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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 12839/2024 & CM APPL. 53565/2024, CM APPL. 53566/2024

NEW ASHOKA COOPERATIVE HOUSE
BUILDING SOCIETY

.....Petitioner

Through: Mr. Sanjeev Sagar and Ms. Nazia
Parveen, Advocates.

versus

VEENA KUMARI & ANR.

.....Respondents

Through: Mr. Rakesh Khanna, Senior
Advocate with Mr. Vivek Kumar
Tandon and Mr. Mayank Tiwari,
Advocates for R-1.
Mr. Udit Malik, ASC, GNCTD with
Mr. Vishal Chanda, Advocate for R-
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Date of Decision: 12th September, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CAV 456/2024

1. Since learned counsel has entered appearance on behalf of caveator, caveat stands discharged.

W.P.(C) 12839/2024 & CM APPL. 53565/2024, CM APPL. 53566/2024

2. The present writ petition has been filed by the petitioner Society under Articles 226 & 227 of the Constitution of India seeking setting aside



of the order dated 5th July, 2024 passed by the Financial Commissioner in Case no.119/2021 and order dated 20th October, 2020 passed by the office of Registrar of Cooperative Society.

3. The facts germane to the present dispute are that one Mr. L.C. Gupta applied for and was granted membership of the petitioner Society *vide* Membership No. 133 w.e.f. 14th December, 1965. Subsequently, the said Mr. L.C. Gupta also applied for and acquired membership of another society, namely Preet Nagar Cooperative House Building Society (for short "*Preet Nagar CHBS*") *vide* Membership No. 81 in 1966 and was allotted Plot No. 124, Preet Vihar, New Delhi. As against the membership with the petitioner Society, he was allotted Plot No. B-31, Ashoka Niketan, Delhi.

4. It is stated that in the year 1978, Mr. L.C. Gupta applied for transfer of his membership in petitioner society to his nephew, namely, Mr. Ajay Kumar Gupta and executed an affidavit stating that neither he nor his spouse has any other membership in any other Cooperative Group Housing Society. It is stated that at the relevant time, Mr. L.C. Gupta had a membership in Preet Nagar CHBS which was concealed. It is claimed that *vide* letter dated 11th January, 1999, the respondent no.2/RCS cleared the name of Mr. Ajay Kumar Gupta (nephew) for allotment of subject plot in the petitioner Society alongwith three (3) others and had also further requested the Delhi Development Authority to hold draw of lots for allotment of plots to them. Subsequently, the subject Plot No. B-31, Ashoka Niketan was allotted in the name of Mr. Ajay Kumar Gupta on 25th May, 1999 which was also confirmed by respondent no.2/RCS. This was followed by execution of Conveyance Deed dated 26th November, 1999 in favour of Mr. Ajay Kumar Gupta.



5. On 10th April, 2000, Mr. Ajay Kumar Gupta sold the subject plot to Sheela Wati (Mother of respondent no.1/Veena Kumari). Upon a complaint against Mr. L.C. Gupta regarding holding of a dual membership and his false deposition before the petitioner Society, a vigilance enquiry was conducted. Consequently, the respondent no.2/RCS, *vide* letter dated 27th June, 2001, revoked the membership of Mr. Ajay Kumar Gupta. In pursuance thereto, Delhi Development Authority (DDA) *vide* order dated 8th October, 2001 cancelled the Lease Deed in favour of Mr. Ajay Kumar Gupta in respect of the subject plot.

6. Aggrieved by the same, Ms. Sheela Wati (Mother of respondent no.1/Veena Kumari) filed a writ petition bearing W.P.(C) 6606/2001 before this Court challenging the order dated 27th June, 2001 passed by respondent no.2/RCS. However, the said writ petition was dismissed by this Court *vide* order dated 7th September, 2006. The review petition against the said order was also dismissed by this Court *vide* order dated 23rd November, 2006. Thereafter, Ms. Sheela Wati preferred a Special Leave Petition before the Supreme Court which was later on converted to an appeal being Civil Appeal No. 8369-8370/2009. The said appeal was dismissed by the Supreme Court *vide* order dated 10th August, 2017.

7. After dismissal of the said appeal, in compliance with the order passed by this Court, the petitioner Society submitted a letter dated 11th January, 2018 indicating the waitlist members as on 27th July, 2017. Thereafter, the first waitlist member namely Ms. Saroj Kumari @ Saroj Khaneta approached the petitioner Society for allotment of subject Plot No. B-31, Ashoka Niketan, Delhi. Subsequently, all the documents filed by Ms. Saroj Khaneta with the petitioner Society were duly forwarded to respondent



no.2/RCS on 16th August, 2019 for verification of her membership and documents.

