



2025:DHC:11386-DB



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

Reserved on: 17.10.2025

Pronounced on: 16.12.2025

+ **W.P.(C) 4332/2021 & CM APPL. 13232/2021**

RANJANA RAJAGOPALAN

.....Petitioner

Through: Mr.D. N. Goburdhun, Sr. Adv.
with Mr.Hemant Phalpher,
Adv.

versus

LT. GOVERNOR OF DELHI & ORS.

.....Respondents

Through: Mr.Tushar Sannu, Standing
Counsel and Ms. Aqsa, Adv.
for GNCTD/R-1 & R-2
Mr.Aayush Agarwala,
Mr.Prakash Jha and Ms.Mallina
Luthra, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. The present petition has been filed, praying for the following reliefs:

“A] issue an appropriate Writ, Order, or Directions to declare Rule 91, Form 17 of Delhi Cooperative Society Rule 2007, as manifestly arbitrary and violative of Article 14, 19[1][c], 21, 300A of the Constitution of India;

B] to declare, that Rule 91 Form 17, being Subordinate Legislation, is contrary to Section 78, 79, 80 of the present Act and is therefore ultravires of the Act and unconstitutional and void/ nullity;



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C] To declare that Petitioner's case is covered under Section 74,78, 79 and 80 of the Act and Rule 93 applies along with Form 22 of the Delhi Cooperative Society Rules 2007

D] to set aside, and quash the order of Respondent No.3 passed on 26.12.20, Annexure-P5 herein and direct that nominee's name given by the Respondent be accepted and that the Record of Respondent No.3 be rectified;

E] to declare Form 17, ultravires, unconstitutional to the extent of details of Blood relative in Form 17 is concerned and Form 17 be accepted Sans blood line clauses;

F] to issue writ, order, direction, directing that Petitioners case is covered under Rule 93 as Lands was allotted to Respondent No.3 on Perpetual Lease basis and deal with the procedure land down under the same is Form 21 & 22.

G] Writ, Order Direction, reading down Rule 91, that Rule 91 does not violate any Fundamental Right nor parent act provision are violated as under 'Nomination' head, a person or persons by within Section 2[g] blood relation are disjunctive and any person, can be nominated by the member of the society as they operate in different fields.

H] To issue writ, order, direction directing that Form 17 insertion of "blood line" is void/ struck off and to that extent Form 17 is void"

FACTUAL MATRIX

2. It is the case of the petitioner that she is a single woman, having no children or any immediate blood relations but herself. Her father,



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who has since passed away, was an Advocate, and a member/Shareholder of the Supreme Court Bar Co-operative House Building Society Ltd./respondent no.3. The Society was allotted land to construct houses by the President of India, who is the lessor, on a permanent sub lease basis.

3. The petitioner's father was allotted Plot No. C-32, Neeti Bagh, New Delhi-110049 by the Society, wherein the respondent no.3 Society was the lessee and petitioner's father, a member of the respondent no.3 Society, was the sub lessee.

4. The father of the petitioner nominated her as a nominee in the 'Share Certificate' of the Society. On her father's demise, the petitioner became a Member of the respondent no. 3 Society.

5. The petitioner, by a letter dated 13.03.2020, addressed to the Secretary of the respondent no.3 Society, had sought to nominate Ms. Gayatri Kumari and Master Pushkar Ram (both being siblings, but admittedly not in blood relation of the petitioner) as her nominees for membership/Share Certificate of the respondent no.3 Society. The same was, however, rejected by the respondent no. 3 *vide* Letter dated 26.12.2020, which reads as under:-

"As you are aware the Managing Committee of the Supreme Court Bar Cooperative House Building Society Ltd. in its meeting on 19.12.2020 considered your request for nomination of Ms.Gayatri Kumari & Master Pushkar Ram and the following resolution was passed:

"In view of the express provisions of the Delhi Cooperative Societies Act Section 78 and Rule 91 of the DCS Rules, 2007 as well as our Bye



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Laws, Form 17 provided under the Rules and also in view of the Division Bench judgment of the Delhi High Court dated 24.11.2009 in W.P. (C) No. 6807/2008(Para 10) the request made by Ms. Ranjana Rajagopalan to nominate Ms. Gayatri Kumari and Master Pushkar who are not her blood relations cannot be acceded to and is rejected.”

Since admittedly the Proposed nominees are not your blood relations, your request to nominate them cannot be accepted.”

6. Aggrieved by the said rejection of her request for nomination, the petitioner has filed the present petition.

7. During the course of final arguments, and as recorded in the Order dated 17.10.2025 of this Court passed in the present petition, it has been submitted by the learned senior counsel for the petitioner that the petitioner now intends to nominate only one person, namely Ms. Gayatri Kumari, who is an adult, as her nominee for the membership/Share Certificate of the respondent no.3 Society.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

8. The learned senior counsel for the petitioner submits that the present petition challenges the constitutional validity of Rule 91 and Form 17 of the Delhi Co-operative Societies Rules, 2007 (in short, ‘Rules’), as they are contrary to the parent Act, being the Delhi Co-operative Societies Act, 2003 (in short, ‘Act’), particularly Sections 74, 78, 79, and 80 thereof.

9. He submits that Section 78 of the Act governs nominations by members of co-operative housing societies and under the same, the



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restriction of making a nomination in favour of blood relatives would arise only if there is a joint and more than one nominee being nominated by a Member. He submits that there is no outright restriction on making a non-blood relative a nominee in terms of Section 78 of the Act. He submits that the use of the disjunctive ‘or’ between person and persons creates two distinct categories of nominations - the nomination of a single person, and the nomination of multiple persons. He submits that the restriction pertaining to blood relations appears only in the proviso to Section 78(3) of the Act, which states that “*joint and more than one nomination within the blood relation shall be permissible*”. He submits that this proviso applies exclusively to the second category, namely where there are multiple nominees. He submits that the requirement of blood relation is thus a condition precedent only when a Member seeks to nominate more than one person jointly.

10. He submits that Section 78 of the Act, in any event, does not prohibit/curtail/restrict the absolute right of the Member to dispose of her movable property, that is, the Share Certificate, by nominating it to a sole person. He submits that the Share Certificate represents a movable property, not an immovable property, which would be subject to the Transfer of Property Act requirements. He submits that there is no restriction to the effect that the member can nominate only a blood relation and not anyone else; the blood relation requirement is triggered only in cases of joint or multiple nominations.



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11. The learned senior counsel further submits that the definition of “person” under Rule 2(s) of the Rules further supports this interpretation. He submits that the same is an inclusive definition and extends the meaning of ‘person’ beyond natural persons to include companies, firms, societies, and other corporate bodies. He submits that it is clear that by this definition, ‘person’ *per se* is not blood relation, and, therefore, when Section 78 of the Act permits the nomination of a ‘person’, it contemplates any person as defined under Rule 2(s) of the Rules, without any mandatory requirement of blood relation in the case of a single nominee.

