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

+ **CONT.CAS(C) 406/2013**

URMIL MITTAL

..... Petitioner

Through: **Mr. O.P. Gupta, Advocate**
versus

TAJOH TALOH

..... Respondent

Through: **Mr. Utkarsh Singh, Advocate for**
Mr. Santosh Kr. Tripathi, SC-
GNCTD
(M:9129829862,email:scgnctd@g
mail.com)

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Date of Decision: 20th February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present contempt petition has been filed alleging violation of the order dated 01st February, 2013 passed by the Division Bench of this Court in *Review Petition No. 193/2010, 195/2010, 218/2010 in W.P.(C) 3626/1991*.

2. Mr. O.P. Gupta, learned counsel appearing for petitioner submits that by way of aforesaid order, directions had been issued to the respondents to handover possession of a flat to one of the petitioners in the batch of matters, as it had been informed on 01st February, 2013 by the respondents to the Division Bench that Membership of one petitioner had been approved, while the Membership of the three other petitioners, was held to be disqualified.



3. Since no flat came to be allotted to the said petitioner, in whose favour Membership had been approved by the Registrar of Cooperative Societies, the present petition has been filed.
4. Per contra, learned counsel for respondent submits that by order dated 01st February, 2013, there were directions only with respect to supplying the copy of the order passed by the Registrar of Cooperative Societies ("ROCS"), wherein the three petitioners had been held to be disqualified. It is submitted that the said order has already been communicated to the petitioners.
5. Learned counsel for respondent submits that no false statement was given on behalf of respondent as recorded in the order dated 01st February, 2013, as the case of one of the petitioners, was still under consideration at that point of time.
6. He further submits that subsequently by order dated 29th July, 2013, which was in the nature of final order passed by the ROCS, Membership of all the four petitioners have been rejected. He further submits that against the order dated 29th July, 2013, the petitioners had filed an appeal before the learned Financial Commissioner. However, by order dated 03rd November, 2022, learned Financial Commissioner dismissed the appeal filed on behalf of the petitioners. He further submits that against the aforesaid order dated 03rd November, 2022 passed by learned Financial Commissioner, the petitioner herein has already filed a petition before this Court, being *W.P.(C) 7670/2023*.
7. I have heard learned counsel for the parties and have perused the record.
8. The order dated 01st February, 2013 alleging non-compliance of



which, the present petition has been filed, reads as under:

“CM No.1211/2013

1. Notice.

Learned counsels for the non-applicants who are present in court today, accept notice.

2. By this application, the Registrar of Cooperative Society has sought leave to place on record its consideration of the validity of membership of the petitioners. It is stated that three of the petitioners have been disqualified, while membership of one petitioner has been approved. We find that no copy of the order passed in that regard has been enclosed. No such order appears to have been served upon any of the parties.

3. The Registrar of Cooperative Society shall ensure service of a copy of this order on the petitioners; learned counsels representing the petitioners as well as counsels for the Society and the non-applicants within one week from today. Learned counsel for the petitioner submits that she does not accept the stand which has been taken by the Registrar of Cooperative Societies and that appropriate steps assailing the decision taken by the Registrar of Cooperative Society shall be taken in accordance with law. Liberty to do so is hereby granted.

4. This application further states that in view of the decision of the Registrar of Cooperative Society with regard to the membership of the petitioners, only one additional flat is required so as to accommodate the lone petitioner who has been found eligible and that steps to accommodate him would be taken by the Registrar of Cooperative Society. Undoubtedly, this position would depend on the outcome of the challenge that may be raised by those three petitioners whose membership has been rejected.

5. Be that as it may, inasmuch as only a factual narration has been given in this application, no adjudication thereon is necessary.

This application is disposed of in the above terms

6. We make it clear that we have not expressed any opinion on the merits of the position taken by any of the parties while recording this order on CM No.1211/2013 and we have not affected the rights of any of the parties eventually one way or another.

