

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

**Date of decision: 22<sup>nd</sup> December, 2014.**

+ **W.P.(C) No.8302/2014 & CM No.19254/2014 (for stay)**

**BALRAJ SINGH MALIK** ..... **Petitioner**

Through: Mr. Sanjay Sharawat with Mr. Ratish  
Kumar, Advs.

Versus

**GOVT. OF NCT OF DELHI & ANR** ..... **Respondents**

Through: Ms. Sangeeta Sondhi, Adv. for R-1.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J.**

1. This petition under Article 226 of the Constitution of India impugns Rule 102(2) of the Delhi Co-operative Societies Rules, 2007 (Rules) framed under the Delhi Co-operative Societies Act, 2003 (the Act) to the extent it enables the General Body of the Co-operative Group Housing Society to fix higher charges of essential services in respect of dwelling units which are on rent and in possession of tenants, on the ground of being *ultra vires* Sections 76, 89 and 93 read with Section 137(2) and other provisions of the Act and Article 14 of the Constitution of India. Axiomatically, the decision taken by the respondent No.2 Crown Co-operative Group Housing Society Ltd.,

Dwarka, Phase-I, New Delhi in its Annual General Body Meeting held on 12<sup>th</sup> October, 2014 and as recorded in Minutes / Letter dated 26<sup>th</sup> October, 2014, to increase the maintenance charges for flats on rent from the existing rate of Rs.2624/- per month by Rs.300/- per month from November, 2014 till March, 2015 and by Rs.500/- with effect from April, 2015, is also impugned.

2. It is the case of the petitioner:

(i) that the respondent No.2 Society was allotted land at plot No.18-B, Sector-7, Dwarka, Phase-I, New Delhi and has constructed a multi-storeyed building having 70 flats thereon and which flats were allotted to the members of the respondent No.2 Society;

(ii) that of the said 70 flats, 40-45 flats are presently occupied by tenants;

(iii) that the petitioner is a tenant in Flat No.A-902 in the said Co-operative Society;

(iv) that the respondent No.2 Society had initially fixed Rs.1800/- as monthly maintenance charges to be paid with respect to each of the flats;

(v) that the petitioner in accordance with the agreement with his landlord, who is a member of the said Society and the allottee of the said flat, besides paying the rent of the flat, is also liable to pay the said maintenance charges directly to the Society;

(vi) that the Society in its Annual General Body Meeting held on 12<sup>th</sup> October, 2014 took various decisions and with respect to Agenda Item No.5(e) took the decision as under:

“(e) **Discussion of Increase in Maintenance Charges**

*The Secretary informed the House that Society, on account of Maintenance Charges, collects from members Rs.1,26,000/- and expenses are approx. Rs.1,55,000/- due to running of Water Pump for 23 Hrs. daily. This inflates the common area consumption very high and also tariff rates have gone up.*

*To meet this expense, we have two options-*

- **Option 1** – Increase maintenance by Rs.500/- per member, but still there will be no margin for contingencies.
- **Option 2** – No increase in maintenance but distribution of common area electricity bill amount equally amongst all 70 members, then we will have little margin for contingencies.

*Few members also suggested increasing the maintenance charges for members who have rented out their flats.*

**Decision:** - *To meet the requirement the following decisions had been taken/approved by the House.*

(i) *With regards to Common area electricity amount, the same be distributed and recovered from all 70 Members with effect from Nov. 2014 and the same be*

*reflected in monthly bill. No payment will be made from Maintenance Charges towards electricity bill w.e.f. Nov. 2014.*

*(ii) Maintenance Charges for flats on rent be increased by Rs.300/- till Mar. 2015 with effect from Nov. 2014 and by Rs.500/- with effect from Apr. 2015.”*

(vii) that in accordance with the aforesaid decision, members of the respondent No.2 Society who are self occupying their flats have to pay monthly maintenance charges at Rs.2624/- but the members whose flats are occupied by tenants are required to pay Rs.2924/- per month with effect from November, 2014 and Rs.3124/- per month with effect from April, 2015;

(viii) that the said differentia has no rational nexus with the objective;

(ix) that the respondent No.2 Society has so decided in accordance with Rule 102 of the Rules (supra) and the relevant portion whereof is as under:

***“102. Maintenance of essential services in a cooperative housing society-***

*(1) The Committee shall be responsible for maintaining the following essential services in the housing complex on regular basis, namely:-*

- (a) Electricity supply;*
- (b) Water supply and sewerage;*
- (c) Garbage disposal;*

