

DELHI DEVELOPMENT AUTHORITY

v.

ARUN LAL SATIJA AND ORS.

NOVEMBER 23, 2007

[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA AND  
P. SATHASIVAM, JJ.]

*Land Laws:*

*Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981; R.17:*

*Allotment of Land—Son of deceased member of a Society entered into membership of the Society—Applicability of r.17—Held: R.17 of 1981 Rules regarding general restrictions to allotment of land for residential purpose applies to Nazul land—Appellant-authority neither claimed that the land in question was Nazul land nor any material placed before the High Court to justify applicability of r.17—Hence, the question of applying r.17 to restrict allotment of land in favour of son of the deceased does not arise—Delhi Co-operative Societies Act, 2005—Section 87.*

**Father of respondent No.1 was a member of the Society. He was entitled to be included in the draw of lots for allotment of land. However, before any allotment of land was done, he died. The Managing Committee of the Society adopted a resolution transferring the membership of the father to respondent No.1. Thereafter, he applied to the Registrar of Cooperative Societies for inclusion of his name in the draw of lots by the appellant-authority, which was rejected by the Registrar of Cooperative Societies. A writ petition was filed by respondent No.1 before the High Court challenging the non-inclusion of his name for allotment. The High Court directed clearance of the name of respondent No.1. Since the order of the High Court was not**

A complied with, contempt proceedings were initiated against the Registrar, Cooperative Societies-respondent No.2. The Registrar, Cooperative Societies made a statement before the High Court that the clearance letter for holding draw of lots for allotment of plot would be issued immediately. The High Court disposed of the Petition holding  
 B that the membership of a society and eligibility for a plot are entirely independent issues; that merely because respondent No.1 was having another plot in his name, he cannot be made ineligible for allotment of a plot on that ground; and that Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 is not  
 C applicable to the case of respondent No.1. Hence the present appeal.

Appellant-authority contended that true import of Rule 17 has been lost sight of by the High Court.

D Respondent No.1 submitted that Rule 17 has no application as the land in question was not Nazul land; and that Section 87 of the Delhi Co-operative Societies Act, on which the appellant has placed reliance, does not apply to the present case.

Dismissing the appeal, the Court

E HELD: 1.1. A bare reading of Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 makes it clear that it applies only to Nazul land. Nowhere, it was the stand of appellant that the land in question was Nazul land. Therefore, the question of applying Rule-17 does not arise. [Para 7] [531-G]  
 F

1.2. The last proviso to Section 87 of the Delhi Cooperative Societies Act, 2005 makes the position clear that it does not apply to a case of inheritance. The undisputed position is that the property devolved on the respondent No.1 by way of inheritance. But it is not  
 G necessary to go into the question in the present dispute because there was no material placed before the High Court to justify the stand that Rule-17 had any application. [Para 9] [533-A, B]

1.3. In the facts and under the circumstances of the case, the High  
 H

**Court's view does not suffer from any infirmity to warrant interference. A**  
**[Para 10] [533-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5373 of  
2007.

From the Judgment and Order dated 3.10.2005 of the High Court B  
of Delhi at New Delhi in C.W.P. No. 133/2005.

Ashwani Kumar for the Appellant.

T.S. Doabia, Sanjeev Sachdeva, Rashmi Malhotra and D.S. Mahra C  
for the Respondents.

Nagendra Rai and Amit Pawan for the Respondent No. 1.

Rakesh Munjal and Vishal Sinha for the Respondent No. 3. D

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to by a Division Bench of the Delhi E  
High Court allowing the writ petition filed by the respondent no.1

3. Factual background in a nutshell is as follows:

The land to which the present dispute relates was allotted to The F  
Mianwali District Cooperative House Building Society Ltd., Flat No. 3-  
A, New Qutab Road, Delhi. Father of Respondent No.1 was a member  
of the Society. Members of the Society were entitled to be included in  
the draw of lots for allotment of land. Before any allotment of land was  
done, father of respondent No.1 died on 22.11.1974. Respondent No.1  
filed an application for issuance of succession certificate which was allowed G  
on 17.02.1986. The Managing Committee of respondent No.3-Society  
adopted a resolution transferring the membership of Shri K.K. Satija in  
favour of respondent No.1. Thereafter, respondent No.1 approached the  
office of the Registrar of Cooperative Societies (in short 'the Registrar')  
for clearance and for forwarding his name for inclusion in the draw of H