12. He submits that Rule 91(1) of the Rules again employs the disjunctive ‘or’ between person and persons, mirroring the language of Section 78 of the Act. He submits that the phrase “*within blood relation*” must be read contextually as applying to the latter part of the provision, that is, when there are multiple nominees.

13. The learned senior counsel further submits that Form 17 in Schedule VII of the Rules, that prescribes for making nominations, must be read in light of the parent Act and the Rules. He submits that Form 17 of the Rules is designed only for cases of joint or multiple nominations. He submits that Column 4 of Form 17 requires details of “persons” (plural) in blood relations and requires specification of their relationship with the Member. He submits that the structure and language of Form 17 indicate that it is intended for cases where there are multiple nominees, who are required to be blood relatives. He submits that when a member makes a single nomination, Form 17 has



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no application, and to insist otherwise would be to impose procedural requirements that are intended only for multiple nominations.

14. He places reliance on the judgment of the Coordinate Bench of this Court in ***Jyoti Khanna v. Registrar Cooperative Societies***, 2011 SCC OnLine Del 4268, to submit that though that case dealt with the old Act, this Court held that any restriction limiting nominations to blood relatives would be beyond the stipulation contained in Section 78 of the 2003 Act.

15. The learned senior counsel further submits that it is a well-settled principle of law that subordinate legislation cannot travel beyond the scope of the parent statute; the rules framed under a statute must be subservient to and consistent with the provisions of the Act. He submits that in case of any conflict between the Act and the Rules, the Act must prevail. He submits that the provisions of Section 78 of the Act and Rule 2(s), Rule 91, and Form 17 of the Rules are clear and unambiguous, and the golden rule of grammatical and literal interpretation should be applied. He submits that single nomination and the definition of 'person' in Rule 2(s) make it abundantly clear that no blood relation requirement applies to sole nominations. He submits if Rule 91 and Form 17 are interpreted to impose such a requirement, they would be *ultra vires* the parent Act. He submits that Rule 91 or Form 17 can and should be read down harmoniously with Section 78 of the Act to hold that the blood relation requirement applies only to cases of joint or multiple nominations, and not to single nominations. In support, he places reliance on the judgments of the Supreme Court



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in *Central Bank of India v. Workmen*, 1959 SCC OnLine SC 1; *State of Kerala v. K.M. Charia Abdulla and Co.*, 1964 SCC OnLine SC 92 and *Anandji Haridas & Co. (P) Ltd. v. Engineering Mazdoor Sangh*, (1975) 3 SCC 862.

16. He submits that in the counter affidavit of the respondent nos.1 and 2, it is conceded that 'Share' transfer can be made by a member by nomination or by testamentary declaration or by intestate succession. He submits that by making a Will, the share certificate can be given to a non-blood relative, which nullifies the very edifice of the respondents' submissions.

17. He further submits that the right to property is a constitutional right guaranteed under Article 300A of the Constitution of India, and the right to hold property necessarily includes the right to dispose of that property in the manner of one's choosing. He submits that regulations contained in any statute must be interpreted in a manner so as to least interfere with the right to property of the owner. He submits that the petitioner has the absolute right to dispose of her property by way of lawful means and any restriction that arbitrarily curtails her right to nominate a person of her choice would be an unreasonable restriction on her constitutional right to property under Article 300A of the Constitution of India. In support, he places reliance on the Judgments of the Supreme Court in *P.T. Munichikkanna Reddy v. Revamma*, (2007) 6 SCC 59; *Bhikhubhai Vithlabhai Patel v. State of Gujarat*, (2008) 4 SCC 144; *Dharnidhar Mishra v. State of Bihar*, (2024) 10 SCC 605; *Indore Vikas Pradhikaran v. Pure Industrial*



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Coke & Chemicals Ltd., (2007) 8 SCC 705; and, *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & Ors.*, (2003) 2 SCC 111.

18. He further submits that no such restrictions exist in other comparable statutory provisions governing nominations. He submits that there is no restriction under the Indian Succession Act, 1925 or the Hindu Succession Act, 1956, restricting any transfer of rights to a non-blood relative. Similarly, under Section 72 of the Companies Act, 2013, holders of shares and debentures of a company can nominate a person to whom the shares and debentures would vest on the demise of the holder of shares or debentures. Under Section 39 of The Insurance Act, 1938, a policyholder may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. Even under Section 45ZA of the Banking Regulation Act, 1949, nomination for payment of depositors' money, the depositor or, as the case may be, all the depositors together may nominate, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company. He submits that, therefore, there is no rational basis for imposing a more restrictive regime under the Act.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT NOS. 1 AND 2

19. The learned counsel for the respondent nos. 1 and 2 submits that the present petition challenges the constitutional validity of Rule 91



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and Form 17 of the Rules on the ground that they restrict nominations to blood relations only as opposed to Section 78 of the Act; however, the same is based on a fundamental misreading of the parent statute itself.

20. He further submits that, in fact, the issue raised in the present petition is not confined to the Rules alone. He submits that identical nomination restrictions, limiting such rights to family members, are embedded across a wide range of Central and State enactments and service regulations, including the Payment of Gratuity Act, 1972, the Employees' Provident Fund Scheme, 1952, the Central Civil Services (Pension) Rules, and the General Provident Fund Rules, which restrict nomination to family members to protect dependents and maintain the natural line of succession. He submits that any contrary finding would have far-reaching consequences, unsettling a settled and consistent legislative policy followed for decades across India.

21. He submits that the constitutional validity of identical provisions restricting nominations to family members has already been tested and upheld. He submits that the West Bengal Co-operative Societies Act, 1983 contains provisions in Section 79 thereof read with Rules 127 and 128 of the West Bengal Co-operative Societies Rules, 1987 that are substantially identical to Section 78 of the Act and Rule 91 of the Rules, and restrict nomination to persons belonging to the family of the member. He submits that this restriction was specifically considered by the Calcutta High Court in ***Parul Sengupta v. Registrar of Co-operative Societies***, 2004 SCC Online Cal 604,



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where the Court upheld the restriction and held that it does not alter the normal line of succession but confines nomination within family relationships. He submits that the same was also upheld by the Division Bench in appeal. He submits that the matter subsequently reached the Supreme Court in ***Indrani Wahi v. Registrar of Co-operative Societies***, (2016) 6 SCC 440, arising from the very same statutory framework, and the Supreme Court did not find any constitutional infirmity in Section 79 or Rules 127 and 128 of the West Bengal Act and Rules. He submits that instead, the Supreme Court applied and interpreted these provisions directly and held that the co-operative society has no option whatsoever except to transfer the membership in the name of the nominee in consonance with these provisions. He submits that the Supreme Court expressly proceeded on the footing that these provisions constituted the governing and valid law on the subject.

