



2024:DHC:8720-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment reserved on: 28.10.2024
Judgment delivered on: 12.11.2024

+ W.P.(C) 15180/2024, CAV 533/2024 & CM APPL. 63595-96/2024

SHRI PRIT PAL SINGH BHATIA ...Petitioner
versus

THE REGISTRAR COOPERATIVE SOCIETIES & ORS ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ravi Sikri, Senior Advocate alongwith Mr. R.K. Gupta, Mr. Deepank Yadav, Mr. Jagjit Singh Anand and Ms. Kanak Grover, Advocates.

For the Respondents : Mr. Sameer Vashisht, ASC (Civil), GNCTD alongwith Mr. Vedansh Vashisht, Advocate.
Mr. Mahendra Singh, Advocate for Respondent no.3/Society.
Ms. Shahana Farah and Ms. Sanna Harta, Advocates for R-4.
Mr. Arjun Syal and Mr. Raghuveer Kapur, Advocates for R-5.

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

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Article 226 of the

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Constitution of India seeking setting aside of an order dated 26th July, 2024 passed by the Financial Commissioner in Revision Petition No.327/2012 as well as an order dated 31st January, 2012 passed by the Assistant Registrar, office of Registrar, Cooperative Societies whereby the name of respondent no.5/Smt. Joginder Kaur was forwarded for holding the draw of lots for allotment. It further seeks a direction to respondent nos.1 to 4 to allot the plot in favour of petitioner on the basis of seniority and to maintain status quo in respect of Plot no.169, Guru Hari Kishan Nagar, New Delhi-110087.

2. The facts, shorn of unnecessary details and germane to the issue at hand, are as under:-

- (a) It is the case of the petitioner that the mother of the petitioner, namely, Smt. Surjeet Kaur had applied for membership and allotment of a plot with respondent no.3/Hindustan Cooperative House Building Society (for short 'Society') on 30th September, 1973. Smt. Surjeet Kaur was enrolled as a member on 23rd November, 1973 and her name was kept in the waiting list. It is further stated that the requisite charges on account of share money were deposited *vide* Receipt no.1185 dated 23rd November, 1973. It is claimed that on account of non-deposit of payment by her towards the plot in 1974, the share money of Rs. 100/- paid on 23rd November, 1973 was returned to her by the respondent no.3/Society on 22nd March, 1980. It is claimed that this amount



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was not accepted by Smt. Surjeet Kaur. The petitioner claims that in pursuance of the direction of the Managing Committee *vide* Resolution dated 12th September, 1981, to pay land money for a plot of 125 sq.mts., admission fee, share money and interest thereon w.e.f. 1st February, 1974, Smt. Surjeet Kaur had deposited the said payments on 29th October, 1981, 10th November, 1981 and 30th January, 1982. Subsequently, the membership of Smt. Surjeet Kaur was transferred in the name of petitioner, sometime in the year 1982.

- (b) It is stated that in compliance with the Resolution dated 6th January, 1996, the Managing Committee/Secretary of the respondent no.3/Society sent a letter dated 22nd May, 2000 to respondent no.1/Registrar, Cooperative Societies (for short 'RCS') thereby fixing the seniority of the waiting list members, wherein the name of the petitioner was shown at S.No.1 and the name of the respondent no.5/Smt. Joginder Kaur was shown at S.No.5.
- (c) On 31st January, 2012, the Assistant Registrar, office of RCS forwarded the name of respondent no.5/Smt. Joginder Kaur for allotment of plot through a mini draw. It is alleged that the then Administrator, on account of extraneous consideration, got a plot allotted in the name of respondent no.5/Smt. Joginder Kaur, by ignoring the seniority list prepared by the Managing Committee and stated to have been approved by the RCS. Though the



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petitioner had challenged the said allotment in favour of respondent no.5 by way of W.P.(C) No.3800/2012, the same was dismissed on 10th September, 2012 directing him to avail the remedy of filing a revision before the Financial Commissioner.