Review Petition Nos.193. 195 & 218/2010



7. *Learned senior counsels for the review petitioners submit that in view of the position taken by the Registrar of Cooperative Society in CM No.1211/2013, they do not press the review petitions and withdraw the same with liberty to take appropriate legal remedy in case they are aggrieved by the action and stand of the petitioners and the authorities in future.*

8. *Learned senior counsels for the review petitioners, on instructions of the review petitioner who are present in court today, submit that in case any additional costs are required to be paid towards the new construction, the same shall be apportioned and paid on pro rata basis between them and they shall bear the full costs thereof. The petitioner(s) who are found eligible for allotment shall not have to bear the burden of the additional costs. The review petitioners in Review Petition Nos.193, 195 & 218/2010 shall remain bound by this statement and shall be responsible for this payment. Let an undertaking in this regard be placed on record by the review petitioners within one week from today.*

9. *The review petitions stand disposed of in the above terms with liberty as prayed for while again making it clear that while passing this order, we have not vested any rights on the review petitioners. We have also expressed no opinion on the merits of the action of or the orders passed by the Registrar of Cooperative Societies qua the petitioners.*

CM Nos. 6119, 6120, 6121, 7101, 7102, 7103/2010, 8654-8656/2012

10. *In view of the review petitions having been disposed of, these applications do not survive for adjudication and the same are disposed of as such."*

9. A perusal of the aforesaid order clearly shows that no opinion had been expressed by the learned Division Bench on the merits of the position taken by any of the parties. Further, the learned Division Bench had clarified in clear terms that it had not vested any rights on the petitioners. Further, the only direction that was given by the learned Division Bench was to supply a copy of the requisite order passed by the ROCS to the petitioners. There was no other specific direction given by the learned Division Bench. Rather, on the submission of the petitioners



that only one additional flat was required so as to accommodate the lone petitioner who had been found eligible, the Division Bench had stated that the said position would depend on the outcome of the challenge that may be raised by the three petitioners whose Membership had been rejected.

10. However, by final order dated 29th July, 2013 passed by the Office of ROCS, it was held that all the petitioners were disqualified. Relevant portion of the order dated 29th July, 2013 issued by the Office of ROCS, Govt. of NCT of Delhi, reads as under:

“xxx xxx xxx

9. In compliance of the above said orders, a verification process was carried out by Shri G.P. Singh, the then Joint Registrar of Cooperative Societies (hereinafter referred as JRCS) in respect of each of the four petitioners wherein he gave personal hearing to the parties and also gave them full liberty to submit any documentary evidence(s) in their support. Based on the report of the JRCS, an application u/s 151 CPC was filed before the Hon'ble High Court, stating the difficulties/discrepancies in the membership claims of the petitioners, and also stating that based on the verification process conducted by the then JRCS, three of the four petitioners were disqualified. Regarding, the fourth petitioner (Smt. Darshana Devi), it is observed that the Section 151 CPC application at one place mentions that none of the four petitioners was eligible, whereas the concluding paragraph stated that the membership of Smt. Darshana Devi was valid, as the report of the handwriting expert was not found to be a sufficient evidence (by the then JRCS who conducted the verification process) to draw an adverse conclusion. The Hon'ble Court disposed of the matter vide orders dated 1/2/2013. The Hon'ble Court has inter-alia directed the RCS to serve and order on the petitioners and other concerned. The Court also observed that: “We make it clear that we have not expressed any opinion on the merits of the position taken by any of the parties while recording this order on CM No. 1211/2013 and we have not affected the rights of any the parties eventually one way or another”.

... ..



13. Accordingly, the membership of Smt. Darshana Devi stands ceased under the provisions of 41 (d) of the Delhi Cooperative Societies Act, 2003.

xxx xxx xxx”

11. This Court also takes note of the personal affidavit filed by the ROCS dated 24th March, 2017, relevant portion of which reads as under:

“xxx xxx xxx

13. That it is submitted that thereafter the records and the report of the Joint Registrar was carefully considered and a final order was passed on 29.07.2013 by the office of Registrar. Copy of the report and the order are annexed as Annexure R/2.

xxx xxx xxx”

12. It has also come to the fore that against the aforesaid order dated 29th July, 2013, the petitioners had approached the learned Financial Commissioner, wherein their appeal was dismissed by order dated 03rd November, 2022. Against the aforesaid order of the learned Financial Commissioner, the petitioners have already approached this Court vide W.P. (C) No. 7670/2023.

13. Therefore, this court is of the view that when substantial compliance has been made towards the order/judgment in contempt, no contempt can be attributed on the part of the respondents. Thus, in the case of *Bihar State Government Secondary School Teachers Association Versus Ashok Kumar Sinha and Others*, (2014) 7 SCC 416, Supreme Court has held as under:

“xxx xxx xxx

24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious disobedience of the orders, that the



Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out.

xxx xxx xxx”

(Emphasis Supplied)

14. In view of the aforesaid, this Court is of the considered view that no contempt of the order dated 01st February, 2013 passed in W.P.(C) 3626/1991 has been committed by the respondent.

15. Accordingly, the present contempt petition is dismissed.

MINI PUSHKARNA, J

FEBRUARY 20, 2024

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