

Jagdish Singh

Vs

Lt. Governor, Delhi and Others

Civil Appeal No. 1866 of 1997

(S. C. Agarwal, G. B. Pattanaik JJ)

11.03.1997

JUDGMENT

PATTANAİK, J. –

1. Leave granted.

2. In this appeal, the order of the Registrar, Cooperative Societies, Delhi Administration dated 23-2-1993 directing that the appellant ceases to be a member of Dronacharaya Cooperative Group Housing Society as well as Tribal Cooperative Housing Society Ltd., the revisional order of the Lt. Governor, Delhi dated 25-8-1993 dismissing the revision filed by the appellant as well as the judgment of the Delhi High Court dated 20-3-1996 passed in Writ Petition (Civil) No. 4924 of 1993 have been challenged.

3. Admittedly, the appellant became a member of Dronacharaya Cooperative Group Housing Society on 9-8-1980. The said Society was allotted land within the Union Territory of Delhi by Delhi Administration for construction of flats for allotment to its members. The appellant being a member of the Society desirous of purchasing a flat on being directed by the Society deposited initially a sum of Rs. 8000 and thereafter different sums of money on different dates, in all Rs. 3,35,015 by 20-6-1991. While he was a member of Dronacharaya Cooperative Group Housing Society, he also got himself enrolled as a member of another Society called Tribal Cooperative Housing Society Ltd. on 29-11-1983, but later on he resigned from the said Tribal Cooperative Housing Society Ltd. on 7-6-1991. The Registrar, Cooperative Societies issued a notice to the appellant on 22-10-1992 in exercise of his powers under sub-rule (4) of Rule 25 of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as "Rules") stating therein that the appellant could be enrolled as a member of the Tribal Cooperative Housing Society Ltd. by filing a false affidavit and declaring that neither he nor his wife nor any of his dependent relations has been a member of any other House Building Cooperative Society and thus has incurred the disqualification under Rule 25(1)(c)(iii) of the Rules and consequently ceases to be a member of the Society under sub-rule (2) of Rule 25. The Registrar called upon the appellant to reply to the show-cause notice within 15 days from the date of issue of the notice. The appellant in his reply indicated that he was not aware of the relevant provisions of the Rules prohibiting a member of one society to become a member of another Cooperative Society. At any rate he has tendered his resignation from the Tribal Cooperative Housing Society Ltd. since June 1991 much prior to the issuance of the notice of show-cause, and therefore, the alleged disqualification under Rule 25(1)(c)(iii) was no longer subsisting. The Registrar of the Cooperative Societies, however, by his order dated 23-2-1993 came to the conclusion that the appellant has incurred the disqualification for membership under Rule 25(1)(c)(iii) of the Rules as he got himself enrolled as a member of the Tribal

Cooperative Housing Society Ltd. while continuing as a member of the Dronacharaya Cooperative Group Housing Society, and therefore, his membership of both the societies ceases. Being aggrieved by the aforesaid order the appellant preferred a revision to the Lt. Governor of Delhi and the said revision having been dismissed by the order dated 25-8-1993, the appellant preferred a writ petition in the Delhi High Court. The High Court by its judgment dated 20-3-1996 agreed with the conclusion of the Registrar and came to hold that by virtue of Rule 25(2) the appellant automatically became disqualified for the membership of both the societies and as such there is no error in the orders passed by the Registrar of Cooperative Societies and affirmed by the Lt. Governor. Hence the present appeal.