- (d) Pursuant thereto, a Revision Petition No.327/2012 was filed before the Financial Commissioner. On 13th December, 2022, the matter was heard and the parties were directed to file their written arguments, which were filed by the petitioner. The matter was adjourned to 23rd February, 2023 for the pronouncement of order. It is claimed that no orders were passed since the police report from the Crime Branch was not received by then. Subsequently, on 4th April, 2024, the Crime Branch, Delhi Police through the Assistant Commissioner of Police (for short 'ACP') filed an Inquiry Report dated 22nd March, 2024 as directed.
- (e) The matter was thereafter listed on 10th May, 2024 when the Financial Commissioner had recorded that the petitioner was unable to lead arguments and the matter was reserved for orders and adjourned to 26th July, 2024 for pronouncement. It is claimed that the counsel for the petitioner was suffering from fever and thus unable to appear before the Financial Commissioner to address arguments on 10th May, 2024. It is claimed that only a proxy counsel had appeared on behalf of the petitioner on that



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day.

(f) The impugned order was pronounced by the Financial Commissioner on 26th July, 2024, *inter alia*, dismissing the revision petition on merits. It is claimed that the said order was passed in violation of the principles of natural justice. Hence, the present petition.

3. Mr. Ravi Sikri, learned senior counsel for the petitioner at the outset stated that the mother of the petitioner, Smt. Surjeet Kaur, had admittedly been enrolled as a member of respondent no.3/Society on 23rd November, 1973. In support thereof, he relied upon the Receipt no.5195 claimed to have been issued on 23rd November, 1973. He stated that for certain reasons, payment on account of the advance towards the cost of plot could not be deposited, resulting in the share money of Rs.100/- being returned to the mother of the petitioner on 22nd March, 1980. He contended that subsequently, *vide* Resolution dated 12th September, 1981, Smt. Surjeet Kaur was directed to pay a sum of Rs.4760/- on account of land money, Rs.10/- as admission fee and Rs.100/- as share money along with interest of Rs.4430/-. He stated that all the payments as directed were deposited on 29th October, 1981, 10th November, 1981 and 30th January, 1982. He further stated that Smt. Surjeet Kaur transferred her membership in the name of the petitioner which was granted by respondent no.3/Society, on which a sum of Rs.500/- was charged as transfer fee. A sum of Rs.4850/- lying deposited in the account of the



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mother was also transferred to the account of the petitioner.

4. Mr. Sikri, learned senior counsel for the petitioner contended that by virtue of the fact that Smt. Surjeet Kaur had deposited the land money, admission fee and share money along with interest, the membership of the petitioner has to be reckoned with effect from 23rd November, 1973 and not from the date of payment i.e., 10th November, 1981. He contended that on 22nd May, 2000, the respondent no.3/Society had come out with a waiting list of membership as per seniority wherein the petitioner figured at S.No.1 of such list and respondent no.5/Smt. Joginder Kaur was shown much below the petitioner. He contended that in such a situation, it was not permissible for any of the authorities to have over-ridden the seniority of the petitioner and thus, the process of allotment in favour of respondent no.5 is illegal, unlawful and ought to be set aside.

5. Learned senior counsel for the petitioner vehemently contended that the moment the amounts as directed were paid by the mother of the petitioner in the year 1981, the petitioner's membership ought to be construed from the date of original application seeking membership dated 30th September, 1973. So construed, he contended that the petitioner would obviously be at S.No.1 in the waiting list, since admittedly, respondent no.5 had been enrolled as a member only on 4th December, 1973. For the said proposition, he relied upon the judgment of the Division Bench of this Court in ***S.K. Gambhir vs. Union of India & Ors,***