- (d) *Running of lifts, borewell, Genset, Water Harvesting system and maintenance of green areas;*
- (e) *Security services;*
- (f) *Availability of plumber, electrician and Mali etc., for day to day services for all occupants;*
- (g) *Availability of fire safety equipments/ systems in running condition;*
- (h) *Round the clock hours emergency response and staffing; and*
- (i) *Other services as may be specified by the General Body.*

*(2) The general body while framing regulations for maintenance of essential services including mandatory green area in the co-operative housing society shall have to take into account the common areas, common facilities and the services which are rendered to the members and the residents by the co-operative housing society. The regulations shall have to spell out the basis of fixing up of the charges for the maintenance of essential services specially in such complexes, where area of dwelling units and number of storey of flats differ in sizes. Further, where lifts are installed in building charges for its use and maintenance shall have to be paid by all members and residents in spite of the fact whether the particular member or resident is staying at any floor of the building. The general body may fix higher charges of essential services in respect of dwelling units which are on rent and in possession of tenants.” (emphasis added).*

3. The petition came up before us for admission on 28<sup>th</sup> November, 2014, when *prima facie* not finding any merit in the petition, we heard the counsel for the petitioner at length and reserved judgment on admissibility of the petition.

4. The counsel for the petitioner has contended:
- (a) that the underlying legislative policy of the Act is mutual help, equitable contribution by the members to the capital of the Society and equal apportionment of the maintenance charges amongst the members; there is thus no scope to discriminate amongst the members;
  - (b) that there is no embargo on the members allowing their flats to be occupied by relatives, licensees and tenants and merely because some members, instead of occupying the flats themselves, have allowed the same to be occupied by others, is no ground to burden such members with higher rate of maintenance;
  - (c) that Sections 76, 89 and 93 of the Act expressly provide that the costs / charges of maintenance shall be apportioned amongst the members and that the cost or maintenance charge is a charge on the flat and “the member is primarily responsible for its payment”; it does not permit classification of members on the basis of nature of occupancy of their flats;
  - (d) that Government, in exercise of the rule making power under Section 137 of the Act, cannot legislate on the field covered by the

Act;

(e) that the monthly maintenance charges levied for use of common areas / facilities in a group housing society are the charges determined for use of such facilities and are leviable against each flat / dwelling units if all the units / flats in a Society are of the same size then the charges must be levied uniformly;

(f) that if occupancy is the determinative criterion for fixing monthly maintenance charges, then such charges cannot be legally levied upon a member who keeps his flat unoccupied;

(g) that power under Rule 102 (supra) can be exercised by the Society only by framing Regulations, as provided under Section 89 of the Act and which has not been done by the respondent No.2 Society;

(h) that without extending any special privileges and facilities to the flats in occupation of tenants, they cannot be charged differently, as the maintenance charges are to be shared 'equally' by all members;

(i) attention in this regard is also invited to Section 2(g) of the Act defining Co-operative Principles as that specified in the Schedule to the Act and to the Schedule to the Act laying down the co-operative principles and particularly to Clause 3 thereof which provides that

members contribute 'equitably' and control the capital of their co-operative democratically; and,

(j) reliance is placed on *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.* (1997) 5 SCC 516, *Kunj Behari Lal Butail Vs. State of H.P.* (2000) 3 SCC 40, *Amarendra Kumar Mohapatra Vs. State of Orissa* (2014) 4 SCC 583, *Patna Improvement Trust Vs. Smt. Lakshmi Devi* (1962) 2 SCR 812, *State of Uttar Pradesh Vs. Singhara Singh* (1963) 4 SCR 485 and *Ramchandra Keshav Adke Vs. Govind Joti Chavare* (1975) 1 SCC 559.

5. We have considered the material placed before us and also weighed the contentions raised.

6. First and foremost question which, in our view, arises and which was during the hearing posed to the counsel for the petitioner also is, whether the petitioner who is admittedly not a member of the respondent No.2 Society, has any locus to challenge the decision of the General Body of the respondent No.2 Society or the Rule aforesaid in accordance wherewith the said decision was taken and which decision is alleged to discriminate a member / flat of the said member of the said Co-operative Society from

another member / flat in the said Co-operative Society. To us, it appeared that the locus for such a challenge would only be of the member of the Co-operative Society and not of the petitioner who is but a tenant in a flat of one of the members and otherwise has no say in the Co-operative Society. The counsel for the petitioner of course contended that it is the petitioner who is affected by the decision and would thus have a cause of action. We are however unable to agree.

7. Yet another question which was posed by us during the hearing to the counsel for the petitioner and which remained unreplied was, whether even a member of a Co-operative Society could challenge a decision taken in the General Body meeting of the Society and whether the Court could interfere in the same. In our view, the principle of the Courts not interfering in the internal affairs of Society or a Club, would be attracted.