A lots by the appellant. On 16.05.1994, the Registrar issued a show cause notice to respondent No.1 as to why his membership of the Society be not cancelled for the reason that he was already owning a residential house at A-120, Saraswati Vihar, Delhi. On 13.10.1994, an order in this regard was passed by the Registrar. But the membership was restored by the  
B Government in a revision petition filed under Section 80 of the Delhi Cooperative Societies Act, 1972 (in short 'the Act'). A writ petition was filed before the Delhi High Court challenging the non-inclusion of the respondent No.1's name for allotment. The Delhi High Court passed an order directing clearance of the name of respondent No.1, since no order  
C was passed in terms of the High Court's order. Two and four weeks' time were granted for inclusion of name and allotment of the plot. Since same was not done contempt proceedings were initiated. In these proceedings, the present appellant was not a party. In the contempt proceedings, a statement was made by the official of the Registrar, Cooperative Societies-  
D respondent No.2 that the clearance letter for holding draw of lots for allotment of plot of 300 sq. yds. would be issued immediately. Accordingly, the application was disposed of. On 19.02.2004, respondent No.1 approached the appellant for allotment in the draw of lots. At that point of time, the appellant came to know that order relating to inclusion  
E of the name of respondent No.1 had been passed. Respondent No.1 filed another writ petition seeking a writ of *mandamus* against the appellant to allot and handover the plot. The Division Bench allowed the petition and held that there was no substance in the plea raised by the appellant and that the membership of a society and eligibility for a plot are entirely  
F independent issues. It also did not find any substance in the plea that because respondent No.1 was having another plot in his name, he was ineligible for allotment of a plot in the society. The appellant's contention centred around Rule-17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (in short the 'Rules').  
G

4. The High Court held that Rules are not applicable to the case of respondent No.1.

H 5. In support of the appeal, learned counsel for the appellant submitted that true import of Rule 17 has been lost sight of by the High

Court. On the other hand, learned counsel for the respondent submitted that Rule 17 has no application as the land in question was not Nazul land. It was also submitted that Section 87 of the Act on which the appellant has placed reliance, does not apply to the present case. A

6. The dispute revolves primarily around applicability of Rule-17. The same reads as follows: B

“17. General restriction to allotment for residential purposes.

Notwithstanding anything contained in these rules, no plot of Nazul land shall be allotted for residential purposes, to an individual other than an individual referred to in clause (i) of rule 6, who or whose wife husband or any of his or her dependent children whether minor or not, or any of his her dependent parents or dependent minor brothers, or sisters, ordinarily residing with such individual, own in full or in part, on lease hold or free hold basis, any residential land or house or who has been allotted on hire purchase basis by residential land or house in the Union Territory of Delhi; C D

Provided that where, on the date of allotment of Nazul land, E

(a) the other land owned by or allotted to such individual is less than 67 square metres, or

(b) the house owned by such individual is a plot of land which measures less than 67 square metres, or F

(c) the share of such individual in any such other land or house measures less than 67 square metres, he may be allotted a plot of Nazul land in accordance with the other provision of these rules.”

7. A bare reading of the Rule makes it clear that it applies only to Nazul land. Nowhere, it was the stand of present appellant that the land in question was Nazul land. Therefore, the question of applying Rule-17 does not arise. G

8. Additionally, Section 87 of The Delhi Co-operative Societies Act, H

A 2003 also has some relevance. The same reads as follows:

“87. Additional ground for cessation of membership of co-operative housing society - Subject to the provision of this Act, in the case of a co-operative housing society, a person shall also cease to be a member of a co-operative society -

B

(a) an disposing of the property through instrument of power of attorney and agreement for sale subject to the interest of the mortgage if there is any loan on the property; or

C

(b) if he -

(i) before becoming a member of a co-operative *housing* society, already owns, either in his own name or in the name of his spouse or any of his dependent children.

D

(ii) after becoming a member in a co-operative housing society, during the currency of such membership, till allotment of any plot or flat to him, as the case may be, 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. metres in area, in any of the approved or unapproved colonies or other localities in Delhi either on lease hold basis or free hold basis or own power of attorney or on agreement for sale basis:

E

Provided that no person having residential property under this Section in the village abadi area in Delhi shall be disqualified:

F

Provided further that no such disqualification shall be applicable in the case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the membership of the co-operative housing society concerned:

G

Provided also that no member shall earn disqualification in clause (b) above, if the residential *Property* devolves on his by way of inheritance.”

H

9. The last proviso to Section 87 makes the position clear that it does not apply to a case of inheritance. The undisputed position is that the property devolved on the respondent no.1 by way of inheritance. But it is not necessary to go into the question in the present dispute because there was no material placed before the High Court to justify the stand that Rule-17 had any application. A  
B

10. In view of the aforesaid, the High Court's view does not suffer from any infirmity to warrant interference. The appeal is devoid of merit and is dismissed but in the circumstances, without any order as to costs.

S.K.S.

Appeal dismissed. C