4. Mr. Bobde, the learned Senior Counsel appearing for the appellant, contended that under sub-rule (2) of Rule 25, when a member of one housing society incurs the disqualification under Rule 25(1)(c)(iii) then from the date of such disqualification he would deem to have ceased from the membership of the subsequent society and he does not cease to be a member of both the societies namely the earlier and the later. The Registrar, however, committed serious error in interpreting sub-rule (2) of Rule 25 and directing cessation of membership of the appellant from both the societies. Mr. Bobde also argued that if sub-rule (2) of Rule 25 is interpreted to mean that on incurring such disqualification by operation of law one ceases to be a member of both societies, then Rule 28 conferring power on the Registrar to give a written requisition to either or both the cooperative societies for cessation of the membership, would become inoperative, and therefore, efforts should be made for harmonious construction whereunder both the provisions can operate. Mr. Bobde also argued that under Rule 25(1) the embargo upon a person to become a member of a cooperative society is there if the said person or his spouse or any of his dependent children is a member of any other housing society. The disqualification in question is thus attached to becoming a member of a cooperative society if he is already a member of another society. Under sub-rule (2) of Rule 25 a deemed cessation accrues obviously in relation to a society in respect of which the disqualification is attached under sub-rule (1) of Rule 25 and judged from this angle the appellant could be said to have ceased to be a member of the Tribal Cooperative Housing Society Ltd. and not from Dronacharaya Cooperative Group Housing Society.

5. The learned counsel appearing for the respondents, however, submitted that Chapter 3 of the Rules contains provisions indicating the conditions to be complied with for becoming a member of the society as well as the rights and liabilities of such persons. According to the learned counsel Rules 24, 25, and 28 of the Rules should be read together and on such a reading it is crystal clear that on incurring disqualifications under Rule 25(1) the member loses his membership not only of the society in respect of which the member incurs the disqualification but also of the original society. According to the learned counsel such stringent provisions have been made with an avowed object of preventing people from grabbing more than one lands and flats by becoming members of different cooperative societies when the land as well as flats are scarce in Delhi and that object would be frustrated if Rule 25(2) is interpreted in the manner as argued by Mr. Bobde, appearing for the appellant. The learned counsel also contended that since under Rule 28 the Registrar was empowered to direct cessation of membership from either or both the societies, the impugned order passed by the Registrar can be held to be one in exercise of the said power under Rule 28, inasmuch as the label of the order is immaterial so long as the power exists. In interpreting sub-rule (2) of Rule 25 the learned counsel urged that the word "member" in sub-rule (2) does not indicate as to membership of any particular society and therefore it must be held that the membership of the person concerned ceases from both the societies.

6. In view of the rival submissions at the Bar, sub-rule (2) of Rule 25 of the Rules comes up for

consideration and the question arises as to what would be the correct interpretation of sub-rule (2) of Rule 25 of the Rules. For better appreciation of the point in controversy it would be appropriate to extract Rules 24, 25 and 28 of the Rules in extenso :

"24. Conditions to be complied with for admission to membership. - No person shall be admitted as a member of a cooperative society unless -

(i) he has applied in writing in the form laid down by the cooperative society or in the form specified by the Registrar, if any, for membership along with a declaration on oath that he is not a member of any other cooperative society having similar objects;

(ii) his application is approved by the committee of the cooperative society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body may in pursuance of the powers conferred on it in that behalf from time to time pass, and in the case of nominal, associate, by an officer of the society authorised in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down in the Act, the rules and the bye-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trust or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership and the sanction of the Lt. Governor has been accorded.

25. Disqualifications for membership. - (1) No person shall be eligible for admission as a member of a cooperative society, if he -

(a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or

(b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence; or

(c) in the case of membership of a housing society -

(i) he owns a residential house or a plot of land for the construction of a residential house in any of the approved or unapproved colonies or other localities in the Union Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on leasehold or freehold basis provided that disqualification as laid down in sub-rule (1)(c)(i) shall not be applicable in case of persons who are only co-sharers of joint ancestral properties in congested localities (slum areas) whose share is less than 66.72 sq. metres (80 sq. yards) of land;

(ii) he deals in purchase or sale of immovable property either as principal or as agent in the Union Territory of Delhi; or

(iii) he or his spouse or any of his dependent children is a member of any other

housing society except otherwise permitted by the Registrar.

(2) Notwithstanding anything contained in the rules or the bye-laws of the cooperative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.

