperative Societies Act, 1973 was repealed by the Delhi Cooperative Societies Act 2003 and received the assent of the Hon'ble President of India on 3rd March 2004, however, it came into force on 1st April, 2005 and the Rules thereunder were made applicable from 2007



which re-imposed the condition of being a resident of NCT Delhi prior to applying for membership in terms of Sub-Clause 6 of Rule 19(1).

15. As noted above, when the petitioner became a member of respondent No. 3/society i.e. on 30th September, 2003 the circular dated 16th December, 1992 was applicable as the notification dated 22nd April, 1997 was never gazetted and did not come into force. Further, the DCS Act 2003 and the Rules framed thereunder had also not come into force nor could the DCS Rules notified under the DCS Act 2003 could have been given a retrospective application. Thus, the rejection of the claim of the petitioner based on the requirement of being a resident of NCT of Delhi for a period of three years prior to applying for enrolment in the respondent No. 3/society, as being insisted by the respondent No. 1, is contrary to law.

3. Keeping in view the above, the present writ petition along with the application is dismissed on merits and the petitioner is directed to comply with the impugned order forthwith.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

**FEBRUARY 6, 2024
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