

\$~23

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

% Decided on: 19.04. 2022

+

W.P.(C) 1006/2019

PRAVIN KUMAR

.....Petitioner

Represented by: Mr. Pavan Kumar, Advocates.
versus

THE REGISTRAR CO-OPERATIVE SOCIETIES AND ANR.

..... Respondent

Represented by: Mr. Shadan Farasat, ASC with Ms.
Hafsa Khan & Mr. Aman Naqvi,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

MUKTA GUPTA, J (ORAL)

1. Father of the petitioner became a member of respondent no.2 –Group Housing Society i.e. Raj Vihar Cooperative Group Housing Society on 10th October, 2004 when he was employed in the Central Government. Since then the father of the petitioner followed by the petitioner are running from pillar to post in getting an approval from the Registrar, Co-operative Societies (RCS) for allotment of a flat in the respondent no.2- Group Housing Society. Father of the petitioner passed away on 6th July, 2007 and thereafter the membership was transferred in the name of the petitioner on 21st September, 2008, but, neither the name of the father of the petitioner nor the petitioner was ever referred by the respondent no.1-RCS for allotment of

the flat in the respondent no. 2-Group Housing Society. The plea consistently taken by the RCS till date is 'The original member Late K.K.Yadav was never a resident of Delhi and he always remained posted outside Delhi although he was a Central Government employee and documents submitted by him contained addresses outside Delhi'. When despite repeated representations, the respondent no. 1 failed to forward the name of the petitioner for allotment of flat with DDA, the petitioner was constrained to file the present petition.

2. In response to the present petition, an affidavit dated 20th July, 2019 was filed by Mr. Amitabh Joshi, Asstt. Registrar, Cooperative Societies. According to the said affidavit, the father of the petitioner became a member of the society on 10th October, 2004 and at that time the circular dated 18th May, 1990 was not relevant as Rule 24 of the Delhi Cooperative Societies Act, 1973 was amended and this amended rule was applicable on the date on which the father of the petitioner obtained membership of the society. Thus it was incumbent for every member of the Group Housing Society to be a resident of Delhi for a minimum period of three years at the time of applying for membership in any society. As the original member was not covered under this category, hence, his case was not considered by the Committee for allotment of the respondent no.1 constituted under Rule 90 (in short the 'Rule 90 Committee') and order dated 27th December, 2017 was passed as per the decision taken by Rule 90 Committee as not a fit case for allotment.

3. After hearing the parties, this Court vide order dated 23rd March, 2022 passed the following order:-

"1) Aggrieved by the fact that the petitioner's name as a member for allotment of a flat by DDA in the respondent

No. 2-Group Housing Society was not being allowed, resulting in the order dated 27th December 2017, the petitioner preferred the present petition.

2) According to the petitioner, the father of the petitioner became the member of the respondent No. 2-Society on 10th October 2004 when his father was employed in Central Government. His father passed away on 6 July 2007, whereafter, the membership was transferred in the name of the petitioner on 21st September 2008. However, his name was rejected for forwarding it to DDA for allotment of a flat to the petitioner in the respondent No. 2-Society on 27th December 2017 on the ground that the original member Late Sh. K.K. Yadav was never a resident of Delhi and he remained posted outside Delhi although he was a Central Government employee. The petitioner has placed on record the circular dated 18th May 1990 which amended the 'bye-law 5' and the Proviso thereof exempted the officers of All India Service and employees of Central Government and Public Undertakings of the Central Government and Delhi Administration for being residents in the Union Territory of Delhi for two years or more at the time of enrolment as a member.

3) By a subsequent circular dated 16th December 1992, the requirement of being a resident of Delhi was done away with and thus, the petitioner's claim that covered by both the circulars dated 18th May 1990 and 16th December 1992, the allotment in favour of the petitioner's father could not be rejected as firstly, he was a Central Government employee and thus, exempted and secondly, no prior residence of Delhi was required as per the second circular.

4) In the counter-affidavit filed, learned counsel for the respondent No. 1 relies upon a notification dated 27th April 1997 and claims that after the circular dated 16th December 1992 doing away with the requirement of residence in Delhi for application as a member of the Co-operative Society, a fresh notification was issued on

22nd April 1997 which provided that the applicant in the case of a Co-operative Housing Society has to be a resident of National Capital Territory of Delhi for a minimum period of three years at the time of applying for membership in the Society. He further states that Rule 24 of the Delhi Co-operative Societies Rules, 1973 was accordingly amended and the same did not include Proviso as provided in the circular dated 18th May 1990 and hence, the petitioner's father could not have been a valid applicant for the Co-operative Society.