8. In the meanwhile, respondent no.1 approached the petitioner Society *vide* letter dated 26th December, 2018 for transfer of membership under section 91 of the Delhi Cooperative Societies Act, 2003 on the basis of Registered Will dated 11th July, 2008 allegedly executed by Ms. Sheela Wati in her favour. However, the petitioner Society *vide* letter dated 28th February, 2019 rejected the said request made by respondent no.1, in view of the orders passed by this Court and upheld till Supreme Court.

9. Against the said communication, respondent no.1 filed an appeal before respondent no.2/RCS wherein *vide* impugned order dated 20th October, 2020, the said appeal was allowed and the order dated 27th June, 2001 cancelling the membership of Mr. L.C. Gupta passed by the then RCS, was recalled. Aggrieved with the same, the petitioner Society filed a review petition before respondent no.2/RCS which was dismissed *vide* order dated 9th August, 2021. Thereafter, the petitioner Society filed a revision petition before the Financial Commissioner which was also dismissed *vide* impugned order dated 5th July, 2024 stating that since all the facts were not placed before this Court and no hearing was granted to Ms. Sheela Wati and also the fact that the law applicable at that point of time did not prohibit dual membership under Bombay Cooperative Societies Act, 1925, therefore the order dated 27th June, 2001 was rightly recalled by respondent no.2/RCS. Hence, the petitioner Society has filed the present petition.

10. Mr. Sanjeev Sagar, learned counsel for the petitioner at the outset draws the attention of this Court to the order dated 7th September, 2006 passed by this Court in W.P.(C) No. 6606/2001 and upheld by the Supreme



Court *vide* order dated 10th August, 2017 in Civil Appeal No. 8369-8370/2009, to submit that the issue regarding cancellation of membership of Mr. L.C. Gupta has been clearly settled way back in the year 2017. According to him, the dispute having attained finality, cannot be reagitated or reopened by the person claiming through the original member. Much less, could the respondent no.1 have reagitated the issue before respondent no.2/RCS. Learned counsel for petitioner further submits that the impugned orders passed by respondent no.2/RCS and Financial Commissioner are illegal and contrary to the orders passed by this Court and the Supreme Court.

11. It is submitted that once the membership of Mr. L.C. Gupta was cancelled by this Court and the same having upheld by Supreme Court in view of the false affidavits filed by him with the petitioner Society, the subsequent transfer of membership to Mr. Ajay Kumar Gupta and thereafter to Ms. Sheela Wati was also held to be illegal and cancelled.

12. Learned counsel for petitioner further submits that in the appeal filed by respondent no.1 before respondent no.2/RCS, no prayer for recall of orders passed by this Court and upheld by Supreme Court was made. In any case, he submits that respondent no.2/RCS as well as the Financial Commissioner had no authority to go beyond or contrary to the final order dated 10th August, 2017 passed by the Supreme Court. He submits that by disturbing the settled issue of law, respondent no.2/RCS and the Financial Commissioner have not only overreached their jurisdiction, but simultaneously caused grave prejudice to third party who is entitled for allotment of the subject plot.



13. On a query by this Court, learned counsel for the petitioner did not deny that dual membership was not barred as per the law applicable at that point of time under the Bombay Cooperative Societies Act, 1925. However, learned counsel for the petitioner, as an extension to his arguments, submits that no action was initiated against Mr. L.C. Gupta by respondent no.2/RCS, with regard to the membership as well as allotment made in his name by the other Society i.e., Preet Nagar CHBS and prays that if this Court is not inclined to set aside the impugned order of the Financial Commissioner, a direction be given to respondent no.2/RCS to initiate an action against Mr. L.C. Gupta or his beneficiary with regard to membership and allotment of plot by Preet Nagar Cooperative Society.

14. This Court has heard the arguments of Mr. Sanjeev Sagar, learned counsel for the petitioner Society, Mr. Rakesh Khanna, learned Senior Counsel with Mr. Vivek Kumar Tandon, learned counsel for respondent no.1 and examined the documents on record.

