

(2015) 12 DEL CK 0168
In the Delhi High Court
Case No : W.P.(C) 2255/2014

Gewa Sampada CGHS Ltd. and Others	APPELLANT
Vs	
The Registrar Cooperative Societies	RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Delhi Co-operative Societies Act, 2003 — Section 127

Citation : (2016) 1 AD 393

Hon'ble Judges : Gita Mittal and I.S. Mehta, JJ.

Bench : Division Bench

Advocate : Rakesh Kumar, Advocate, Nirvan Singh, President and Party-in-Person, for the Appellant; Santosh Kumar Tripathi, ASC, GNCTD, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—Mr. Santosh Kumar Tripathi, learned Additional Standing Counsel for the respondent has handed over a copy of the counter affidavit in Court today and prays leave to place an additional copy thereof on record. Let the same be filed in the Registry and placed on record.

2. The writ petitioner GEWA SAMPADA CGHS LTD, a Group Housing Society is aggrieved by the failure of the respondent to regularise two self-draws conducted for allotment of the flats despite there being a policy dated 13th March, 1996 of the Registrar of the Cooperative Societies as well as the DDA.

3. The facts giving rise to this writ petition are undisputed and to the extent necessary, are briefly noted hereinafter.

4. The petitioner No. 1, a Group Housing Society registered under the provisions of the Delhi Cooperative Societies Act, 1972 and the rules framed thereunder was registered in the year 1979 initially with a membership of 155 members. The society, however, constructed 172 flats. Initially, a self draw of lots for allotment of 155 flats was held on 29th October, 1989 by the general body in the meeting

of the shareholders. For the remaining 17 flats, such self-draw was conducted on 25th February, 1990. Possession of the allotted flats was duly given to the respective members by the then existing managing committees.

5. It is an admitted position before us that there has been no objection at all to the allotment of the flats by any of the members or any other person till date.

6. It appears that persuaded by the prevalent situation, the respondent-RCS issued a circulated dated 13th March, 1996 communicating its decision to regularise allotment of flats conducted by the Cooperative Societies such self-draw subject to the conditions stipulated in this circular. For the sake of convenience, we extract hereunder the circular dated 13th March, 1996 whereby one-time exemption was given to the societies who had already conducted self-draws on their own.

"OFFICE OF THE REGISTRAR COOPERATIVE SOCIETIES, GOVT. OF NCT OF DELHI, OLD COURT'S BUILDING, PARLIAMENT STREET, NEW DELHI.

Draw of Lots

No.F.36/Policy/RCS/1289

dated 13.3.96

CIRCULAR

You are aware that some of the cooperative group housing societies have conducted the draw of lots of flats themselves without consulting/involving the office of the Registrar, Cooperative Societies and the DDA and in some cases the group housing societies have also conducted their draw even without the verification of membership by this Department. In such case the required action under the DCS Act, 1972 and Rules there under has already been taken against the M.C. of the society for violation of the directive issued by this office under Rule 77 of DCS Rules, 1973. However, in order to finalise the matter and also with a view to see that innocent members of these societies do not face problems on the execution of the sub-lease deed of their flats by the DDA in their favour, it has been decided that all such societies be asked to take the following action immediately so that their cases may be forwarded to DDA for consideration and regularization of allotment of flats:--

i) In the case where the society has conducted the draw of lots without getting its membership verified/cleared by the Department, the society should submit the requisite documents required for the clearance of membership including the affidavits so that the names of the members may be considered for clearance. After the clearance the allotments will have to be ratified by the G.B.

ii) In the cases where the society has conducted the draw on its own after clearance of membership by the Registrar's office, the society may be asked to produce a general body resolution ratifying the allotment and individual NOCs from the members; as well as an undertaking from the management of the

society that there is no complaint from any of the members about the procedure adopted in conducting the draw.

In both the above categories, a certificate from the society that upto date audits have been conducted:--

This is a onetime relaxation given to the societies who have already conducted the draw on their own. However, the D.Rs/A.Rs may ensure that in case any more society commits such an irregularity, immediate action may be taken against them in consultation with the DDA.

sd/- (GITA SAGAR) REGISTRAR, COOPERATIVE SOCIETIES

1. J.Rs

2. D.Rs

3. A.Rs"

7. The writ petition also discloses that the increase in the membership of the society from 155 to 172 was with the concurrence of the DDA and on 3rd April, 2000 was duly confirmed by the office of the RCS.