8. The Act was enacted to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions, based on self help and mutual aid, to enable them to promote their economic and social betterment and to provide for regulation, management, and functional autonomy of such Societies and for matters connected therewith. We may remind ourselves that our Constitution vide Article 19(1)(c) vests a right in

all citizens to form co-operative societies and vide Article 43-B, it is the directive principle of the State policy to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

9. The co-operative movement, as far as the city of Delhi is concerned, is not new. The Act of 2003 was preceded by the Act of 1972. However, with the ever increasing population of the city and with the resultant shortage of land for housing and the axiomatic increase in cost of such land as well as the inflationary trend in the cost of construction, the co-operative movement got a huge fillip in the housing sector and co-operative house building societies became the focal point, even for re-enactment of the Co-operative Societies Act. This fillip was aided by the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 framed under the Delhi Development Act, 1957 which carved out a category of co-operative house building societies for allotment of such land on pre-determined rates.

10. We have been unable to find anything in the Act to sustain the challenge to Rule 102(2) (supra) as being in conflict therewith. As far as reliance on Co-operative Principle as defined in Section 2(g) and Schedule

to the Act is concerned, the same is of 'equitable' as distinct from 'equal' contribution. The word 'equitable', as per the Black's Law Dictionary, Eighth Edition, means just, consistent with principles of justice and right, existing in equity. Since the maintenance charges are expenses incurred by the Society in maintenance of common areas and for maintenance of common services and are apportioned between the members, we also looked up the definition of 'equitable distribution'. The same is defined as a 'fair' but not necessarily 'equal' allocation; the fairness is to be determined by considering all the relevant factors. Similarly, 'equity' is defined as fairness, impartiality, even handed dealing.

11. We similarly find the word 'equitable' only and not 'equal', used in Sections 76, 89 and 93 of the Act on which the petitioner relies. All the said Sections are under Chapter IX of the Act titled "Special Provisions for Co-operative Housing Societies". Section 76, in sub-sections (1) to (7) thereof lays down the rights and privileges of members on allotment of plot or dwelling unit in a co-operative housing society. We are unable to find therein any requirement for equal distribution of maintenance charges. Section 86, provides for expulsion of a member of a co-operative housing society *inter alia* on the ground of persistent default in respect of the dues of

the Society. Similarly Section 87 provides that a person ceases to be a member of the co-operative housing society *inter alia* on the ground, if such member, after becoming a member of the housing society, acquires either in his own name or in the name of his spouse or any of his dependent children, a residential property exceeding 66.72 sq. meters in area either on lease-hold basis or free-hold basis or on power of attorney or on agreement to sell basis. Section 88 provides that the management of co-operative housing society shall vest in its committee. Section 89, on which reliance is placed, requires every co-operative housing society to frame Regulations from time to time with the approval of the General Body for maintenance of essential services in the housing society and containing details of services to be provided and service charges to be recovered for such services from the “members and residents of its housing complex”. We may highlight that the same uses two separate expressions i.e. ‘members’ and ‘residents’ and does not contain any requirement for the charges to be recovered “equally”. Section 93 provides that the management of a co-operative housing society shall be entrusted to the committee and while again providing that it shall be the responsibility of the ‘member’ or ‘occupant’ to make payment of maintenance charges to the committee, does not state that such payment

shall be on equal basis.

12. We may at this stage also deal with the contention of the counsel for the petitioner, of Section 89 providing for the charges to be recovered to be specified by the Society by framing Regulations and that the respondent No.2 Society has not framed any such Regulations. The meeting of the respondent No.2 Society in which the impugned decision was taken was admittedly of the General Body. From the minutes of the said meeting, it is evident that one of the agendas for the meeting was the increase in maintenance charges. Neither do we find in the Act nor has the counsel for the petitioner argued that there is any procedure prescribed for framing such Regulations. We are unable to see, as to how the decision taken in the said meeting does not qualify to be a Regulation of the Society.

13. As far as the argument, of the distinction aforesaid made between self occupied flats and tenanted flats of the Society, in the matter of levy of maintenance charges, being violative of Article 14 of the Constitution is concerned, what needs to be seen is, whether the two are similarly placed, in the same class. Evidently, the members of the Society who by contributing to the cost of land and cost of construction of the Society are in occupation of the flats so allotted to them, cannot be said to be in the same class or

similarly placed as a person who has not contributed to the cost of land and cost of construction of the flats and who is in occupation of a flat of the co-operative housing society as a tenant therein of a member of a co-operative society. The two clearly belong to distinct classes.

