

(2002) 08 DEL CK 0187

In the Delhi High Court

Case No : C.W.P. No's. 4831 of 1996, 788 and 1881 of 1997, 3328, 3338 and 5235 of 1998 and 1598, 3334 and 4002 of 2000

Col. (Retd) M.L. Jetley and Others, Milan Vihar Coop G.H. Socy. Ltd. and Others, Ramesh Gupta and K.S. Jain and Another

APPELLANT

Vs

Registrar Coop. Society and Others
 Milan Vihar Coop G.H. Socy. Ltd. and Others Vs B.R. Rawal and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Citation : (2002) 08 DEL CK 0187

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

Bench : Division Bench

Advocate : Kirti Uppal, for the Appellant; Rakesh Munjal Thampi Mathur, V. Shankra, R.N. Bhardwaj, Anil Amrit and V.K. Shali, for the Respondent

Judgement

Khan, J.—All these petitions raise connected issues and are being disposed of by this common order.

Respondent society (Milan Vihar Cooperative House Building Society) was formed way back in 1979 and was initially allotted land by DDA for construction of 399 flats. Petitioners claim to have become its members from time to time. They allege that General Body Meeting (GBM) of the society was held on 8.3.1992 in which it was resolved that a premium ranging from Rs. 1 to 2 lacs would be charged from the members, besides the normal charge. This resolution was followed in case of three new members enrolled by R-4, the then President of the society but this resolution was thereafter given a go by the new Managing Committee of the society elected on 15.1.1994 which enrolled 35 new members without charging them the equalisation fee as per the resolution. Thereafter fresh elections were held on 15.10.1995 and newly elected committee again enrolled 80 new members in similar fashion and in violation of GBM resolution dated 8.3.1992.

2. Petitioners' further case is that they approached respondent No. 1 in this regard by various representations contending that enrollment of members after Serial No. 587 was void and voidable of this resolution but the Managing Committee manoeuvred to regularise their membership and for that convened GBM on 29.12.1996. So much so that Registrar had also initiated action u/s 32 against the Society. Petitioners claim that enrollment of new members from Serial No. 587 onwards was gross violation of the GBM resolution dated 8.3.1992 and discriminative as some of them were charged under the first resolution and others were let off. They pray that respondent No. 1 be directed to declare membership of all those members from Serial No. 587 onwards invalid and R4-5 be directed to comply with GBM resolution dated 8.3.1992 and R-4 be restrained from holding any meeting dated 29.12.1996.

3. R-5 has filed a brief affidavit challenging the maintainability of this petition for raising disputed questions of fact and for non-joinder and misguide of parties and so on. It is denied that GBM held on 8.3.1992 had decided to charge premium from different categories of members or that any new member was enrolled in violation of that decision or any provisions of the Act and Rules. On the contrary, all members were enrolled by the Managing Committee under bye-law 5 and, Therefore, all of them were bonafide members. It is also denied that GBM called on 29.12.1996 was so called with ulterior motive or that membership after Serial No. 587 was void or illegal on any count. On the contrary, all such members had participated in the elections in which petitioners had also contested but lost. It is also submitted that R-1 (Registrar) was apprised of the position of enrollment of members from time to time and no objection at any stage was raised by him which shows that he had approved of the action of the Managing Committee.

4. Several CMPs have been filed in these petitions for impleadment and even some of the newly enrolled members have also filed reply by the large adopting the stand of the society.

5. Notice of this petition was issued to first imp leaded respondents on 20.12.1996 and by interim order it was provided that outcome of GBM which was to be held on 29.12.1996 shall be subject to the decision of this petition. Ever since this court had from time to time required rival factions to come to terms and reach an amicable settlement. Court order dated 19.3.2002 records that all concerned parties had reached a consensus for such amicable resolution of their differences and had wanted to approach the Registrar for exploring the possibility of settlement between them. The matter was consequently referred to the Registrar who was asked to report to the court about the outcome of his efforts. He has submitted a report after hearing all concerned and their counsel also formulating terms of settlement between the contenders as under:-

"1. All the Ld. Advocates agreed to clear the list of those members who otherwise fulfill the conditions for allotment of flats and no dispute is pending regarding their membership/ payment due, if any.

2. The matter regarding payment of equalisation charges will be settled after the final orders of the Hon"ble High Court without affecting the right of individual membership.

3. The possession of flats may be handed over to 285 members who have already been allotted flats in the draw of lots held on 16.4.2000 subject to their furnishing undertaking about the payment of equalisation amount pending final directives of the Hon"ble High Court.

4. Flats in respect of those members whose claims are pending before any court/Tribunal/Registrar Cooperative Societies should be kept reserved.

5. Possession of flats should not be handed over to the junior most members over the right of senior members.

6. The proper scrutiny in respect of the members whose names have been forwarded to the DDA should be conducted by the office of the Registrar Cooperative Societies as these names were forwarded to the DDA long time back and some changes might have taken place thereafter.

7. As regards election, all agreed unanimously to hold the elections of the Managing Committee of the society by the Election Officer deputed by the office of the Registrar Cooperative Societies to hold free and fair elections within a period of 45 days."

6. This should have set the controversy at rest. But L/C representing the society Mr. Munjal and some contenders again are expressing some doubts about the true interpretation of Clause (3) and (6) of the settlement. While the society counsel maintains that Clause 3 of the terms of settlement did not contemplate any further scrutiny in cases of 285 members to whom flats stand already allotted pursuant to draw held on 16.4.2002, some rival counsel interpret Clause 6 of the settlement to suggest that cases of all members after Serial No. 587 were to be scrutinised by the Registrar before these could be forwarded to DDA. It was also pointed out that the settlement had left out by the issue equalisation fee to be charged from eligible members.

7. It is not for us to clarify the terms of settlement reached by Registrar with the agreement of the parties and their counsel. In case any of the parties want to seek any clarification of the terms of Clauses 3 and 6 of the settlement to know whether cases of all members were to be scrutinised inclusive of 285 members who were allotted flats in the draw held on 16.4.2002, it was for them to approach the Registrar for this and should they do so, Registrar is directed to examine their plea and make necessary clarification, wherever required.

8. Determination of equalisation fee to be charged from eligible members also does not fall within our domain. Nor are we inclined to undertake this exercise. If it is believed by petitioners that Managing Committee of the society had declined to charged such fee from newly enrolled members pursuant to GBM held on 8.3.1992, it was for the committee and the Registrar to implement such decision

and should any member feel aggrieved of that, he or she was free to take appropriate remedy in the matter.

9. These petitions are accordingly disposed of in terms of the settlement reached by the parties and their counsel before the Registrar as contained in his report dated 3.4.2002. Should any of the parties want to seek any further clarification on the terms of the settlement or seek levy or determination of equalisation fee, they could approach the Registrar in the matter who is directed to examine their grievance and pass appropriate orders in the matter. And should any party have any further grievance in the matter, it was equally open to that party to take appropriate remedy in the matter under law.

10. We are informed that some contenders had sought arbitration proceedings before Registrar which were held up because of pendency of these petitions Registrar and some more wanted to do so. Any pending arbitration matter on the subject matter shall proceed and be disposed of within four months from the date of appearance of parties. Those who want to take to arbitration now may do so and in all cases plea of limitation, if any, involved shall stand waived with the agreement of parties.

11. Nothing said in this order shall have any bearing on any pending or future proceedings on the subject matter between the parties. This disposes of all connected writ petitions with all CMs for impleadment or any other ancillary relief.