15. It is undisputed that so far as the first round of litigation is concerned, the *lis* was settled in favour of the petitioner right uptill the Supreme Court. The issue arising in the present writ petition is as to whether the respondent no.1, who is the legal heir of late Smt. Sheela Wati (purchaser of the subject plot from Mr. Ajay Kumar Gupta), could have initiated any action at all before the respondent no.2/RCS for the subject plot despite the finality attached to the previous litigation and settled by the Apex Court.

16. This Court notes that the previous round of litigation had commenced with order passed by respondent no.2/RCS cancelling the membership of Mr. L.C. Gupta and consequential revocation of allotment of subject plot in pursuance to a complaint and a vigilance inquiry report. This was predicated



upon the false affidavit stated to have been submitted by Mr. L.C. Gupta stating, *inter alia*, that he or his spouse did not have membership in any other Society at the time when the subject plot was being allotted. It was stated that Mr. L.C. Gupta had concealed the fact that at the relevant time, he had a valid and subsisting membership with Preet Nagar CHBS and thus was guilty of suppression of material facts and false deposition, leading to cancellation of membership and revocation of the subject plot. As a consequence, the lease deed in respect of the subject plot held and sold by his nephew, Mr. Ajay Kumar Gupta to Smt. Sheela Wati, late mother of the respondent no.1, was cancelled by the Delhi Development Authority. This was upheld by this Court and finally by the Supreme Court, premised upon the aforesaid undeniable fact.

17. In order to satisfy the conscience of this Court, the Court deems it apposite to appreciate the facts as placed before this Court in the previous litigation in W.P.(C) 6606/2001 which are extracted hereunder:

“ The present writ petition has been filed by the petitioner praying, inter alia, for quashing and setting aside the letter dated 27th June, 2001 issued by the office of the respondent No.1/Registrar, Cooperative Societies (for short ‘the RCS’) revoking the clearance of membership in respect of Mr. Ajay Kumar Gupta, respondent No.4 herein, conveyed vide earlier letter dated 11th January, 1999 for allotment of a plot by the respondent No.2 society (hereinafter referred to as ‘the respondent society’) on the basis of transfer of membership allowed by the respondent society vide resolution dated 30th April, 1978 and for declaring the petitioner to take a bona fide purchaser and owner of plot No.B-31, Ashoka Niketan, Delhi. The reason stated in the letter dated 27th June, 2001 for revocation of the membership of respondent No.4 was that the original member, one Mr. L.C. Gupta, a relative of the respondent No.4, from whom the membership was transferred in favour of respondent No.4 was holding dual membership contrary to and in violation of the provisions of the Delhi Cooperative Societies Act, 1972 and Delhi Cooperative Societies Rules, 1973.



2. The brief facts of the case, as admitted by both the parties, are that one Mr. L.C. Gupta was the member of Preet Nagar Cooperative House Building Society Ltd. vide Membership No.81, he was allotted plot No.124, Preet Vihar, New Delhi. While continuing to be a member of the aforesaid society, Mr. L.C. Gupta also became a member of the society vide membership No.133 with effect from 14th December, 1965 and he continued to be a member till 30th April, 1978. In the meanwhile, Mr. L.C. Gupta and his nephew, respondent No.4 approached the society with a request to transfer his membership in favour of the respondent No.4. Alongwith the request, he and respondent No.4 filed affidavits to the effect that they did not own any other plot or house in Delhi either in their names or in the names of their spouses and dependent children. Accordingly, the respondent society transferred the membership of Mr.L.C. Gupta in the name of his nephew, i.e. respondent No.4 which was also approved by the RCS and respondent No.3/DDA. As a result, respondent No.4 was allotted plot No.B-31, Ashoka Niketan, Delhi, measuring 166.66 sq.yards in a draw of lots held on 25th May, 1999. This was followed by execution of a perpetual Sub-lease deed dated 26th November, 1999 in favour of respondent No.4. Subsequently, a vigilance enquiry was initiated and as a result of the said enquiry, it was revealed that Mr. L.C. Gupta was holding dual membership of two house building societies, as stated hereinabove. Consequently, the impugned letter dated 27th June, 2001 was addressed by the RCS to respondent No.3 pointing out the violation of Rule 28 of the Delhi Cooperative Societies Rules, 1973 (for short 'the Rules') which prohibits dual membership and revoking the clearance of membership in respect of the respondent No.4.