14. The next question to be considered is, whether the said differentiation has a reasonable nexus to the resolution / decision of the General Body of the Society to collect maintenance charges from the tenants at a rate higher than from the members of the Society in self occupation of their flats. Though the argument of the counsel for the petitioner, of the two being equally liable because they equally / similarly enjoy the benefits of the common services and areas, is attractive but the test laid down in the Act is of equity and not of equality. The decision of the General Body of the respondent No.2 Society and which as aforesaid is permitted by the Rules, cannot be said to be not equitable or discriminatory. As aforesaid, the question of discrimination between two separate and distinct classes, does not arise. As far as treatment of two members of the Society differently is concerned, though does not arise in this case as the petition has not been filed by any member of the Society but still, a member who has let out his flat, cannot be said to be similarly placed as a member who is in occupation

of his flat. While a member in occupation of the flat is not earning anything therefrom, a member who has let out the flat is earning therefrom and thus getting a return on the capital investment made in the cost of land and cost of construction of the flat. If the General Body of the Society is of the opinion that the same is equitable, it is not for this Court to interfere. This Court in *Lok Sevak Cooperative House Building Society Ltd. Vs. S.P. Goyal* 70 (1997) DLT 152 was dealing with a challenge to the differential price being demanded by the Society for allotment of land to the members. It was the contention that equality is the hallmark of democracy within the Society and every member of the Society is to be treated at par and the Society cannot discriminate between one member and another and all have to be treated equally. It was held that a person who was inducted as a member of the Society in the year 1986 cannot be allotted at the same rate at which a member inducted in the year 1970 was allotted and equating the two at par would amount to treating unequals as equals which is not warranted by any criteria.

15. As aforesaid, the principle of Courts not interfering in internal affairs of Societies/Clubs applies. It has been held that Clubs / Societies / other such associations should be allowed to decide on their own affairs and the

Court insofar as such decision is reached by following the prescribed Rules and procedure, will not interfere therein. As far back as in *Satyavart Sidhantalankar Vs. Arya Samaj, Bombay* AIR 1946 Bombay 516, it was held that every member of a corporation or an incorporated company joins the same on the basis that *prima facie* the majority of members are entitled to exercise powers and control operations generally and the same would be the position in the case of unincorporated associations of individuals whether the same be registered under the Societies Registration Act or not. The rule of majority was held to be the normal basis of these associations. It was held that the members of such associations know fully well that the affairs of these associations would be conducted normally by the vote of the majority of members thereof and no member would be heard to contend to the contrary. The Supreme Court in *T.D. Daver Vs. Lodge Victoria* AIR 1963 SC 1144 held that interference of the Courts in the case involving expulsion of a member from the Club is extremely limited and the Court's enquiry only is to find out whether the decision making is within the four corners of the rules and the Courts cannot sit in appeal over the decisions of the Society/Club. This view was followed by the High Court of Kerala in *K. Nanu Vs. C.H. Kunhikrishna Kurup* MANU/KE/1146/2013 as well as

by this Court in *All India Wokey's Hockey Federation Vs. Indian Olympic Association* 55 (1994) DLT 607 and *Ashok Kumar Vs. SBI Officers Association* 201 (2013) DLT 433 (in FAO (OS) 252/2013 preferred thereagainst and decided on 27.08.2013 this part was not interfered with). In the context of the Supreme Court Bar Association also, in its dispute with *B.D. Kaushik* reported in (2011) 13 SCC 774 it was held that the Courts leave it open to the association and its members to frame a bye law, rule or regulation which may provide for eligibility and / or qualification for the membership and / or provide for limitations / restrictions on the exercise of any right by and as a member of the said association. It was held to be a settled legal proposition that once a person becomes a member of the association, he / she loses his individuality qua the association and has no individual rights except those given to him by the rules and regulations and / or bye laws of the association.

16. We repeat that no member of the Society has any grievance with such a decision. Rather, the members who have let out the flats joined / are deemed to have joined in taking the said decision. It is for the tenants of the said members to, if of the view that the rate at which they are paying the rent and at which they are required to pay the maintenance charges is not

worth the facilities, amenities provided or the aggregate thereof is higher than the market rate, to quit the same. However, once the tenant has come into occupation of the property, he cannot be permitted to dictate qua the affairs of the Society. In fact, we had during the hearing, asked the counsel for the petitioner that if the petitioner is aggrieved from the said decision, the remedy of the petitioner is to call upon his landlord who is a member of the Society to exercise his powers as a member and have the said decision reversed, if majority of the other members of the Society are willing for the same. The Supreme Court recently in *J.N. Chaudhary Vs. State of Haryana* (2014) 11 SCC 249 held that in judging the functioning of a Cooperative Society where the democratic process of election is adopted in pursuance to the Rule and a collective decision is taken by majority of the members of the entire body expressed in terms of a resolution passed by the General Body, then the same cannot be ignored and bypassed at the instance of handful of members. It was held that if a decision is taken by majority in terms of the Rule, it cannot be overruled by minority even on the ground of *mala fide* or fraud unless established through strict proof of evidence. It was reiterated that *mala fide* is always easy to allege but difficult to prove.