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W.P.(C) 1116/1984, dated 11th August, 1986. According to learned senior counsel for petitioner, this Court in **S.K. Gambhir** (*supra*) held that it is not the date of deposit of money which would be a relevant factor, but the date when the application is submitted that would govern the seniority list of the members. Relying on the said judgment, he strenuously contended that by applying the said ratio, the membership of Smt. Surjeet Kaur ought to be construed w.e.f. 30th September, 1973, or at best, it should be from 23rd November, 1973 when the share money of Rs. 100/- was deposited *vide* Receipt no.5195. Additionally, relying on the aforesaid judgment, he forcefully argued that on the same basis, the deposit of land money, admission fee and share money with interest thereon in the year 1981 by Smt. Surjeet Kaur would not be reckoned to be the date of acceptance of her membership. In other words, even if the petitioner had failed to deposit the land money in the year 1974, the deposit of the same in the year 1981 coupled with restoration of membership would relate back to the date of submission of the original application of Smt. Surjeet Kaur.

6. That apart, learned senior counsel for the petitioner contended that the principles of natural justice were violated in the present case. Dilating on the argument, he contended that counsel for the petitioner was unwell on 10th May, 2024, yet without affording an opportunity to address arguments, the Financial Commissioner had passed the impugned order on 26th July, 2024. He contended that quasi judicial authorities and

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administrative authorities are under an obligation to afford proper and complete opportunity of hearing to the parties before rendering their decisions, lest the same violate the principles of natural justice. In the present case, the principles of natural justice having been violated, the impugned order ought to be set aside and the matter remanded back to Financial Commissioner for a *de novo* hearing on merits.

7. Learned senior counsel for the petitioner also submitted that a copy of the police report submitted by the ACP, Crime Branch, Delhi Police was never furnished to the petitioner. He stated that the allegations of forgery and fraud having been committed by the petitioner are wholly untrue and not borne out from the records. He contended that the investigating officer of the Crime Branch, Delhi Police never interviewed or sought any clarifications from the petitioner, rendering the said report unilateral and one-sided. Here too, according to him, the principles of natural justice were violated. He contended that this is a classic case of condemning a person unheard. He prayed that the writ petition be allowed and the action impugned be quashed and set aside. He further prayed that the petitioner be allotted the plot in place of respondent no.5/Smt. Joginder Kaur.

8. *Per contra*, Mr. Arjun Syal, learned counsel for respondent no.5/Smt. Joginder Kaur vehemently opposed the submissions addressed on behalf of the petitioner. He contended that the entire edifice of the case of the petitioner is built upon lies, falsity, fabrication of documents



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and fraud. He pointed out to the receipt (typed copy) as well as the daybook maintained by respondent no.3/Society placed on record by the petitioner and other relevant documents to substantiate his argument that the petitioner committed forgery, which has been fully investigated into by the Crime Branch and a scathing report has been filed by the said Crime Branch. He invited attention to the Inquiry Report of the Crime Branch dated 22nd March, 2024 placed on record and painstakingly read through the same. He also pointed out the observations of the Financial Commissioner to submit that in the impugned order too, the Financial Commissioner after examining the records of the respondent no.3/Society as also the Inquiry Report of the Crime Branch, concluded that as on 24th November, 1981, the respondent no.5/Smt. Joginder Kaur figured at S.No.7 and Smt. Surjeet Kaur figured at S.No.16 on the waiting list drawn on that date. He contended that once the investigating authority as also the fact finding authorities came to a firm conclusion on the seniority position, this Court under Article 226 of the Constitution of India would not interfere in such findings of fact.

9. That apart, he contended that Receipt no.5195 was never issued in the name of Smt. Surjeet Kaur but in the name of one Ms. Vidya Bhatia. In order to substantiate this, learned counsel for respondent no.5 drew attention to the daybook maintained by respondent no.3/Society. He claimed that Smt. Surjeet Kaur was only a transferee of Smt. Vidya Bhatia and not the original applicant. He also contended by drawing



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attention to the Inquiry Report wherein it is noted that as per voucher no. 850 dated 20th February, 1974, membership was transferred by Smt. Vidya Bhatia in favour of mother of the petitioner, Smt. Surjeet Kaur.