22. He submits that when Rule 91 of the Rules mirrors Rule 127 of the West Bengal Rules, and when the Supreme Court has already applied and accepted the constitutional validity of the West Bengal provision under an identical statutory scheme, this Court cannot re-examine the constitutionality of a provision that has been implicitly upheld by the Supreme Court.

23. Placing reliance on the judgment of this Court in ***Mayurdhwaj Cooperative Group Housing Society Ltd. v. Registrar, Cooperative Societies***, 2009 SCC Online Del 3803, he further submits that this Court has already examined the precise question of nomination under



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the Act and the Rules. He submits that the Court expressly noted that Rule 91 of the Rules introduced a policy change, restricting nominations only to blood relations, in contrast to the earlier regime under the 1972 Act, and the 1973 Rules, which had permitted wider nomination. He submits that the Court observed that the position under the present regime is somewhat different from the position under the earlier regime, as under the earlier regime there was no embargo on a member making a nomination in favour of a person who may not have been their blood relation, but that has changed under the present regime.

24. He submits that the ratio of *Indrani Wahi* (supra) and *Mayurdhwaj* (supra) affirms that the restriction to blood relations is a legitimate legislative policy, fully in conformity with the parent Act and constitutionally reasonable under Article 14. He submits that, therefore, Rule 91 of the Rules enjoys the presumption of constitutionality as part of a valid statutory framework; is supported by a judicial precedent of an identical rule being not disturbed by the Supreme Court; and is backed by a rational and intelligible classification serving the co-operative objective of keeping membership and ownership within the family unit.

25. He further submits that the present petition is not *bona fide* and misuses the process of law inasmuch as the petitioner, under the guise of questioning the constitutional validity of the nomination restriction, is, in fact, seeking to secure a purely financial advantage in favour of nominees, by avoiding substantial payment of lawful stamp duty and



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registration charges, thereby causing loss to State revenue. He submits that the law never intended nomination to serve as a substitute for conveyance or testamentary disposition. He submits that if the petitioner genuinely wishes to transfer her interest to the proposed nominee, she could easily have alienated or gifted her lawful share by executing a registered conveyance. He submits that instead, she seeks to use the nomination route as a colourable device to transfer valuable property to a non-relative without payment of statutory duties.

26. He further submits that in the present case, the property in question is an inherited property and not the petitioner's self-acquired asset; the petitioner, being a successor to her father's estate, holds only such limited interest as devolved upon her by operation of law, and in respect of inherited property, she has no absolute right to divert succession by Will or nomination in favour of a stranger, but can only deal with her own undivided share during her lifetime, and cannot nominate or create future ownership in favour of a non-family person contrary to statutory succession. He submits that if the petitioner is permitted to nominate a non-family person in respect of inherited property, the legal heirs would inevitably be dragged into a protracted and unavoidable legal battle after her lifetime, generating needless litigation and defeating the very object of orderly succession envisaged under the Rules.

27. In response to the submissions made by the learned senior counsel for the petitioner, he submits that Section 78(1) of the Act employs a single, composite phrase, "a person or persons within blood



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relation”, meaning thereby that all nominations, whether singular or plural, must fall within the category of blood relations. He submits that the petitioner’s attempt to bifurcate this provision into two distinct categories, one permitting nomination of any person irrespective of relationship, and another confining nomination to blood relations only in cases of multiple nominations, is grammatically unsound and contrary to the plain language of the statute. He submits that the said phrase must be read as a unified whole, where the qualifying phrase “within blood relation” applies to both “person” and “persons”. He submits that this construction is dictated by the Series-Qualifier Canon of statutory interpretation. He submits that there is no comma, semicolon, or other punctuation in Section 78(1) of the Act that would justify reading the restriction as applicable only to multiple nominations.

28. He submits that the legislative intent behind Section 78 of the Act is clear and unambiguous; the Legislature consciously intended to restrict the right of nomination to persons within the blood relationship of the member, ensuring that ownership and membership rights in co-operative housing societies remain within the family unit and do not become subject to speculative or commercial transfers. He submits that this has also been consistently understood and implemented by the Registrar of Co-operative Societies and by co-operative housing societies across Delhi for nearly two decades.



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29. He submits that the second proviso to Rule 22(1) of the Rules further reinforces the legislative intent to confine membership and related rights to persons within blood relationships.

30. He further submits that the reliance of the petitioner on the definition of ‘person’ under Rule 2(s) of the Rules, is entirely misplaced inasmuch as while Rule 2(s) of the Rules provides an inclusive definition for general purposes, the same cannot be invoked to override the specific restriction contained in Section 78(1) of the Act, which confines nominations to blood relations. He submits that the general definition cannot be used to defeat or dilute a specific substantive restriction imposed by the parent statute.

31. He submits that Rule 91 and Form 17 of the Rules are framed under Sections 78(4) and 137 of the Act, which expressly authorize the Government to prescribe the procedure and form for nomination. He submits that Rule 91 of the Rules does not enlarge or modify the scope of Section 78 of the Act; it merely operationalizes the legislative command through an administrative format. He submits that it is well settled that delegated legislation that is consistent with the parent statute forms part of the statute itself and enjoys the same presumption of validity as the parent provision.

32. He submits that the petitioner has not challenged Section 78 of the Act, which itself contains the very restriction now questioned through Rule 91 of the Rules. He submits that when the enabling statute is not challenged and is in fact relied upon by the petitioner, its implementing rule cannot be invalidated independently.



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33. Placing reliance on the judgments of the Supreme Court in ***B.K. Srinivasan v. State of Karnataka***, (1987) 1 SCC 658 and ***Naresh Chandra Agrawal v. The Institute of Chartered Accountants of India***, (2024) 13 SCC 241, he submits that it is mandatory that a challenge to subordinate legislation must first establish the source of power, then interpret the rule, and finally test its consistency with the parent Act. He submits that Rule 91 of the Rules is demonstrably in sync with and operates wholly within the scope of Section 78(1) of the Act. He submits that to accept the petitioner's contention would create an anomalous situation where the Rule is struck down while the identically worded substantive restriction in the unchallenged parent provision continues to operate, rendering the quest for relief entirely infructuous.

34. He further submits that membership in a co-operative society is a voluntary and contractual relationship governed by the Act, the Rules, and the bye-laws. He submits that under Section 25(1) of the Act and Rule 19(1)(f) of the Rules, every applicant must declare in writing that he shall abide by these governing provisions. He submits that the petitioner, having been admitted as a member in the year 2009, after the Rules came into force, executed the prescribed form, being Form 22, giving this undertaking. Placing reliance on the judgment of the Supreme Court in ***Zoroastrian Cooperative Housing Society Ltd. v. District Registrar***, (2005) 5 SCC 632, he submits that the Supreme Court has held that the bye-laws of a co-operative society constitute a binding contract between member and society, and having



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voluntarily accepted membership under these terms, the petitioner is estopped by conduct from challenging the statutory framework she agreed to obey.