17. In fact, the Supreme Court in the *B.D. Kaushik* judgment (supra) also held that no citizen has the fundamental right to become a member of a Cooperative Society; his right is governed by the provisions of the statute; so the right to become or to continue being a member of the Society is a statutory right and his being a member of the society is subject to the Act, Rules and Bye-laws applicable from time to time. It was thus held that no individual member is entitled to assail the constitutionality of the Act, Rules and the Bye-laws as he has his right under the said Act, Rules and Bye-laws and is subject to its operation and “the stream cannot rise higher than the source”. The same principle was echoed earlier in *State of U.P. Vs. C.O.D. Chheoki Employees’ Cooperative Society Ltd.* (1997) 3 SCC 681 and in *Zoroastrian Co-operative Housing Society Ltd. Vs. District Registrar Co-operative Societies (Urban)* (2005) 5 SCC 632. Though vide 97<sup>th</sup> Amendment to the Constitution with effect from 15<sup>th</sup> February, 2012 the right to form Co-operative Societies has been made a fundamental right but the same in our view would not alter the said principle in as much as the right to form a Co-operative Society is different from the right to become a member of a Co-operative Society which continues to be governed by the provisions of the Act, the Rules and the Bye-Laws. At least a Division Bench of the Madras High Court in *M. Arumugam Vs. State of Tamil Nadu* MANU/TN/0811/2013 has taken the same view.

18. Notice may also be taken of the fact that even for the levy of property tax self occupied and tenanted flats/premises are treated differently.

19. While on the subject we may also notice that the position which emerges from a reading of the various provisions of the Act is that the co-operative housing societies are intended to fulfil the need of the citizens for houses for their own occupation. Plots/flats in co-operative housing societies are not intended for trading or as a tool of investment for appreciation. It is for this reason only that conditions have been placed on acquisition and disposal thereof. A person can be a member of one society only and cannot become a member and / or ceases to be a member, if the conditions regarding not having any other property as aforementioned, are not fulfilled / are breached (Ref. Section 22 of the Act and Rules 21, 23 of the Rules).

20. Considering all the aforesaid factors, we are unable to hold that the decision of the General Body of the respondent No.2 Society as permitted by the rules to levy a higher rate of maintenance charges on tenants of flats in Co-operative Society can be said to be inequitable.

21. As far as the judgments cited by the counsel for the petitioner are concerned, we do not find the same to be having any application to the matter / issue at hand.

22. *Agricultural Market Committee* and *Kunj Behari Lal Butail* (supra) are on the proposition of essential legislative functions being non-delegable.

The argument that the impugned part of Rule 102(2) is an essential legislative function and beyond the rule making power in Section 137(2)(zz) i.e. of making rules providing the guidelines for maintenance of essential services in a co-operative housing society. However the same ignores the other clauses of Section 137 which permit rules to be made qua the management of co-operative housing society (zy). Moreover, Section 88 under Chapter IX (supra) containing Special Provisions with respect to the co-operative housing societies vests the management of every co-operative society in its committee and Section 89 permits a co-operative society to from time to time with approval of the General Body frame regulations for maintenance. No limitation is placed on the power of the General Body in this regard and which is also indicative of there being no limitation on the right of co-operative society to levy higher maintenance charges on tenant vis-a-vis members.

23. As far as the reliance on *Amarendra Kumar Mohapatra* (supra) is concerned, attention was invited to para 53 thereof, laying down the principles to be determined for judging equality. We have already hereinabove held that tenants cannot be said to be equally placed as members of a co-operative society in self occupation of their flats. The last three judgments are on the proposition of exercise of power, though prescribed to be exercised by making Regulations, without framing

Regulations. We have already dealt with the said aspect hereinabove. The counsel, inspite of our prodding, could not state as to how the decision taken in the General Body meeting would not amount to framing Regulations.

24. We therefore do not find any merit in this petition, which is dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**CHIEF JUSTICE**

**DECEMBER 22, 2014**

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