10. Learned counsel for respondent no.5 further stated that the petitioner was issued a notice by the Crime Branch to which the petitioner filed his reply enclosing documents which were considered by the Crime Branch. According to him, the submission that the petitioner was not afforded an opportunity to place his explanation or defence before the Crime Branch is contrary to the records. Similarly, he also contended that the petitioner had not been appearing before the Financial Commissioner on a number of occasions and as such, the Financial Commissioner was constrained to pass the impugned order. He also submitted that the Financial Commissioner had taken into consideration the written submissions filed by the petitioner and consequent thereto, the impugned order was passed. Thus, according to him, there was no violation of principles of natural justice. On the said basis, learned counsel for respondent no.5 prays that the present writ petition be dismissed with heavy costs.

11. This Court has heard the arguments addressed by learned counsel for the parties, minutely scrutinized the record and considered the judgment relied upon by the petitioner.

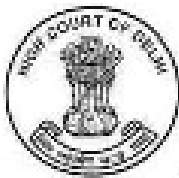
12. Before advertng to the arguments rendered by the parties, it would be expedient to note that while verifying the claim of the petitioner for

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allotment, it was found that some of the documents had been manipulated. Upon conducting the proceedings under Section 61 of the Delhi Cooperative Societies Act, 1973, conclusions were rendered by the Joint Registrar (for short 'JR') which are reproduced hereunder:-

“the receipt no.5795 vide which the petitioner claiming his membership in the name of Surjeet Kaur, his mother is missing from the copies of the receipt book being maintained by the society. Besides the receipt being shown by petitioner no. 5195 is dated 23.11.1973 whereas the receipt nos. in the copies maintained by the society no. 5194 and 5196 are both dated 27.11.1973. Obviously, the receipt no.5195 could not have been issued on 23.11.1973. The Administrator also produced copy of the cash book vide which the receipt no. 5195 has been shown to have been issued in the name of Vidya Bhatia S/o S. Mohan Singh which was a cheque transaction of Union Bank of India vide cheque no. 488165 dated 27.11.1973, Apparently there is some discrepancy in the record, which might have been caused by the act of forgery. I recommend the matter be referred to Crime Branch of Delhi Police for further investigation. The administrator is directed to prepare a detailed report for Crime Branch of Delhi Police and submit it to the department at the earliest.”

13. In pursuance thereto, the Administrator vide report dated 18th July, 2012 requested the RCS to register a case against the petitioner for the act of forgery and fraud. The office of RCS vide letter dated 16th December, 2012 forwarded the report of the Administrator to the Crime Branch, Delhi Police for investigation. Thereafter, an Inquiry Report dated 22nd March, 2024 was furnished by the ACP, Crime Branch, Delhi Police. The relevant portion of the said Inquiry Report of the Crime Branch, Delhi Police is extracted hereunder:-

“After the detailed enquiry conducted into the present matter, it is concluded that as per Application of Membership of Smt Surjit Kaur