35. He further submits that the restriction confining nominations to blood relations creates a rational distinction between family succession through nomination and transfer to outsiders through registered conveyance under Rule 93 of the Rules, having an intelligible differentia with a clear nexus to legitimate objectives of preventing benami or proxy transfers, safeguarding government revenue through proper registration and stamp duty, and preserving the co-operative and residential character of housing societies. He submits that the restriction serves the legitimate purpose of preventing misuse of the nomination mechanism, which was rampant under the earlier 1972 Act, when society flats were illegally transferred to outsiders without registration or payment of stamp duty. He submits that the 2003 Act and the 2007 Rules were enacted specifically to correct this mischief and ensure that succession to membership remains within genuine family units. He submits that a measure enacted in public interest and within legislative competence cannot be termed arbitrary or unconstitutional, and such regulation constitutes reasonable classification under Article 14 of the Constitution of India, fully consistent with the principles laid down by the Supreme Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534 and *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191.



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36. He submits that Rule 91 of the Rules does not infringe upon the right to property guaranteed under Article 300A of the Constitution as it only regulates the procedure for recognition of membership upon a member's death and does not deprive any individual of ownership or title to property. He submits that ownership continues to devolve according to succession laws or through registered conveyances as provided under Rule 93 of the Rules. Placing reliance on the judgments of the Supreme Court in *Indrani Wahi* (supra) and *Sarbati Devi v. Usha Khanna*, (1984) 1 SCC 424, he submits that it has been held that nomination is merely a statutory convenience for identification of the person to whom the society shall recognize the transfer of membership, and not a transfer of ownership or title. He submits that, therefore, Rule 91 involves no deprivation of property and falls well within the permissible scope of State regulation.

37. He further submits that the petitioner's reliance on Rule 93 of the Rules is wholly misplaced. He submits that Rule 91 of the Rules governs the substantive right of nomination during the lifetime of a member and clearly restricts such nomination to persons within blood relation. He submits that it is a living member's act, a voluntary declaration identifying who shall be recognized by the Society after death. He submits that Rule 93 of the Rules, on the other hand, operates only after the member's demise, when the question of transfer of occupancy right arises in a perpetual lease society. He submits that Rule 93 of the Rules is purely procedural, ensuring that the society and the lessor process the transfer to the nominee, heir, or legal



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representative already recognized under Rule 91 of the Rules. He submits that the provision does not create any fresh or wider right of nomination; it merely regulates the manner of effecting transfer post-death in accordance with the lease conditions and succession law. He submits that the petitioner's claim that Rule 93 of the Rules permits nomination of any person beyond family is legally unsustainable and contrary to the statutory scheme. He submits that Rule 93 of the Rules must be read in consonance with Section 78 of the Act and Rule 91 of the Rules, meaning that the terms “nominee”, “heir”, and “legal representative” are not three separate and independent classes but part of a single family-based continuum. In support, he places reliance on the judgment of the Supreme Court in *Daman Singh v. State of Punjab*, (1985) 2SCC 670.

38. He submits that the petitioner's challenge to Rule 91 and Form 17 of the Rules must fail on the ground that the constitutional validity of a legislative enactment can be challenged only on limited grounds, namely, lack of legislative competence, violation of fundamental rights, or manifest arbitrariness, and even then, the presumption of constitutionality must prevail. He submits that the Supreme Court in *Jaya Thakur v. Union of India*, (2024) 9 SCC 538 has reaffirmed this principle and held that the presumption is always in favour of the constitutionality of a legislative enactment. He submits that further, it is a settled principle that when a party wants to challenge the constitutional validity of a statute or rule, he must plead in detail the grounds on which the validity is sought to be challenged. He submits



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that in the absence of specific pleadings to that effect, a Constitutional Court cannot go into the issue of validity of statutory provisions. He submits that the Supreme Court in *Haji Abdul Gani Khan v. Union of India*, (2023) SCC Online SC 138, has held that there is always a presumption of constitutionality of laws, and the burden is always on the person alleging unconstitutionality to prove it, and for that purpose, the challenge has to be specifically pleaded by setting out the specific grounds on which the challenge is made. He submits that in the present case, the petitioner has failed to discharge this burden. He submits that the petitioner has not established lack of legislative competence, nor has she demonstrated any violation of fundamental rights or manifest arbitrariness. He submits that on the contrary, the restriction imposed by Section 78 and Rule 91 is reasonable, serves a legitimate State purpose, and is consistent with the co-operative and familial nature of housing societies.

39. He submits that for these reasons, the petition is liable to be dismissed.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT NO. 3

40. The learned counsel for the respondent no.3 Society submits that the Impugned Communication dated 26.12.2020 was issued by the respondent no.3 Society in accordance with the provisions of the Act and the Rules. He submits that Section 78 of the Act confines nominations to only blood relatives. He submits that the said restriction is contained in the proviso to the said Section and applies to



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a single as well as joint nomination. He submits that while the petitioner has sought to argue that the restriction of blood relations is applicable only for joint nominations, however, this is not correct, as the *proviso* clearly means that all nominations have to be within blood relations, and any other interpretation will defeat the objective of the restriction.

41. Placing reliance on the judgment of the Supreme Court in ***Vivek Narayan Sharma v. Union of India***, (2023) 3 SCC 1, he submits that the Supreme Court has held that an interpretation that prevents the mischief sought to be curbed by the enactment, ought to be adopted.

42. He further submits that it is settled law that both primary and subordinate legislation enjoy a presumption of constitutionality and an interpretation which upholds the provisions must be favoured. In support, he places reliance on the judgment of the Supreme Court in ***Bombay Dyeing & Mfg Co. v. Bombay Environmental Action Group***, (2006) 3 SCC 434.

43. He further submits that apart from Section 78 of the Act, the said Act permits framing of rules for the purpose of regulating and restricting both transfers and nominations. He submits that Section 23 of the Act recognizes the discretion of the Society to admit members subject to bye-laws and rules; Section 28 of the Act provides that on the death of the member, the transfer of his or her interest is again made subject to rules; Section 80 of the Act provides that a transferee must be qualified to be a member before interest of a member can be transferred; and, Section 137(k) of the Act specifically provides for



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rule making power in relation to restriction on transfer of shares or interest.

44. He submits that even assuming Section 78 of the Act does not clearly spell out the restriction of nominees being blood relations, there are various other provisions which contemplate and permit additional restrictions to be placed under the Rules. He submits that, therefore, Rule 91 and Form 17 of the Rules are well within the legislative competence and the rule-making power conferred by the Act.

