

(2002) 11 DEL CK 0155

Delhi High Court

Case No: C.W.P. No. 2991 of 1987

Sh. Mahendra Pratap Singh

APPELLANT

Vs

P.O. Delhi Coop. Tribunal and
Others

RESPONDENT

Date of Decision: Nov. 13, 2002

Hon'ble Judges: Jiwan Dass Kapoor, J; B.A. Khan, J

Bench: Division Bench

Advocate: R.P. Bansal, for the Appellant; Nemo, for the Respondent

Judgement

J.D. Kapoor, J.

Through this petition, the petitioner has challenged mainly the order dated 15.7.1987 passed by Delhi Cooperative Tribunal whereby the Tribunal declined to entertain the appeal against the order dated 26.2.1987 passed by the Joint Registrar on the claim of the petitioner on the ground that the said claim was belated and cannot confer right of membership upon the petitioner. Admittedly the petitioner had deposited the share money and admission fee on 8.3.1996 and his name was put in the membership register and share certificate was prepared but his name was not found either in the freeze list which was approved by the Registrar Cooperative Societies nor in the membership list of the Society when the present Managing Committee took charge in 1982.

2. The Joint Registrar found that there was no dispute between the petitioner and respondent society u/s 60 of the Act and rejected the application of the petitioner for deciding the issues raised by him through arbitration.

3. Feeling aggrieved, he filed a revision petition before the Lt. Governor but the same was dismissed with the observation that since the order of the Joint Registrar was u/s 61 of the Act, the appeal is maintainable and not revision. According to the Lt. Governor, the Joint Registrar has not gone into the merits of the claim by holding the claim to be belated one and further held that the petitioner is not entitled to claim any rights on the basis of deposit of share money and admission fee. The

Lt.Governor also observed that u/s 61 of the Act it is within the competence of the authority below either to decide upon the dispute himself or entrust it to any other authorised person. In this case, the Registrar authorised the Joint Registrar to decide upon the claim or dispute raised by the petitioner.

4. Amazingly and defiantly the Tribunal took a contrary view than the view expressed by the Lt.Governor and held that the action of the Joint Registrar as challenged in this appeal cannot be deemed to be an action u/s 61 of the Act as he has failed to follow the procedure for deciding the matter in terms of Section 61 of the Act and Therefore such decision cannot be treated to be decision or award as contemplated u/s 61 of the Act or the law laid down under 76(1)(i) of the Act. It is this order of the Tribunal which has been assailed through instant petition.

5. We are afraid either the Tribunal did not take note of the observations made by the Lt.Governor in his order dated 10.6.1987 whereby revision petition filed by the petitioner was dismissed on account of order of the Joint Registrar being an order u/s 61 of the Act and Therefore was appealable before the Tribunal or due to inadvertence the Tribunal fell in error by treating the order of Registrar as an order u/s 60 and Therefore relegated the petitioner to original position and back to square one. In the process of dissecting the order of Joint Registrar whether it was an order u/s 60 or u/s 61, the petitioner has been reduced to a ping pong ball or a shuttle cock.

6. Once the revision petition was dismissed by the Lt.Governor with the observation that the order of the Joint Registrar was order u/s 61 of the Act and was Therefore appealable the propriety as well as legality demanded that the Tribunal should have decided the appeal of the petitioner on merits. What was under challenge was the order of the Joint Registrar dismissing the claim of the petitioner primarily on account of delay and secondly that the petitioner was vigilant enough to find out from the society as to the status of his membership and should not have remained dormant after depositing the share money and admission fee. Any member or society can arise the dispute before the Registrar under the provisions of Section 60 of the Act. While the Registrar can either himself decide and determine the dispute or can appoint any officer u/s 60 and can refer the matter for arbitration. Condition precedent is that he must come to the conclusion that there is a dispute which is arbitrable and adjudicable either by himself or by his delegatee.

7. In the instant case, Registrar had found that there was no dispute between the claimant and respondent-society and it is a belated case and the petitioner cannot claim his rights merely because he has deposited the share money which was a very meagre amount and Therefore there was no dispute which was arbitrable or adjudicable u/s 61 of the Act.

8. We are afraid the approach of the Joint Registrar was highly erroneous. Once dispute is raised before him and there is a contest between the parties, his decision

that there is no dispute between the parties which is arbitrable is fallacious as the finding that the claim of the petitioner is not only belated one but he cannot claim his rights merely because he has deposited the share money amounts to dismissal of the claim of the petitioner preferred before the Registrar. Such an order as observed by the Lt. Governor tantamount to an order u/s 61 of the Act. Since the claim of the petitioner was dismissed being belated one and without giving notice to the society it needs to be decided and determined on merits.

9. Be that as it may, we cannot leave the petitioner in lurch or remedyless. As a consequence, we allow the petition and set aside the order of the Tribunal and remand it to Registrar for fresh decision in accordance with provisions of law as if it was a dispute before him which is to be adjudicated or arbitrated upon under the provisions of Section 61 of the Act. Registrar shall either enter into reference afresh and decide it by way of arbitration himself or may refer it to any other officer and would proceed u/s 61 of the Act. Petitioner to appear before the Registrar on 20.11.2002 and Registrar to issue notice to the society. Interim order dated 13.1.1988 shall remain in force till the disposal of matter by him.