(3) A member who ceases to be a member of a cooperative society under sub-rule (2), shall not be entitled to exercise rights of memberships or incur liability as member with effect from the date referred to in sub-rule (2) but as from the date he becomes a creditor of the cooperative society in respect of the amount due to him on account of paid-up share capital, deposit, cost of land deposited or any other amount paid by him to the cooperative society as its member. As from the date of his ceasing to be a member of the society under sub-rule (2), the amount standing to his credit shall be paid to him by the cooperative society within 3 months and when the cooperative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the cooperative society.

(4) If any question as to whether a member has incurred any of disqualifications referred to in sub-rule (1) arises, it shall be referred to the Registrar for decision. His decision shall be final and binding on all concerned. The power of the Registrar under this rule shall not be delegated to any other person appointed to assist the Registrar.

28. Prohibition of membership in two cooperative societies. - No individual, being a member of a primary cooperative society of any class shall be a member of any other cooperative society of the same class without the general or special permission of the Registrar, and where an individual has become a member of two cooperative societies of the same class either or both of the cooperative societies shall be bound to remove him from membership upon written requisition from the Registrar to that effect."

7. A conjoint reading of the aforesaid provisions would make it clear that Rule 24 provides the conditions to be complied with by a person for being admitted as a member of a cooperative society. Rule 25 enumerates the disqualifications of a person for becoming a member of a cooperative society. Sub-clause (c) of Rule 25(1) deals with the disqualifications of a person in case of a housing society, clause (iii) of Rule 25(1)(c) provides that if the said person or his spouse or any of his dependent children is a member of any other housing society then he cannot become a member of another housing society unless permitted by the Registrar. Sub-rule (2) of Rule 25 provides for a deemed cessation of a member in the event that member incurs any of the disqualifications mentioned in sub-rule (1) of Rule 25 with effect from the date of such disqualification. Sub-rule (4) of Rule 25 confers power to decide a dispute as to whether a member has incurred any of the disqualifications referred to in sub-rule (1). Rule 28 of the Rules confers power on the Registrar directing removal of an individual from membership of either or both of the cooperative societies when such individual has become a member of two cooperative societies of the same class. The short question that arises for consideration is whether a person who is a member of a housing cooperative society having incurred the disqualification under Rule 25(1)(c)(iii) on being a member of a subsequent housing society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principle of construction of a statute

or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. Bearing in mind the aforesaid rules of construction if sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the society pertaining to which disqualifications are incurred. A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two cooperative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the cooperative societies. If sub-rule (2) of Rule 25 is interpreted to mean the deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28 will not arise. If the interpretation given by the Registrar to sub-rule (2) of Rule 25 as well as the contention raised by the learned counsel for the respondents is sustained then the said sub-rule will be at loggerheads with Rule 28. On the other hand, if sub-rule (2) is interpreted to mean that the deemed cessation is in relation to the society in respect of which the person concerned incurs the disqualification then both sub-rule (2) as well as Rule 28 would have its play. Rule 28 in our considered opinion cannot be held to be otiose and must be allowed to have its full play. In this view of the matter the only way by which sub-rule (2) of Rule 25 and Rule 28 can be harmoniously construed is to construe sub-rule (2) to Rule 25 to mean that the deemed cessation of the person concerned from the membership of the society is the society in respect of which the disqualification was incurred. In the case in hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Cooperative Housing Society Ltd. as he could not have become a member of the said Society as he was already a member of Dronacharaya Cooperative Group Housing Society, and therefore, by operation of sub-rule (2) he would be deemed to have ceased to be a member of the Tribal Cooperative Housing Society right from the inception in November 1983 and not from the Dronacharaya Cooperative Group Housing Society.