5) After the above-noted circulars, Delhi Cooperative Societies Act, 2003 (DCS Act) came into force, Sections 22(1) & 22(2) whereof read as under:-

"Persons who may become members-

22.(1) No person shall be admitted as member of a co-operative society except the following, namely -

(a) an individual competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);

(b) any other co-operative society;

(c) the Government;

(d) a firm, a joint stock company, or any other body corporate constituted under any law; and

(e) such class or classes of persons or association of persons as may be notified by the Government in this behalf Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a co-operative society exclusively formed for the benefit of students of a school or college:

Provided further that no individual shall be eligible for admission as a member of any financing bank or federal co-operative society except as provided in clause (m) of section 2.

(2) Notwithstanding anything contained in sub-section (1), the Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any co-operative society or class of co-operative societies by general or special order, published in the official Gazette, declare

that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing as member or shall be eligible for membership only to a limited extent of any specified co-operative society or class of co-operative societies, so long as such person is or such persons are engaged in or carrying on that profession, business or employment, as the case may be”

6) Section 141 of DCS Act, 2003 which provided for repeal and savings notes as under:-

"Repeal and savings.

141. On the day on which the Delhi Co-operative Societies Act, 2003 comes into force, the Delhi Co-operative Societies Act, 1972 (35 of 1972) in force in the National Capital Territory of Delhi shall stand repealed. Provided that the repeal shall not affect —

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed".

7) *It is thus evident that the Delhi Co-operative Societies Act 1972 in force in the NCT Delhi stood repealed and therefore, the bye-laws and the circulars thereon also automatically got repealed except to the extent provided in Clauses (a), (b), (c) and (d) of Section 141 of the DCS Act.*

8) *This aspect that whether the petitioner's case would*

be covered by the DCS Act 2003 or not is nowhere stated in the Counter-affidavit filed by the respondent No. 1 is highly deficient. Respondent No. 1 is directed to file a detailed affidavit within one week with advance copy to learned counsel for the petitioner.

9) List on 19th April 2022 when the Registrar, Co-operative Societies will be personally present in Court”.

4. Once the presence of the Registrar Cooperative Societies was directed by this Court, a revised affidavit has been filed by the respondent under the signatures of Mr. Sanjay Jha, Assistant Registrar.

5. Learned counsel for respondent no. 1 at the outset admits that in the earlier affidavit filed by the respondent no. 1, complete facts were not brought to the notice of this Court and only after the directions were issued for the presence of the Registrar Cooperative Societies for further affidavit, a revised affidavit has been filed. According to the respondent, the revised affidavit gives the complete chronology of the various circulars issued in regard to the requirement of a person being resident of Govt. of NCT of Delhi for the three years prior to becoming a member of a Group Housing Society in Delhi. In this regard, the first circular issued was on 18th May, 1990 which reads as under:-

*“No. F.47/1852/NGH/Coop.
Circular*

Dated the 18.5.90

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 .

*(K S Mehra)
Registrar Coop. Societies”*

6. 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.”

7. 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.

8. The 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)*

9. 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 Co-operative 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).

10. Petitioner's father became a member of the respondent No. 2 society on 10th October, 2004 when admittedly the 1992 circular prevailed, when there was no requirement of being a resident of the Union Territory of Delhi prior to becoming a member of a group housing society in Delhi. The DCS rules notified under the DCS Act, 2003 have no retrospective application.

11. A perusal of the revised affidavit thus clearly shows that despite there being no requirement of the petitioner's father being a resident for the last two-three years preceding the applying for membership of the group housing society, his case was never referred to DDA for allotment of the flat by Rule 90 Committee ostensibly on the ground that the father of petitioner was not a resident of Delhi before he applied for the membership of the respondent no.2-society.

12. The present case clearly shows the sorry state of affairs prevalent in the functioning of the Registrar Cooperative Societies and the manner in which incomplete and incorrect affidavits are filed before this Court.

13. Considering the revised affidavit filed now, the minutes of meeting dated 27th December, 2017, whereby the case of the petitioner for recommendation was rejected, to that extent is set aside. The respondent is directed to refer the case of the petitioner for allotment of flat with DDA within four weeks. The DDA on receipt of recommendation of respondent no. 1 will complete the necessary formalities within eight weeks thereafter.

14. In view of the assurance rendered by the Registrar, Cooperative Societies who is personally present that every endeavour will be made to streamline the filing of proper affidavits before this Court, this Court is

refraining from imposing the cost.

15. The writ petition is accordingly disposed of.

