

The Water & Power Engineers CGHS Ltd. Vs. RCS & Anr.

25/04/2014

Present : Sh. Akhil Sachar, Counsel for the Petitioner.

1. The present petition has been filed by the Society (The Water and Power Engineers CGHS Ltd.) under Section 116 of the Delhi Cooperative Societies Act, 2003 assailing the order No. F.47/Misc./91/GH/East/2013/4924 dated October 14, 2013 passed by Assistant Registrar (East) vide which the Assistant Registrar (East) has directed the petitioner society to grant membership to Dr. Ashok Kumar Chaudhary, respondent No. 2 herein.

2. Brief facts of the case are as under :

Dr. Ashok Kumar Chaudhary, respondent No. 2 herein purchased a flat No. C-32 in the petitioner society and accordingly applied to the society for the membership alongwith all the desired documents as required as per provisions under section 91 of DCS Act, 2003. As per the provisions of section 91 of DCS Act, 2003 after submission of an application, the society has to either grant or refuse membership to the applicant within thirty days but in this case the society failed to decide the matter even after the completion of 30 days after the submission of the application. Aggrieved, the respondent No. 2, Dr. Ashok Kumar Chaudhary filed an appeal before the Asstt. Registrar (East). The society in its written submission before the Asstt. Registrar (East) admitted that it had received documents from Dr. Ashok Kumar Chaudhary seeking the membership of the society but they were not able to establish the genuineness of the documents submitted by Dr. Chaudhary and since it was not in a position to take a decision so it had also asked for the advice of the Office of the RCS. However, before any advice could be tendered by the office of the RCS, the respondent no. 2 went into appeal before the Asstt. Registrar (East). The Asstt. Registrar (East) vide the impugned order dated October 14, 2013 disposed of the appeal by directing the society to grant membership to Dr. Ashok Kumar Chaudhary. The operative part of the impugned order reads thus :

"I have perused the list of the documents filed by the appellant, written submissions filed by society and observed that the appellant has submitted all the documents i.e. application form, affidavit, payment of transfer fee along with share money and admission fees, copy of share certificate and registered GPA required to seek the membership u/s 91 of DCS Act 2003.

In view of the facts stated above, I am of the considered view that the appellant is eligible to become member of the society. The society is hereby directed to grant the membership to Dr. Ashok Kumar Chaudhary, appellant within two weeks from the issue of this order."

The petitioner society by way of the present petition, is before this Court against this very order of Asstt. Registrar (East).

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3. Heard the argument of Ld. Counsel for the petitioner. The main contention of the petitioner is that the genuineness in respect of the documents submitted by Dr. Ashok Kumar Chaudhary, respondent No. 2 herein could not be established as the documents namely the General Power of Attorney and the Agreement to Sale are unstamped/insufficiently stamped, so the society is apprehensive in granting the membership.
4. On perusal of the documents on record, it can be gathered that on one hand the society was unable to decide the application of respondent no. 2 and asked for advice from the Office of RCS, and on the other hand when the Office of the RCS vide the impugned order dated October 14, 2013 directed the society to grant membership to respondent no. 2 within two weeks, the society is reluctant in implementing the same despite the very fact that now onus and responsibility in granting membership to respondent no. 2 clearly lies on the office of RCS. Had the society really been aggrieved with the impugned order then it would not had interacted with the respondent no. 2 vide its letter dated November 22, 2013 but instead should have assailed the impugned order either in review or in revision before the appropriate forum at that stage itself. But the society chose to wait and delay the matter despite the two letters dated November 11, 2013 and November 19, 2013 written by the Office of the RCS seeking explanation from the society as to why the impugned order was not being complied with. And, finally when the Show Cause Notice dated January 29, 2014 was issued by the RCS seeking explanation on the matter and to show cause as to why the society be not superseded for not implementing the impugned order, only then the society has rushed before this Court by way of this petition. The challenge to the impugned order by the petitioner society at this belated stage totally weakens their case, moreover so, when the show cause notice dated January 29, 2014 in its operative paragraph clearly provides an opportunity to the society for personal hearing which the society does not want to avail for reasons best known to them. The conduct of the society simply shows its lackadaisical approach and delaying tactics.
5. Furthermore, the impugned order of the Asstt. Registrar (East) clearly mentions that Dr. Ashok Kumar Chaudhary has submitted all the documents required for seeking the membership under section 91 of DCS Act, 2003 which implies that the Asstt. Registrar has passed the impugned order after considering all the requirements under section 91 of DCS Act, 2003 for seeking membership has been fulfilled by the Respondent No. 2 herein.
6. In view of the above, this Court does not find any merits in the petition preferred by the society and refrains from entertaining the same at this belated stage. Hence, the petition is dismissed *in-limine* being devoid of any merits.
7. File be consigned to record room after completion.

— Sd —
(D.M. SPOLIA)
Financial Commissioner
Delhi