45. He further submits that confining the power to nominate in favour of blood relations, which constitute a distinct class, is both reasonable and legitimate as the power to nominate can be exercised without executing any instrument of transfer and thus, liable to be misused if permitted to be exercised in favour of a third person outside the family. He submits that in case nominations are not restricted in this manner, it will be utilized for transfer of property from a member to a total stranger/third party, bypassing laws like the Registration Act, the Stamp Duty Act, and other applicable laws. Supporting the submissions of the respondent nos. 1 and 2, he submits that it is for this purpose that nominations have been restricted to blood relations only, as such limitation serves as a check against such possible abuse, which could further lead to fomenting of litigation between the nominee and the possible legal heirs.

46. He submits that mandating that an instrument of transfer be executed if succession is to be given to a third party outside the



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family, will serve as a form of check and balance. He submits that for instance, even in the case of a Will, an enquiry has to be conducted whether it is validly executed by a person of sound mind.

47. Placing reliance on the judgment of the Supreme Court in *Central Areca Nut and Cocoa Marketing and Processing Co-operative Ltd. v. State of Karnataka*, (1997) 8 SCC 31, he submits that it is settled law that the constitutionality of a provision will not be gone into unless there is a violation of a fundamental right.

48. He submits that the petitioner is merely unable to exercise her right of nomination in favour of a third person outside her family, however, she is always at liberty to transfer her interest by executing any known instrument of transfer. He submits that, therefore, no fundamental right of the petitioner has been violated by the provision under challenge. He submits that the issue is thus, not one of an embargo, but at best, of an inconvenience suffered by the petitioner, as she will otherwise be required to execute an instrument of transfer.

49. He submits that, therefore, the relief claimed by the petitioner is liable to be rejected.

REJOINDER OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

50. The learned senior counsel for the petitioner submits that the reliance placed by the respondents on *Mayurdhwaj* (supra) is misplaced as the obiter observations in that case were made in a different context. He submits that even in that case, the argument of the respondents that prices will escalate, backdoor channels will be



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opened and transfers will take place without stamp duty, was repelled by the Bench. He submits that the question of builders does not arise as lands are sold under the Transfer of Property Act, which requires registration and payment of stamp duty at the time of transfer itself. He submits that nomination, by contrast, takes effect only after the death of the member, which occurs only once, thereby eliminating any possibility of repeated transfers or speculative transactions. He submits that the interest in question is movable property in the nature of a shareholder certificate of the society, and not immovable property that could be subject to commercial dealings. He submits that in the said case, the Bench was dealing with a case under the 1972 Act, which has been repealed, and the present matter falls under Chapter IX of the Act, dealing with Group Housing Societies.

ANALYSIS AND FINDINGS

51. We have considered the submissions made by the learned counsels for the parties.

52. Though the petitioner had, in the letter dated 13.03.2020 and in the present petition, sought to nominate two persons as nominees, who admittedly are not her blood relations, at the time of final submissions before this Court, the petitioner has confirmed that she would like to nominate only one of them namely, Ms. Gayatri Kumari, as her nominee. Therefore, we shall first consider as to whether there is any bar on a member of a co-operative society nominating a single person, who is not the blood relation of such member, as their nominee. It is



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only when we find that there is such a bar, that we shall proceed to consider whether the same is constitutionally valid or not.

53. To answer the above question, we shall first consider certain provisions of the Act.

54. Section 22 of the Act gives a list of persons who may become members of a co-operative society. The same is reproduced hereinunder:

“22. Persons who may become members.-

(1) No person shall be admitted as member of a co-operative society except the following, namely –

(a) an individual competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);

(b) any other co-operative society;

(c) the Government;

(d) a firm, a joint stock company, or any other body corporate constituted under any law; and

(e) such class or classes of persons or association of persons as may be notified by the Government in this behalf;

Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a co-operative society exclusively formed for the benefit of students of a School or College:

Provided further that no individual shall be eligible for admission as a member of any financing bank or federal co-operative society except as provided in clause (m) of section 2.

(2) Notwithstanding anything contained in sub-section (1), the Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any co-operative society or class of co-operative societies by general or special order, published in the



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official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing as member or shall be eligible for membership only to a limited extent of any specified co-operative society or class of co-operative societies, so long as such person is or such persons are engaged in or carrying on that profession, business or employment, as the case may be.”

55. Section 27 of the Act deals with the restriction on the transfer of shares or interest, and states that the transfer of the share or interest of a member in the capital of a co-operative society shall be subject to such conditions as to maximum holding as are specified in Section 6 of the Act. Section 28 of the Act deals with the transfer of interest on the death of a member, and states that on the death of a member, a co-operative society shall transfer the share or interest of the deceased member to the person nominated in accordance with the Rules made in this behalf, or, if there is no person so nominated, to such persons as may appear to the Committee to be the heir or legal representative of the deceased member.

56. In Sections 27 and 28 of the Act, there is no bar on nominating a person who is not a blood relation to be transferred the member's share or interest in the event of the death of such member.

57. The above provisions, however, deal with co-operative societies in general. Special provisions with respect to co-operative housing societies are contained in Chapter IX of the Act. As the respondent no.3 Society herein is a co-operative housing society, it is these



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provisions which will be more relevant for the purposes of deciding the questions raised before us, and we shall deal with them in some detail hereinunder.

58. Section 76 of the Act spells out the rights and privileges of members on allotment of a plot of land, or dwelling unit in a co-operative housing society. Sub-section (2) of Section 76 of the Act states that notwithstanding anything contained in the Transfer of Property Act, 1882 or the Registration Act, 1908, any allotment of a plot of land or dwelling unit in a building of a co-operative housing society to its member as per the terms of allotment shall entitle such member to hold such plot of land or dwelling unit ‘*with such title or interest*’. Sub-section (4) of Section 76 of the Act further states that the right, title and interest in a plot of land or dwelling unit shall constitute a ‘*heritable and transferable immovable property*’ within the meaning of any law for the time being in force, provided such land or building shall not be partitioned for any purpose whatsoever.

59. Section 76 of the Act is re-produced hereinunder:

“76. Rights and privileges of members on allotment of plot or dwelling unit in a co-operative housing society.—

(1) Every member of a co-operative housing society, whether registered before or after the commencement of this Act, to whom plots of land or dwelling units have been allotted, shall be issued certificate of allotment by the co-operative housing society under its seal and signature in such form as may be prescribed.

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or the Registration Act, 1908 (16 of 1908), any



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allotment (including re-allotment) of a plot of land or dwelling unit in a building of a co-operative housing society to its member as per terms of allotment shall entitle such member to hold such plot of land or dwelling unit with such title or interest.

(3) A member of a co-operative housing society shall not be entitled to any title or interest in any plot of land or dwelling unit in a building of the co-operative society until he has made such payment as may be specified by the co-operative housing society towards the cost of such plot of land or construction of such dwelling unit, as the case may be, to the co-operative housing society.