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dated 30-09-1973 with remarks read as 'R. No. 5195 dated 23-11-1973 and regarding payment receipt No. 5195 of Rs. 100/- shown as cash deposit of Share Money for membership, it is submitted that as per available Society record no such Receipt No. 5195 dated 23-11-1973 issued in favor of Smt. Surjit Kaur either in the Receipt Book containing receipt Nos. 5101 to 5200 or in the Day Book found on record. However, from the Day Book maintained by the Society it is found that the said receipt No 5195 dated 27-11-1973 has been issued in favor of Smt. Vidya Bhatia for a sum of Rs.100 as share money, which was received by the Society vide Cheque No. 488165 dated 27-11-1973. From the available record it is clear that no such Receipt bearing no. 5195 dated 23-11-1973 has been issued in favor of Smt. Surjit Kaur, because the Day Book reveals that no such Receipt as alleged has been issued on 23-11-1973. Further, the perusal of records also reveals that Receipt No. 5194 earlier to 5195 and Receipt No. 5196 after the Receipt No. 5195 were issued on 27-11-1973 in favor of S. Charan Jit Singh and S. Gulab Singh amounting to Rs. 3000/- and Rs. 100/- respectively. The aforesaid payments were received by the Society through Cheque No. 917733 dated 13-09-1973 and Cheque No.4614 dated 20-11-1973 respectively. Moreover, a meeting of a managing committee of society was held on 24.11.1981 and list of waiting list members was prepared wherein name of Smt Joginder Kaur was mentioned at Serial No.7 and name of Smt Surjeet Kaur was mentioned at serial number 16. In view of above facts, claim of Petitioner Mr PPS Bhatia regarding seniority for allotment of plot in place of Mrs Joginder Kaur could not be substantiated."

14. The Financial Commissioner, having taken note of the said Inquiry Report of the Crime Branch, passed the impugned order on 26th July, 2024. The relevant paragraphs of the same are reproduced hereunder:-

"19. The case of the petitioner herein is primarily on the premise that he had been overlooked by the RCS while forwarding the names of waitlisted members for draw of lots by DDA whereas he should be at Sr.No.1 on the basis of documents in his possession. However, the entire veracity of the documents in possession of the Petitioner qua his claim i.e. the receipt number, detailed report of the crime Branch is self explanatory and clearly shows that the amount received by the society qua the receipt number in possession of the Petitioner was not



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received from the Petitioner/his predecessor. As per the record available with the Society, the said receipt has been issued in the name of some other person which is a transaction via cheque of Union Bank which cannot be mis-construed as the trail of transaction can be ascertained at any point of time.

20. It is the case of the Respondents, RCS and Society that the name of predecessor of petitioner first appeared as member on 22.02.1974 (not in 1973 as claimed by the Petitioner herein) and the predecessor defaulted in payment and her share money was refunded on 21.03.1980. The case of the Respondents, RCS and Society is further that the predecessor of Petitioner again appeared as member in 1981 in place of Shiv Bhushan Datta and share certificate was also issued in her name on 10.11.1981. As per them and which claim is duly supported by the report of Crime Branch, the Managing Committee of the Society on 24.11.1981 had drawn up a waiting list in which the predecessor of Petitioner (Surjit Kaur) is at Sr. No.16.

21. Curiously, it is seen that the Petitioner was the President/Vice President of the Society from 1992 to 2008 and during this period clearly the Petitioner had access to the records of the Society and if the Managing Committee of the Society had committed a mistake on 24.11.1981, the same could have been got rectified by the Petitioner had it been a clear mistake of the then Managing Committee not based on documents. There is no record of any corrigendum of this decision of 24.11.1981 placing the predecessor of Petitioner in waiting list at Sr. No. 16, as made available or referred by any of the parties. This does not support the case of the Petitioner who had managed the affairs for over 15 years in the same Society post 24.11.1981.

22. If the date of application for membership is to be taken as 1973 as per the case of the Petitioner, there has to be something to support it. Clearly, Receipt No.5195 dated 23.11.1973 as issued in favour of Surjit Kaur does not appear in the 'Receipt Book' or in the 'Day Book' of the society. The Managing Committee's decision dated 24.11.1981 is also not supportive of the claim of the Petitioner. In the absence of any record that supports the case of the Petitioner, this Court is unable to find any fault with the impugned orders issued by the office of RCS.