8. Apart from the aforesaid harmonious construction of sub-rule (2) of Rule 25 and Rule 28, on a plain construction of Rule 25 also the same conclusion has to be arrived at. Sub-rule (1) disqualifies a person for admission as a member of a housing society if he or his spouse or any of his dependent children is a member of any other housing society. The disqualification in question obviously attaches to membership of the second society and has no connection with his membership of the first society. In view of the aforesaid embargo contained in sub-rule (1) to Rule 25, sub-rule (2) by its operation brings in the fiction of deemed cessation from the membership of such society from the date when the disqualification was incurred and such fiction of deemed cessation has nothing to do with the membership of the first society. This being the position, sub-rule (2) of Rule 25 when read with sub-rule (1) of the said Rule is not susceptible of a construction that the person concerned ceased to be a member of both the societies. In view of our aforesaid construction of sub-rule (2) of Rule 25, the conclusion is irresistible that the Registrar while passing the impugned order dated 23-2-1993 and the Lt. Governor while dismissing the appellant's revision by his order dated 25-8-1993

as well as the High Court in the impugned judgment dated 20-3-1996 committed gross error in holding that the appellant ceases to be a member of both the societies under sub-rule (2) of Rule 25. The aforesaid orders, therefore, are wholly unsustainable and cannot be sustained.

9. At this stage, it would be appropriate to deal with the contention of the learned counsel for the respondents that since the Registrar had the power under Rule 28 to direct removal of membership from either of the societies or both the impugned order passed by the Registrar may be construed to be one under Rule 28. Though prima facie the aforesaid contention may be attractive but it does not sustain a deeper scrutiny. In the case in hand a notice to show cause was issued by the Registrar in exercise of power under sub-rule (4) of Rule 25 indicating that on account of the disqualification of the appellant incurred under Rule 25(1)(c)(iii) he has ceased to be a member of both the societies under sub-rule (2) of Rule 25. The Registrar while issuing notice or while passing the impugned order has not chosen to exercise his discretion conferred under Rule 28 of the Rules. When a power has been conferred upon the Registrar under Rule 28 to decide as to whether he would direct cancellation of the membership of the person concerned from any one of the two societies or both when it comes to his knowledge that a person has become a member of two of the cooperative societies, then a corresponding duty is cast upon him to examine the circumstances under which the person concerned has become member of the two societies and to take a conscious decision in the matter of exercise of his discretion. The discretion in question obviously has to be judiciously exercised and not arbitrarily, depending upon the facts and circumstances of each case. That being the position, it is difficult to accept the contention of the learned counsel for the respondents that the impugned direction of the Registrar could be treated as one under Rule 28 when on the face of it we find that the Registrar has not chosen to exercise his power under Rule 28 nor has he taken all relevant materials into consideration in exercising his discretion, one way or the other. On the other hand he has chosen to exercise his power under sub-rule (4) of Rule 25. In the aforesaid premises the impugned orders dated 23-2-1993 of the Registrar, the revisional order dated 25-8-1993 passed by the Lt. Governor and the order of the High Court dated 20-3-1996 passed in Writ Petition No. 4924 of 1993 are quashed. It is held that by operation of sub-rule (2) of Rule 25 the appellant has ceased to be a member of the Tribal Cooperative Housing Society with effect from the inception of his entry into the said Society in November 1983. But his membership of Dronacharaya Cooperative Group Housing Society remains unaffected. From the records it has been brought to our notice that the appellant had already deposited a sum of Rs. 3,35,015 on different dates between October 1981 and June 1991. By interim order dated 11-7-1996 this Court had directed Respondent 3 - the Dronacharaya Cooperative Group Housing Society Ltd. to keep one flat available for the appellant in the event of his success in this appeal. The said Respondent 3 though has entered appearance but no counter-affidavit has been filed. In view of our interim direction dated 11-7-1996 and now that the appellant succeeds in this appeal, we direct that the said Respondent 3 would give a flat to the appellant on the appellant satisfying any other condition that is necessary including any additional payment that may be required to be made. This appeal is accordingly allowed but in the circumstances there will be no order as to costs.