(4) The right, title and interest in a plot of land or dwelling unit in a building of the co-operative housing society (including the undivided interest in common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that notwithstanding anything contained in any other law for the time being in force, such land or building shall not be partitioned for any purpose whatsoever.

(5) Every member of a co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or dwelling unit allotted to him, which shall be described in the certificate of allotment as provided in sub-section (1).

(6) Every member of a co-operative housing society in whose favour a plot of land or a dwelling unit has been allotted shall have the right to use the common areas and facilities as prescribed by the co-operative housing society and in case of any violation by a member, the committee shall be competent to recover it at



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the cost of the encroacher which also be applicable with regard to the common areas under the control of the co-operative housing society.

(7) The work relating to the maintenance, repair and replacement of the common areas and facilities (including additions or improvements thereto) shall be carried out in accordance with the building rules of the concerned civic authorities, or other competent authority, as the case may be, and the costs thereof shall be apportioned amongst the members of the co-operative housing society in such manner as may be determined and notified by the committee from time to time.”

60. From the above provision, it would be evident that on the allotment of a plot of land or dwelling unit in a building of a co-operative housing society, the member gets the title or interest in the said plot of land or the dwelling unit, and such right, title and interest in the plot of land or dwelling unit in a building of a co-operative housing society shall constitute a heritable and transferable immovable property.

61. The transferability of the right in the plot of land or the dwelling unit is further highlighted by Sections 79, 80 and 91 of the Act, which are re-produced hereinunder:

“79. Restriction on transfer of share or interest of a member.— Subject to the provisions of this Act, in the case of a co-operative housing society, no transfer of share or interest of a member or the occupancy right, except the transfer to his heir or a nominee, shall be effective, unless -



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(a) the previous permission of the co-operative housing society has been obtained by the transferor;

(b) the dues of the co-operative housing society are paid or transferred to the transferee with the consent of the co-operative housing society;

(c) the transferor vacates and gives possession of the premises to the transferee; and

(d) the transferee applies and acquires membership of the co-operative society :

Provided that the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease.

80. Permission for transfer of occupancy right not to be ordinarily refused and provision for appeal.–

(1) No co-operative housing society shall ordinarily refuse to grant to its member permission for transfer of his occupancy right in the property of the co-operative housing society unless the transferee is otherwise not qualified to be a member :

Provided that nothing contained in any agreement, contract or the bye-laws regarding eligibility for membership stipulated therein shall apply to a nominee, heir or legal representative of the deceased member for his admission to membership of the co-operative housing society :

Provided further that aforesaid transfer in case of lease hold land shall be governed by the provisions of the perpetual lease of land.

(2) The decision of the co-operative housing society on an application for permission to such transfer shall be communicated to the applicant within thirty days from the date of receipt of the application.



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(3) Any person aggrieved by the decision of the co-operative housing society refusing permission for such transfer may within thirty days from the date on which the refusal of permission is communicated to him appeal to the Registrar.

(4) The Registrar shall dispose of the appeal within a period of one hundred and twenty five days whose decision shall be final.

xxxxx

91. Special provision for regularisation of occupancy right of persons who have acquired such a right through the instrument of power of attorney or agreement for sale.

A member of a housing society who has sold his plot or flat on the power of attorney or agreement for sale or by sale deed, shall cease to be a member of that society from the date of the sale of plot or flat:

Provided that the purchaser having registered power of attorney or registered agreement for sale or registered sale deed, as the case may be, in respect of such plot or flat, may apply for membership by paying transfer fee of five hundred rupees and share money and admission fee as per the provisions of the bye-laws of the society and the committee shall grant membership to the applicant within thirty days after the submission of his application. In case of refusal by the committee, the applicant may appeal to the Registrar within thirty days and the decision of the Registrar shall be final:

Provided further that no purchaser shall be entitled for more than one membership in a housing society.”

62. From a co-joint reading of the above provisions, it would be apparent that though for effecting the transfer to a third party, who is



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neither a heir nor a nominee of a member, previous permission of the co-operative housing society has to be obtained by the transferor, such permission for transfer of the occupancy right of a member in the property of the co-operative housing society shall ordinarily not be refused by the co-operative housing society, unless the transferee is otherwise not qualified to be a member of such society. However, at the same time, even this restriction shall not be applicable to a nominee, heir or legal representative of the deceased member for the admission of such nominee, heir or legal representative to the membership of the co-operative housing society. Therefore, while the society can restrict and refuse to accord membership rights to a transferee who is not qualified to be a member of the co-operative housing society, no such right to refuse membership to a nominee, heir or legal representative of a deceased member of the co-operative housing society is vested in such society.

63. This exclusion is important to understand the restrictions that have been argued as far as nomination under Section 78 of the Act is concerned. Section 78 of the Act, reads as under:

“78. Provision for nomination.—

(1) Every member of a co-operative housing society shall nominate a person or persons to whom in the event of his death his right and interest in such co-operative housing society shall be transferred.

(2) The member of the co-operative housing society shall have right to change the nomination at any time.



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*(3) There shall not be more than one nomination subsisting at any time:
Provided that joint and more than one nomination within the blood relation shall be permissible.”*

64. Sub-section (1) of Section 78 of the Act gives an unrestricted right to every member of a co-operative society to nominate a person or persons to whom, in the event of death of such member, the rights and interest of such member in the co-operative housing society shall be transferred. Sub-section (2) of Section 78 of the Act gives an unrestricted right to the member of a co-operative housing society to change the nomination at any time. Sub-section (3) of Section 78 of the Act, however, states that there shall not be more than one nomination subsisting at any time. Therefore, the only restriction is that there should not be more than one nomination at a given point in time. To this restriction, the proviso then carves out an exception and states that joint or more than one nomination within the blood relation shall be permissible. Therefore, a holistic reading of Section 78 of the Act clearly shows that while there is no restriction on a member to nominate a person or persons to whom the member's rights and interest in the co-operative housing society shall be transferred on such member's death, at the same time, if the nomination is to be made in the name of more than one person, the restriction is that these persons must be the blood relations of such member. This restriction shall apply only when the nomination is sought to be made in the name of more than one person. If the nomination is made by the



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member in the name of one person only, there is no restriction on such nomination, and such right is absolute.

65. As noted hereinabove, in view of Section 80 of the Act, the co-operative housing society has no right to refuse to grant to its member permission for transfer of the member's occupancy right in the property of the co-operative housing society to such single nominee as even the restrictions with respect to the qualifications to be a member of the co-operative housing society shall not apply to such a nominee.

66. This now brings us to the effect of Rule 91 of the Rules and also Form 17 in Schedule VII appended thereto. Rule 91 of the Rules, reads as under:

"91. Provision for nomination-

(1) A member of a co-operative housing society may nominate a person or persons within blood relation to whom in the event of his death his right and interest in the co-operative housing society shall be transferred. Joint and more than one nomination with the blood relation shall be permissible. The nomination shall have to be made in writing in the Form No.17, in triplicate by the member in the presence of two witnesses and it is to be entered in the books of the co-operative housing society kept for the purpose.

