

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 309/2012

Revision Petition under Section 116 of
the Delhi Cooperative Societies Act, 2003

In the matter of:-

Dr. P. Samarendra,
S/o Late M.N. Singh,
Permanent R/o Vill. Teus,
Dist. Barbigha
Munger, Bihar

Petitioner

Versus

1. Registrar, Cooperative Societies
Parliament Street
New Delhi-110001.
2. The Delhi Transporter's Coop Group
Housing Society Ltd.
"Joy Apartment"Plot No. 2.
Sector-2, Dwarka,
New Delhi
Through its Secretary

Respondents

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

ORDER dated : 29.05.2015

1. This order shall dispose of the revision petition under Section 116 of the Delhi Cooperative Societies Act, 2003 against the order communicated vide letter no. F47/1379/GH/North/RCS/819 dt. 16.07.2012 from the Asstt. Registrar (North). Vide this letter it was communicated that Competent Authority of RCS office has rejected the petitioner application for dispensing the requirement of providing proof of residence in Delhi while clearing membership for allotment of flat in Delhi Transporter's Cooperative Group Housing Society Ltd.
2. Asstt. Registrar (North) further conveyed that Competent Authority has rejected the petition on the following grounds:
 - (i) That the applicant was enrolled as member by the society vide minutes dated 30.01.1998. At that time of applying of membership the applicant must be a resident of Delhi for the past 3 years as per provision of Rule 24(1) VI of DCS Rules 1973. Applicant file a copy of rent agreement but it is not registered hence cannot be accepted.

(ii) Applicant's contention that requirement of proof of residence in Delhi has been dispensed within the case of employee of All India Services Defence/Defence Services and Defence Services and Public Sector undertaking due to their transferable job is not applicable in the case of applicant since he is not an employee of any such organization.

(iii) That the Applicant himself submitted that he has shifted to England for higher studies and since then he has been residing in England and United States and hence he was not a resident of Delhi therefore not eligible to be a member of the Society.

3. Petitioner filed a revision petition under Section 116 of the DCS Act, 2003 and submitted that:

(i) That the Government has by virtue of Rule 163 of DCS Rules 2007 the power to exempt by a general or special order any coop Society from the provision of the rules. As per clause 24 of Schedule VII framed under Rule 90, the RCS is to place before the Govt. for consideration, the details of enrolment of members in violation of the rules. It is the contention of the applicant that although his enrolment cannot be said to be in violation of rules in the facts of the case, but even if it is held so, and there is non compliance of requirement of proof of residence, the requirement for the same may be dispensed with after obtaining orders from the Govt. The Registrar has in the order communicated vide letter dated 16.07.2012 completely misread the provision of the law and illegally rejected the application. Even if he did not agree to the stand of the applicant that there was no violation of rules, he was required to place the matter for consideration of the Govt.

(ii) That on 22.04.1997 the government of NCT of Delhi issued a notification whereby clause No. V of Sub Rule 1 of Rule 24 of DCS Rules, 1973 was inserted. By means of this notification it was made mandatory for an applicant for membership of a Group Housing Society to have been a resident of Delhi for a period for 3 years at the time of applying. However it appears that notice of the same was not set to individual societies and therefore they were not aware about this requirement.

(iii) That on 30.01.1998 the petitioner paid a sum of Rs.110 to the society as his share in the capital of the society and towards application fee.

(iv) That on 06.03.1998 the Respondent no. 2 society informed the petitioner that he has been enrolled as member with membership no. 245. As per requirement of Rule 37 of the DCS Rules, the list of members of the society was to be sent to the respondent no. 1 every year by the society i.e. respondent no. 2.

(v) That no objection what so ever was ever raised from any quarters that the petitioner was not a resident of Delhi and therefore ineligible to become a member in the society. That as per bye-laws 5(vi) of the respondent no. 2 i.e. society, the petitioner was deemed to have acquired all the rights of a member. The petitioner paid all the sums demanded by the society from time to time towards cost of land and constructions.

(vi) That on 03.01.2001 the respondent no. 1 issued a circular that in view of notification dated 22.04.1997 the societies are bound to observe the eligibility condition of being a resident of Delhi for 3 years at the time of application for membership. Thus notices issued to the societies were deemed to be inoperative and hence withdrawn.

(vii) That on 04.02.2008 the respondent no. 2 society informed the petitioner that a further sum of Rs 25000 should be made. The petitioners submitted the documents requested. However even then no allotment was made.

(viii) The petitioner although being eligible as he had paid all the amount demanded and had submitted all the required documents was not allotted the flat.

(ix) That it is submitted that the requirement of residence in Delhi was never asked for by the society as RCS had withdrawn the directive regarding exemption from requirement of residence in Delhi in the year 2001 long after the petitioner had been granted membership in the year 1998. After the petitioner was granted membership he was deemed to have acquired the rights of a member of the society. Therefore after the petitioner has become a member he cannot now be asked to provide the

proof of residence after passage of 13 years. It has been held by a Division Bench of this Hon'ble Court that it would be unfair and arbitrary to ask person who has been made a member to produce proof of residence after a number of years. Such enquiry should have been conducted before enrolling a member.