8. In terms of the guidelines for regularization of the self-draws mentioned in the RCS directive No. F.36/Policy/RCS/1289 dated 13th March, 1996, the petitioner No. 1 furnished the complete information which included the list of members recommended for verification as well as necessary documents. The records of the society including registers, ledgers, membership forms, affidavits, proof of residence of the members and the general body resolution confirming allotment of the flats, etc.

9. On 7th September, 2000, the petitioner deposited a sum of Rs. 1,72,000/- @ Rs. 1,000/- per flat being the penalty for conducting the self-draw. The request of the petitioner since the issuance of the circular for regularizing said self-draw of lots is pending since then.

10. We are informed that for the reason that the term of the managing committee of the petitioner No. 1-society came to an end without conduct of fresh elections in the year 2001. The managing committee which was in place in 2004 failed to conduct fresh elections, as a result by an order dated 16th January, 2004. The Registrar of Cooperative Societies consequently directed that no elections would be held for the posts of managing committee of the petitioner No. 1-society. The Administrator came to be appointed by the RCS in the year 2009, who continued till elections were finally held on 4th September, 2011.

11. It is only thereafter that the matter of regularization of self-draws was raised once again and pursued vigorously by the managing committee. Repeated reminders in this behalf were given to the office of the RCS between 6th February, 2012 till 14th August, 2013.

12. Unfortunately, by a communication dated 12th July, 2013, the Registrar of

Cooperative Societies directed withholding of the approval of the list of self-draws held in 1989-90 for the reason that the decision in W.P.(C) No. 519/2012 entitled Manohar Lal and Others v. Registrar of Cooperative Group Housing Societies and Others was awaited. In Manohar Lal's case, a challenge had been laid by the petitioners to the notification dated 17th October, 2011 issued by the Lt. Governor, NCT of Delhi in exercise of powers under Section 127 of the Delhi Cooperative Societies Act, 2003, giving one-time exemption with regard to the self-draws conducted by the 26 societies which were not covered in the notification dated 13th March, 1996.

13. Mr. Rakesh Kumar, learned counsel for the petitioner has handed over in Court a copy of the decision dated 5th May, 2015 in the case of Manohar Lal (supra) whereby the challenge has been rejected. This Court has noted the statutory provisions which empowered the Lt. Governor to grant the exemption and has also noticed the empowerment of the respondent to permit regularization of self-draws conducted by the concerned societies. There remains no impediment, therefore, to considering of the petitioners request.

14. It appears that the matter stands scrutinized by the office of the RCS. No specific plea or objection has been pointed out even in the counter affidavit which has been placed before us. The records placed before us would show that the respondent has not pointed out any objection so far as the petitioner No. 1-society's compliance with the requirements of the circular dated 13th March, 1996 is concerned. The matter is pending with the office of the RCS since 22nd January, 1999 when the petitioners first made a request to the respondent to initiate process of regularizing the membership of the 172 flat occupants. It cannot be denied that till such time the respondent passes the order of regularization, the rights of the 172 members of the petitioner No. 1-society remain inchoate. They cannot freely utilize their properties.

15. We are further informed that the members of the petitioner No. 1-society have been denied the benefit of getting their properties converted from leasehold to freehold as well on account of the failure of the respondent to process their request right from 1999. Unnecessarily, the members of the society have been made to suffer agony and insecurity for want of regularization of their flats.

16. In the given facts and circumstances, we are of the view that there remains no reason for not granting the prayers made by the writ petitioners. The impediment noted by the respondent in the noting dated 12th July, 2013 also does not survive inasmuch as W.P.(C) No. 519/2012 stands decided in favour of the Registrar of Cooperative Societies.

17. In view of the above, a direction is issued to the respondent to pass appropriate orders on the petitioners' application for approval of the self-draws conducted on 29th October, 1989 and 25th February, 1990 keeping in view the observations made hereinabove. Needless to state that in case any individual person claims rights in respect of the flats in the society, it would be the

responsibility of the petitioner-society to contest the matter and to abide by the adjudication thereon. A formal order in terms of the above shall be passed by the respondent within a period of four weeks. Needless to state that the respondent shall expedite all further proceedings as may be necessary including informing the DDA about the orders which are passed by us today.

18. This writ petition is allowed in the above terms.