(2) The member may, from time to time, revoke or vary such nomination during his life time.

(3) In case a member nominates more than one person in respect of any shares held by him, he shall, as far as practicable, specify percentage of share of each nominee in terms of whole share and interest thereon. The, transfer shall be made in the name of first



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named nominee and other nominee(s) shall be made joint member(s). If the nominee is a minor, a guardian or a legal representative of the minor to represent the minor nominee in the matters connected with this nomination, shall be appointed.

(4) The nominee shall submit along with his application to the co-operative society with regard to his claim, an indemnity bond, indemnifying the co-operative housing society against any claim made in respect of share and interest in said plot or flat.

(5) If no nomination has been made by a member, the co-operative housing society on receipt of intimation of death of a member shall notify this fact to the public by giving advertisements in English and Hindi leading news papers of the National Capital territory of Delhi and by a notice exhibited at the office of the co-operative society, inviting claims or objections for transfer of share or interest of the deceased member to an heir or a legal representative and after making such inquiries as the committee considers proper in the circumstances prevailing and on the expiry of period of three hundred and sixty five days as provided in sub-section (2) of section 28, the committee of the co-operative housing society shall decide the matter after due deliberations and intimate the decision within thirty days of the expiry of period of three hundred sixty five days. If no decision is communicated by the committee of the co-operative housing society, the transfer of interest in the share of the deceased shall be deemed to have been made."

67. Though at first blush, a reading of sub-rule (1) of Rule 91 of the Rules would seem to suggest that the nomination can be made only in favour of 'a person or persons' within blood relation, the same would be totally contrary to Section 78 of the Act, thereby, becoming



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unsustainable in law inasmuch as, in the event of a conflict between the provisions of an Act and the Rules framed thereunder, it is the provisions of the Act which would prevail over the Rules, the Rules being subordinate to the Act under which they are made, shall have to yield way, or otherwise be declared *ultra vires* the Act. In this regard, we may only make reference to the judgments of the Supreme Court in *Central Bank of India v. Workmen* (supra) and in *K.M. Charia Abdulla and Co.* (supra).

68. Therefore, sub-rule (1) of Rule 91 of the Rules has to be read in conformity with Section 78 of the Act, and when so read, what emerges is that, while a member may nominate any person as his nominee, if such member wishes to nominate more than one person, the condition of such persons being within the blood relation of the member, shall apply, not only in terms of Rule 91 of the Rules but also in terms of sub-section (3) of Section 78 of the Act. The latter part of sub-rule (1) of Rule 91 of the Rules also reflects this when it states that ‘*joint and more than one nomination with the blood relation shall be permissible*’.

69. Form 17, which relates to sub-rule (1) of the Rule 91 of the Rules, is re-produced hereinbelow:

“FORM - 17
(See sub-rule (1) of rule 91)
FORM OF NOMINATION
(To be furnished in triplicate)

To,

The secretary

.....Cooperative House Building Society Ltd.

.....Cooperative Group House Society Ltd.

_____ Pin _____



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**Sub: Application for Nomination for transfer of Share and interest after death.**

Sir,

I, Shri/Smt/Ms _____ S/o,W/o,D/o _____
resident of _____

Pin _____ membership No. _____ am a member of the _____ Cooperative
House Building Society Ltd./ _____ Cooperative Group Housing Society Ltd.

2. I hold Share Certificate No. _____ dated _____ fully paid up share numbering _____ of
the value of Rupees _____ each, bearing numbers from _____ to _____ (both inclusive)
issued by the said cooperative housing society.

3. I also hold the Plot No. _____/Flat No. _____ measuring an area of _____ sq
meter/covered area of _____ sq meter/ in the Society's complex popularly
known as _____ at _____ and numbered _____ in block/pocket/street _____ at _____
Pin _____.

4. As provided in section 78 read with rule 91 of the Delhi Cooperative Societies
Rules, 2007, I hereby, nominate the person(s) within the blood relation as per
provisions of the Perpetual Lease of land whose particulars are as shown below
to whom my share or interest in the capital of the _____ Cooperative House
Building Society Ltd./ _____ Cooperative Group Housing Society Ltd shall be
transferred in the event of my death.

Sr.No	Name of the Nominee(s) along with Father's /Husband's name	Permanent address of the nominee(s) with Pin Code along with PAN No. if any	Relationship with the nominee	Share of each nominee(s) (percentage)	Date of birth of the Nominee(s) if the nominee(s) is a minor
1.					
2.					
3.					
4.					

5. I hereby, state that Sh/Smt/Ms _____ S/o,D/o,Ms _____ aged _____
years, the first named nominee shall apply for claim of share and interest in
respect of the said plot/flat in the cooperative housing society and other
nominee(s) shall be joined as a joint member(s). All the nominees shall have
to give an indemnity bond with application for claim indemnifying the
cooperative housing society against any claims made in respect of my said
share(s) and interest in the plot/flat by the nominee(s).

6. As the nominee Sh _____ at serial No _____ is minor, I, hereby appoint
Sh/Smt/Ms _____ S/o./W/o./D/o _____ resident of
_____ Pin _____ as guardian/legal representative of the



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minor to represent the minor nominee in matter connected with the nomination.

7. *This may be deemed my last Will in respect of above property only. In witness whereof, my hand, this day of _____ two thousand _____*

Yours faithfully,

Name & Signature of Nominator Member

Address _____”

70. Again, while Clause 4 of the said Form would seem to suggest that the right to nominate any person is restricted by the condition that such person shall be within the blood relation, it appears that the said Clause, because it deals with plural, that is, more than one person being nominated, has added such a condition in conformity with Section 78 of the Act and Rule 91 of the Rules. In fact, the table under this clause, as also Clause 5 of the said Form, seem to suggest this.