(x) The society granted the membership to the petitioner on 30.01.1998 and since then the petitioners deemed to have acquired all the rights of a member as per bye-law 5(vi) of the respondent no. 2 society.

(xi) Since 1998 when the petitioner was granted membership there was no objection raised from any quarters about the same. The respondent No. 2 society received the full contribution from the petitioner towards the cost of land and construction over this period. Therefore, the petitioner cannot now be questioned about his residential status.

(xii) The name of the petitioner as member of the respondent no. 2 society had been intimated to the respondent no. 1 from time to time on annual basis in terms of requirement of Rule 37. No objection whatsoever had been raised over these years by the Respondent no. 1. Thus, no clearing the name of the petitioner on the ground that proof of residence had not been submitted is illegal and unfair.

(xiii) Division bench of the Hon'ble Delhi High Court has also held that it would be unfair and arbitrary to ask a person who has been made a member to produce proof of residence after a number of years. Such enquiry should have been conducted before enrolling a member.

(xiv) Because the respondent no. 1 had itself issued circular in the year 1992 and 1994 and had also sent notices to individual societies on 12.01.1994 to amend their bye laws deleting the clause regarding the requirement of being a resident of Delhi at the time of application for membership. Thereafter, the said notice was withdrawn only in the year 2001. Therefore the petitioner had been validly made a member by respondent no. 2 in the year 1998 without proof of residence in Delhi as there was not requirement of the same.

(xv) The Government has by virtue of Rule 163 of the DCS Rules 2007 the power to exempt by a general or special order any coop society from

the provision of the rules. As per clause 24 of schedule VII framed under Rule 90, the Registrar is to place before the Govt. for consideration, the details of enrolment of members not in conformity with the rules with justification for the same. In the present case there are adequate reasons to dispense the requirement of proof of residence and the same should be done.

4. RCS in its reply has submitted the following:

(i) That it is an admitted case of the petitioner that he applied for membership of the society on 24.12.1997 i.e. on the date when the petitioner applied for membership of the society, the condition of being a resident of Delhi was in force. Thus the petitioner in order to become a member of the society was to show that he was resident of NCT of Delhi for past three prior to 24.12.1997

(ii) That it is an admitted fact that the person applying for membership for a cooperative society on or after 22.04.1997 must be a resident of Delhi. It is also an admitted fact that the petitioner applied for membership of cooperative society on 24.12.1997. It is also an admitted fact that an amendment was made in DCS Rules 1973 by Gazette Notification and was given due publicity in leading newspaper and the societies are also aware of the same. Thus the petitioner cannot take the plea that the society was not aware of the said amendment.

5. Society in its reply has submitted that the society was not informed about the change in Clause V of Sub-Rule I of Rule 24 of DCS Rules 1973. Thus the society not being aware of the change, admitted the petitioner as a member of the society. He has paid all the dues of the society and nothing more is due and payable by him to the society. Therefore, at this distance of time to deny him the flat is unjust, unreasonable and inequitable particularly when no objection was raised by the office of the RCS that the petitioner was not eligible to become a member of the society. Since the petitioner has paid all the dues of the society the society has not objection if a flat is allotted to the petitioners in the society.

6. In its written submission petitioner submitted that the society granted the membership to the petitioner on 30.01.1998 and since then the petitioners

deemed to have acquired all the rights of a member as per bye-law 5(vi) of the respondent no. 2 society. Therefore, the requirement of proof of residence at this stage is wholly arbitrary and unfair. The petitioner has been a residence of Delhi for more than three years but is unable to provide the proof as required by the RCS.

7. Petitioner further submitted that in the case tilted as Hardeep Singh Vs. Registrar of Coop Societies Act & Ors. Hon'ble High Court of Delhi held that:

"It is unfair & indeed arbitrary to ask a person who has been made a member, to whom a plot of land has been allotted and a perpetual sub lease executed, to produce proof of his residence in Delhi after a number of years. Such enquiry which would make a person eligible to become a member should have been conducted by the society before enrolling a member. Having enrolled a person as a member, allotted him land and executed a perpetual sub-lease, would preclude, in our opinion, a society from, subsequently, going back on its earlier decision unless it is a case of fraud which had been committed on the society and which fraud has come to light subsequently."

8. I have considered all the facts on records and heard the arguments. During the arguments on 18.05.2015, Counsel for the petitioner submitted that order dated 16.07.2012 was issued without giving an opportunity of being heard. Also, the Respondent No. 2 the society has no objection to the allotment. Considering this fact, in the interest of natural justice the case is remanded back to RCS with the direction to give an opportunity of being heard to the petitioner and decide the matter afresh, preferably within the period of two months from the date of issue of this order.

9. Announced in the open Court.

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(Naini Jayaseelan)
Financial Commissioner, Delhi
29th May, 2015