

CASE NO.:
Appeal (civil) 5373 of 2007

PETITIONER:
Delhi Development Authority

RESPONDENT:
Arjun Lal Satija and Ors

DATE OF JUDGMENT: 23/11/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5373 OF 2007
(Arising out of S.L.P. (C) No. 4024 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to by a Division Bench of the Delhi High Court allowing the writ petition filed by the respondent no.1
3. Factual background in a nutshell is as follows:

The land to which the present dispute relates was allotted to The Mianwali District Cooperative House Building Society Ltd., Flat No. 3-A, New Qutab Road, Delhi. Father of Respondent No.1 was a member of the Society. Members of the Society were entitled to be included in the draw of lots for allotment of land. Before any allotment of land was done, father of respondent No.1 died on 22.11.1974. Respondent No.1 filed an application for issuance of succession certificate which was allowed on 17.02.1986. The Managing Committee of respondent No.3-Society adopted a resolution transferring the membership of Shri K.K. Satija in favour of respondent No.1. Thereafter, respondent No.1 approached the office of the Registrar of Cooperative Societies (in short 'the Registrar') for clearance and for forwarding his name for inclusion in the draw of lots by the appellant. On 16.05.1994, the Registrar issued a show cause notice to respondent No.1 as to why his membership of the Society be not cancelled for the reason that he was already owning a residential house at A-120, Saraswati Vihar, Delhi. On 13.10.1994, an order in this regard was passed by the Registrar. But the membership was restored by the Government in a revision petition filed under Section 80 of the Delhi Cooperative Societies Act, 1972 (in short 'the Act'). A writ petition was filed before the Delhi High Court challenging the non-inclusion of the respondent No.1's name for allotment. The Delhi High Court passed an order directing clearance of the name of respondent No.1, since no order was passed in terms of the High Court's order. Two and four weeks' time were granted for inclusion of name and allotment of the plot. Since same was not done contempt proceedings were initiated. In these proceedings, the present appellant was not a party. In the contempt proceedings, a statement was made by the

official of the Registrar, Cooperative Societies-respondent No.2 that the clearance letter for holding draw of lots for allotment of plot of 300 sq. yds. would be issued immediately.

Accordingly, the application was disposed of. On 19.02.2004, respondent No.1 approached the appellant for allotment in the draw of lots. At that point of time, the appellant came to know that order relating to inclusion of the name of respondent No.1 had been passed. Respondent No.1 filed another writ petition seeking a writ of mandamus against the appellant to allot and handover the plot. The Division Bench allowed the petition and held that there was no substance in the plea raised by the appellant and that the membership of a society and eligibility for a plot are entirely independent issues. It also did not find any substance in the plea that because respondent No.1 was having another plot in his name, he was ineligible for allotment of a plot in the society. The appellant's contention centred around Rule-17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (in short the 'Rules').

4. The High Court held that Rules are not applicable to the case of respondent No.1.

5. In support of the appeal, learned counsel for the appellant submitted that true import of Rule 17 has been lost sight of by the High Court. On the other hand, learned counsel for the respondent submitted that Rule 17 has no application as the land in question was not Nazul land. It was also submitted that Section 87 of the Act on which the appellant has placed reliance, does not apply to the present case.

6. The dispute revolves primarily around applicability of Rule-17. The same reads as follows:

"17. General restriction to allotment for residential purposes.

Notwithstanding anything contained in these rules, no plot of Nazul land shall be allotted for residential purposes, to an individual other than an individual referred to in clause (i) of rule 6, who or whose wife husband or any of his or her dependent children whether minor or not, or any of his her dependent parents or dependent minor brothers, or sisters, ordinarily residing with such individual, own in full or in part, on lease hold or free hold basis, any residential land or house or who has been allotted on hire purchase basis by residential land or house in the Union Territory of Delhi;

Provided that where, on the date of allotment of Nazul land,

(a) the other land owned by or allotted to such individual is less than 67 square metres, or

(b) the house owned by such individual is a plot of land which measures less than 67 square metres, or

(c) the share of such individual in any such other land or house measures less than 67 square metres, he may be allotted a plot of

Nazul land in accordance with the other provision of these rules."

7. A bare reading of the Rule makes it clear that it applies only to Nazul land. Nowhere, it was the stand of present appellant that the land in question was Nazul land. Therefore, the question of applying Rule-17 does not apply.

8. Additionally, Section 87 of The Delhi Co-operative Societies Act, 2003 also has some relevance. The same reads as follows:

"87. Additional around for cessation of membership of co-operative housing society - Subject to the provision of this Act, in the case of a co-operative housing society, a person shall also cease to be a member of a co-operative society -

(a) an disposing of the property through instrument of power of attorney and agreement for sale subject to the interest of the mortgage if there is any loan on the property; or

(b) if he -

(i) before becoming a member of a co-operative housing society, already owns, either in his own name or in the name of his spouse or any of his dependent children.

(ii) after becoming a member in a co-operative housing society, during the currency of such membership, till allotment of any plot or flat to him, as the case may be, acquires either in his own name or in the name of his spouse or any of his dependent children, a residential property exceeding 66.72 sq, metres in area, in any of the approved or unapproved colonies or other localities in Delhi either on lease hold basis or free hold basis or own power of attorney or on agreement for sale basis:

Provided that no person having residential property under this Section in the village abadi area in Delhi shall be disqualified:

Provided further that no such disqualification shall be applicable in the case of a person who has acquired property on power of attorney or through agreement for sale and on conversation of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the membership of the co-operative housing society concerned:

Provided also that no member shall earn disqualification in clause (b) above, if the residential Property devolves on his by way of inheritance."

9. The last proviso to Section 87 makes the position clear that it does not apply to a case of inheritance. The undisputed position is that the property devolved on the respondent no.1 by way of inheritance. But it is not necessary to go into the question in the present dispute because there was no material placed before the High Court to justify the stand that Rule-17 had any application.

10. In view of the aforesaid, the High Court's view does not suffer from any infirmity to warrant interference. The appeal is devoid of merit and is dismissed but in the circumstances, without any order as to costs.

JUDIS