71. What is most important in this Form, however, is Clause 7 thereof, which, only because we want to highlight it, is re-produced hereinbelow:

“7. This may be deemed my last Will in respect of above property only. In witness whereof, my hand, this day of _____two thousand _____”

72. The above Clause would show that the nomination is deemed to be a ‘Will’ of the member with respect to the plot of land or the dwelling unit in the co-operative housing society. If Form 17 is deemed as a Will, we fail to understand how the same can be restricted only to a blood relation. This, however, should not be read as our endorsement to the proposition that the nomination, in fact, amounts to a Will. We say so because we are mindful that in ***Indrani***



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Wahi (supra), the Supreme Court has clarified that the transfer of the membership of a deceased member of a co-operative housing society to a nominee would have no effect on any dispute of title between the inheritors or successors to the property of the deceased and the nominee. We reproduce the relevant paragraph, as under:

*“22. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in para 6 (already extracted above at p. 448f-h and p. 449a-b) of the judgment of this Court in Usha Ranjan Bhattacharjee case . In this behalf, it is necessary to clarify that transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the cooperative society concerned, and is binding on the said society. The cooperative society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). **That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.***

*23. Insofar as the present controversy is concerned, we therefore hereby direct the Cooperative Society to transfer the share or interest of the Society in favour of the appellant Indrani Wahi. **It shall however, be open to the other members of the family (presently only the son of Biswa Ranjan Sengupta, Dhruba Jyoti Sengupta; we are informed that his mother Parul Sengupta has died), to pursue his case of succession or inheritance, if he is so advised, in consonance with law.**”*

(Emphasis Supplied)



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73. We need not go further in this issue in the context of the Delhi Act or the Rules, as it is not an issue before us. Suffice it to say that from a reading of the provision of the Act and the Rules together, it would be apparent that, at least where the member seeks to nominate only one person, to whom his share or interest in the capital of the co-operative housing society shall be transferred in the event of the death of such member, there is no restriction on such nominee being the blood relation of the member. The restriction of blood relation is only applicable when the member seeks to make a joint nomination or seeks to nominate more than one person.

74. Coming to the issue that the petitioner herself having become a member of the respondent no.3 Society as being a nominee of the original member, that is, her father, is somehow barred from nominating a person who is not her blood relation, we do not see how this can make any difference to the question of law being determined by us. It is not the case of the respondents that there is any dispute pending on the rights of the petitioner to the subject membership or the plot of land.

75. Equally, the submission of the respondents that by way of nomination, the petitioner would somehow avoid payment of duty, is only to be stated to be rejected. There is no transfer of title taking place by mere nomination. The nomination shall take effect only on the death of the member, that is, the petitioner herein. There is, therefore, no transfer of title in an immoveable property at this stage.



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76. The submission of the learned counsel for the respondents that the relationship between the member and the Society is governed by the Bye-laws of the Society, which acts as a contract between them, though correct in law, but we fail to see the relevance of the same in the present case. The learned counsel for the respondents has not drawn our attention to any provision in the Bye-laws of the respondent no. 3 Society which restricts the right of the member to nominate only his blood relations.

77. As far as the reliance of the respondents on the judgment of the Calcutta High Court in *Parul Sengupta* (supra) is concerned, the same has no application to the facts of the present case, for not only the fact that it has been reversed in *Indrani Wahi* (supra), but also because the Calcutta High Court was not called upon to adjudicate the validity of the Rule 127 of the West Bengal Co-operative Society Rules, 1987. The said Rule also did not make a distinction between nomination in favour of one person as against more than one person, as has been made under the Act and the Rules herein.

78. As regards the judgment of this Court in *Mayurdhwaj Cooperative Group Housing Society Ltd.* (supra), this Court was considering a case arising out of the Delhi Co-operative Societies Act, 1972 and the Delhi Co-operative Societies Rules, 1973, and, therefore, never had the occasion to consider holistically the provisions of the Delhi Co-operative Societies Act, 2003. It was only in passing that the Court noticed the difference in the provisions insofar as the



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nomination of blood relations is concerned, in Paragraph 10 thereof, which we shall reproduce hereinunder: -

“10. The position under the 2003 Act is, however, somewhat different. Section 28, like Section 26 of the 1972 Act, deals with transfer of the interest on the death of a member. Section 28(1) of the 2003 Act stipulates that on the death of a member, the co-operative society shall transfer the share or interest of the deceased member to the person nominated in accordance with the rules. Rule 91 of the Delhi Co-operative Societies Rules, 2007 clearly stipulates that a member of a co-operative housing society may nominate a person or persons within his / her blood relations to whom, in the event of his death, his right and interest in the co-operative housing society shall be transferred. It also stipulates that joint and more than one nomination within the blood relations shall be permissible. Therefore, the position under the 2003 Act read with the 2007 Rules is somewhat different from the position which obtained under the 1972 Act read with 1973 Rules. Under the 1972 Act and the 1973 Rules, there was no embargo on a member making a nomination in favour of a person who may not have been his or her blood relative. To this extent, the finding of the Tribunal is correct and that of the Registrar of Co-operative Societies is wrong.”

79. The above discussion cannot be stated to be the ratio of the judgment, as the said issue was neither relevant nor considered in detail by this Court, but only a passing reference was made.

80. In ***Jyoti Khanna*** (supra), this Court expressly stated so in Paragraph 10 thereof, when it considered the judgment of



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Mayurdhwaj Cooperative Group Housing Society Ltd. (supra), by observing as under:

“10. We may notice that since the transfer of membership in favour of the petitioner took place under the said Act, we examined the case under it. We may also notice that in so far as the Delhi Co-operative Societies Act, 2003 is concerned, the effect of Rule 30 of the Delhi Co-operative Societies Rules, 2007 is that nomination can be made “in first degree blood relation”, which appears to be beyond the stipulation contained in Section 78 of that Act. The difference in the two provisions has also been noticed in para 10 of the judgment in Mayurdhwaj CGHS Ltd.’s case (supra). We are, however, not called upon to examine this issue in the present case.”

81. Coming to the constitutional challenge to the provisions of the Act and the Rules, as in the present case the petitioner has now stated that she wishes to nominate only one person as her Nominee, which we find that the Act does not prohibit or restrict to only a blood relation, we shall refrain ourselves from considering in detail the validity of the said restriction as far as nomination being in favour of more than one person is concerned. We may herein only note that once Section 76 of the Act gives the title or interest in the plot of land or the dwelling unit to the member, which right, title and interest shall constitute a heritable and transferrable immovable property, any restriction on the right to nominate has to be tested on the Constitutional right guaranteed under Article 300A of the Constitution of India, and any restriction on such right must be strictly construed.



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In this regard, we may refer to the judgment of *Dharnidhar Mishra* (supra) and *Indore Vikas Pradhikaran* (supra).

82. In view of the above, we hold that the provisions of the Delhi Co-operative Societies Act, 2003 and the Delhi Co-operative Societies Rules, 2007 do not restrict the right of a member to nominate any person as his nominee for the right, share and interest of the member in the plot of land or dwelling unit in a building of a co-operative housing society allotted to him by the co-operative society, where such nomination is made of a single person, to only a blood relation. A person who is not a blood relation of the member can also be nominated by a member as a nominee where such nomination is of a single person.

83. In view of the above, the petitioner shall be entitled to make a fresh nomination of her membership of the Society, and the same shall be duly given cognizance of by the respondent no. 3 Society in accordance with the Delhi Co-operative Societies Act, 2003 and the Delhi Co-operative Societies Rules, 2007.

84. The petition, along with the pending application, is disposed of in the above terms.

NAVIN CHAWLA, J

MADHU JAIN, J

DECEMBER 16, 2025/sg/SJ