3. In January, 2000, prior to the issuance of the impugned letter dated 27th June, 2001, the petitioner purchase the aforesaid plot No.B-31, Ashoka Niketan, Delhi from respondent No.4 for a consideration of Rs.3,50,000/-. The petitioner has also stated that necessary documents relating to transfer of the plot were executed by respondent No.4 in favour of the petitioner which included a general power of attorney and a Will and that possession of the plot was in fact handed over by respondent No.4 to the petitioner, pursuant to which the petitioner approached the MCD for obtaining an NOC for the purposes of sanction of building plans. The petitioner further stated that pursuant to the plot in question being assessed for the purposes of property tax by the MCD, the petitioner also deposited property tax and transfer duty vide receipts dated 4th September and 6th September, 2001 respectively. The counsel for the petitioner further submitted that the petitioner came to know about the revocation letter dated 27th June, 2001 issued by the RCS only by letter dated 24th September, 2001 addressed to her by respondent No.4 and immediately thereafter, she filed the present writ petition, in



which vide order dated 29th October, 2001, status-quo as to possession was directed to be maintained.”

18. It is clear from reading the aforesaid facts as noted in the judgment dated 7th September, 2006 passed in W.P.(C) 6606/2001 that this Court had proceeded on the basis that Mr. L.C. Gupta had become member of the petitioner Society subsequent to obtaining membership of Preet Nagar CHBS. However, the correct fact is that Mr. L.C. Gupta had obtained the membership of petitioner Society on 14th December, 1965 and of Preet Nagar CHBS on 11th August, 1966. Apparently, the membership in the petitioner Society was prior in time to that of Preet Nagar CHBS. Thus, it is clear that correct and true facts were not placed before this Court in W.P.(C) 6606/2001, resulting in passing of the judgement dated 7th September, 2006.

19. Upon the arguments of the learned counsel for the parties, this Court is of the considered opinion that having regard to the fact that, (i) incorrect facts were placed before this Court in W.P.(C) 6606/2001; (ii) the issue regarding no embargo upon holding dual membership under the Bombay Cooperative Societies Act, 1925 as well as Delhi Cooperative Societies Act, 1972 during the relevant period, was not subject matter of that litigation, the matter would require re-examination. It is also clear that even if one were to apply the embargo created by the amendments carried out to the Delhi Cooperative Societies Rules, 1973, particularly Rules 25 and 28, inserted *vide* Government Notification dated 6th August, 1997, to the facts of the case, it could, in the opinion of this Court, result in cessation of the subsequent membership obtained by Mr. L.C. Gupta. To make it clear, his membership of the Preet Nagar CHBS could be liable to be revoked/cancelled. If this reasoning is taken to be correct, then logically, the



membership of Mr. L.C. Gupta with the present petitioner Society is liable to be resurrected and the allotment of subject plot also be revived.

20. The record reveals that Mr. L.C. Gupta was granted membership with the petitioner Society in the year 1965 and had also obtained membership of Preet Nagar CBHS in the year 1966. The parties are *ad idem* on this. Moving forward, even if this Court were to take it as a settled fact that Mr. L.C. Gupta had submitted a false affidavit on 21st April, 1988, the question would be as to what should be the consequence of such malfeasance. In the opinion of this Court, ordinarily if an individual holds membership in two or more societies, the membership in the latter society ought to be the one which should be the casualty. Though, the false affidavit was submitted to the petitioner Society, yet, logically speaking, the cancellation of membership, if any, ought to be of Preet Nagar CHBS and not the petitioner Society. No doubt a person who has furnished false information in the form of an affidavit cannot be permitted to go scot free without any penal measure being inflicted, yet, in the considered opinion of this Court, the axe ought to fall on Mr. L.C. Gupta's latter membership in Preet Nagar CHBS and surely not the membership in the petitioner Society.

21. The aforesaid issue is no more *res integra* in view of the judgement of the Supreme Court in ***Jagdish Singh vs. Lt. Governor Delhi & Ors., 1997 (4) SCC 435*** wherein the provisions of Rules 24, 25 and 28 of the Delhi Cooperative Society Rules, 1973 as amended were subject matter of consideration. The relevant paragraphs of the same are extracted hereunder:

“7. A conjoint reading of the aforesaid provisions would make it clear that Rule 24 provides the conditions to be complied with by a person for being admitted as a member of a cooperative society. Rule 25 enumerates the disqualifications of a person for becoming a member of a cooperative society. Sub-clause (c) of Rule 25(1) deals with the



disqualifications of a person in case of a housing society, clause (iii) of Rule 25(1)(c) provides that if the said person or his spouse or any of his dependent children is a member of any other housing society then he cannot become a member of another housing society unless permitted by the Registrar. Sub-rule (2) of Rule 25 provides for a deemed cessation of a member in the event that member incurs any of the disqualifications mentioned in sub-rule (1) of Rule 25 with effect from the date of such disqualification. Sub-rule (4) of Rule 25 confers power to decide a dispute as to whether a member has incurred any of the disqualifications referred to in sub-rule (1). Rule 28 of the Rules confers power on the Registrar directing removal of an individual from membership of either or both of the cooperative societies when such individual has become a member of two cooperative societies of the same class. The short question that arises for consideration is whether a person who is a member of a housing cooperative society having incurred the disqualification under Rule 25(1)(c)(iii) on being a member of a subsequent housing society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. Bearing in mind the aforesaid rules of construction if sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the society pertaining to which disqualifications are incurred. A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two cooperative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the cooperative societies. If sub-rule (2) of Rule 25 is interpreted to mean the deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28



will not arise. If the interpretation given by the Registrar to sub-rule (2) of Rule 25 as well as the contention raised by the learned counsel for the respondents is sustained then the said sub-rule will be at loggerheads with Rule 28. On the other hand, if sub-rule (2) is interpreted to mean that the deemed cessation is in relation to the society in respect of which the person concerned incurs the disqualification then both sub-rule (2) as well as Rule 28 would have its play. Rule 28 in our considered opinion cannot be held to be otiose and must be allowed to have its full play. In this view of the matter the only way by which sub-rule (2) of Rule 25 and Rule 28 can be harmoniously construed is to construe sub-rule (2) to Rule 25 to mean that the deemed cessation of the person concerned from the membership of the society is the society in respect of which the disqualification was incurred. In the case in hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Cooperative Housing Society Ltd. as he could not have become a member of the said Society as he was already a member of Dronacharaya Cooperative Group Housing Society, and therefore, by operation of sub-rule (2) he would be deemed to have ceased to be a member of the Tribal Cooperative Housing Society right from the inception in November 1983 and not from the Dronacharaya Cooperative Group Housing Society.

8. Apart from the aforesaid harmonious construction of sub-rule (2) of Rule 25 and Rule 28, on a plain construction of Rule 25 also the same conclusion has to be arrived at. Sub-rule (1) disqualifies a person for admission as a member of a housing society if he or his spouse or any of his dependent children is a member of any other housing society. The disqualification in question obviously attaches to membership of the second society and has no connection with his membership of the first society. In view of the aforesaid embargo contained in sub-rule (1) to Rule 25, sub-rule (2) by its operation brings in the fiction of deemed cessation from the membership of such society from the date when the disqualification was incurred and such fiction of deemed cessation has nothing to do with the membership of the first society. This being the position, sub-rule (2) of Rule 25 when read with sub-rule (1) of the said Rule is not susceptible of a construction that the person concerned ceased to be a member of both the societies. In view of our aforesaid construction of sub-rule (2) of Rule 25, the conclusion is irresistible that the Registrar while passing the impugned order dated 23-2-1993 and the Lt. Governor while dismissing the appellant's revision by his order dated 25-8-1993 as well as the High Court in the impugned judgment dated 20-3-1996 committed gross error in holding that the appellant ceases to be a member of both the societies under sub-rule (2) of Rule 25. The aforesaid orders, therefore, are wholly unsustainable and cannot be sustained."



22. Resultantly, if this Court were to apply the ratio in *Jagdish Singh (supra)* to the facts obtaining in the present case, the membership of Mr. L.C. Gupta in Preet Nagar CHBS appears to be liable for cancellation. The ratio in the aforementioned judgment was also not brought to the notice of this Court in W.P.(C) 6606/2001.

23. Predicated on the above rationale, this Court unhesitatingly holds that the impugned order passed by the Financial Commissioner appears to be on sound footing and is accordingly upheld. Yet, at the same time, Mr. L.C. Gupta or persons claiming through him, cannot make a premium out of falsehood and must be met with legal consequences. Accordingly, this Court directs the respondent no.2/RCS to initiate appropriate proceedings against Mr. L.C. Gupta or persons claiming through him, regarding his membership, subsisting or transferred and the plot allotted thereunder in respect of his membership in Preet Nagar CHBS, in accordance with law, to be taken to its logical conclusion.

24. Accordingly, the present writ petition and applications are dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 12, 2024/rl