23. In the light of all the above, this Court is not inclined to interfere in the present matter. Further, in pursuance of the impugned letter/order dated 31.01.2012 issued/passed by the Assistant Registrar (West)

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forwarding the names of three wait listed members of the society to DDA for holding mini draw, the DDA had already held draw of lots on 28.03.2012 and sub-lease of plots had also been executed in favour of all three members. Therefore, challenge to impugned proceedings dated 31.01.2012 by the Petitioner is now rendered infructuous. Therefore, the revision petition bearing No.327/2012 titled Prit pal Singh Bhatia Vs. Registrar Cooperative Societies & Ors, is accordingly dismissed. No order as to costs."

15. This Court notes that the aforesaid factual findings by three authorities below concluding with the Inquiry Report of the investigating officer of the rank of ACP, creates grave doubt and suspicion on the version of the petitioner. It is apparent that Receipt no.5195 claimed to have been issued on 23rd November, 1973 is preceded and followed by two receipts viz., Receipt nos. 5194 and 5196 respectively, both dated 27th November, 1973. It is manifest that between two receipts stated to have been issued on 27th November, 1973, a Receipt numbered as 5195 dated 23rd November, 1973 could not be possible. On this short ground itself, the petition ought to be dismissed for having approached this Court with unclean hands. Apart from the aforesaid, this Court does not find it necessary to deal with further observations as extracted above since the same are self-explanatory.

16. It is also not disputed that the petitioner was at the helm of the affairs of the respondent no.3/Society as its President/Vice-President from the years 1992 through till 2008. The impugned order categorically notes that the then Administrator who was in-charge of the respondent no.3/Society, after having perused the records maintained by it, recorded



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a finding that there had been a tampering of records, apparently during the term of the petitioner as the President of respondent no.3/Society. It cannot be disputed by the petitioner that on the said basis, the JR had referred the matter to the Crime Branch for investigation. It is also not disputed that the Crime Branch has castigated the role of the petitioner in its Inquiry Report. These are findings of fact which a Court exercising jurisdiction under Article 226 of the Constitution of India, would be loathe to interfere with.

17. So far as the argument of learned senior counsel for the petitioner regarding the violation of principles of natural justice is concerned, this Court finds that the Financial Commissioner has noted the case and the written submissions of the petitioner in great detail, apart from noting the submissions of the other parties before him and consequent to the detailed analysis, concluded and rightly so, that there was no merit in the revision petition filed by the petitioner. Having regard to the fact that the Financial Commissioner has left no stone unturned in examining the entire gamut of facts in great detail, including minute scrutiny of the Administrator's report, the findings of the JR as also the Inquiry Report of the Crime Branch, this Court does not find that there has been any apparent violation of principles of natural justice. Though this Court could have directed remand for *de novo* hearing, yet refrains from passing any such direction in view of the fact that this Court itself does not find any merit in the petition.

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18. The judgment of this Court in **S.K. Gambhir** (*supra*) has been incorrectly interpreted by the petitioner. We find from a perusal of the said judgment that what it actually holds is that a person becomes a member only when his application for membership is accepted and not before. It also clarifies that the seniority of the membership is not dependent either on the date of payment of money or the date of submission of the application form. In the present case, since the petitioner has been unable to establish the membership as claimed w.e.f. 30th September, 1973 or 23rd November, 1973, being based on the documents which are declared to have been forged/fabricated, this Court finds the submission of the petitioner to be untenable in law and contrary to the facts on record.

19. Even if this Court were to presume that the mother of the petitioner had got the membership transferred *vide* voucher no.850 dated 20th February, 1974 from Smt. Vidya Bhatia as per the records, she would still be junior to respondent no.5/Smt. Joginder Kaur, who was admittedly enrolled on 4th December, 1973. That apart, the authorities below have, after scrutinising the entire records before them, found as a fact that respondent no.5 figured at S. No.7 and the petitioner at S. No.16 as on 24th November, 1981. This finding of fact cannot be interfered with by this Court and therefore, the seniority of respondent no.5 as found and consequent allotment of plot in her favor, stands affirmed.



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20. Resultantly, the present writ petition stands dismissed. Pending applications also stand disposed of.

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MANMOHAN, CJ

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