
(2011) 03 DEL CK 0382
In the Delhi High Court
Case No : Writ Petition (C) 2071 of 1997

Gopal Kishan

APPELLANT

Vs

Registrar Co-operative Societies

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 DEL CK 0382

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shaktiher, J

Bench : Division Bench

Advocate : R.P. Sharma and Shreejata Dutta, for the Appellant; L.K. Garg, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The Petitioner is a member of Respondent No. 2 society. The Petitioner was offered an MIG flat by the society but according to the Petitioner he had paid for and was entitled to a HIG flat. This gave rise to a dispute which was referred to arbitration. An award was made on 14.01.1991 in favour of the Petitioner which has not been assailed further.

2. The Petitioner sought enforcement of the award in respect of which an order was passed on 19.02.1992 and then again on 05.04.1995, on another application filed by the Petitioner. The fact remains that apparently there are no flats available to be allotted to the Petitioner. The Petitioner, however, has filed the present writ petition under Article 226 of the Constitution of India seeking to: enforce the award, and also issuance of a writ against Respondent No. 1/ Registrar to cancel allotment to 17 other persons who had been allotted HIG/MIG flats and were evidently junior to the Petitioner.

3. Since the filing of the writ petition almost 14 years have passed and we are faced with a situation where parties are in settled possession qua flats held in each of the two categories referred to above. There is also a possibility that the parties may have transferred their respective flats on Power of Attorney basis to third parties. Such transfers are now recognized by law with the insertion of the

first proviso to Section 91 of the Delhi Co-operative Societies Act, 2003 (in short "DCS Act").

4. The material aspect to be taken note of is that, in the arbitration proceedings none of the other members whose membership was sought to be cancelled were made a party; though the claim of the Petitioner was only qua such persons.

5. A perusal of the award shows that the Society had not called for any option from its members about the choice of the flats though the tendered cost of a HIG category flat was Rs. 1,78,000/- and simultaneously for a MIG category flat it was pegged at Rs. 1,35,000/-. The Petitioner is stated to have deposited a sum of Rs 1,64,450/- upto 01.03.88, and claims to have paid the last installment of Rs. 31,550 in pursuance to the demand notice dated 02.08.89. Thus, the total amount deposited by the Petitioner was a sum of Rs. 1,96,000.

6. The stand of the Society, on the other hand, before the Arbitrator was that the sum of Rs. 31,550 had been transferred to the account of another member i.e., one Sh Swaraj Parkash, the brother-in-law of the Petitioner. Both the Petitioner and his brother-in-law had given the same residential address, and therefore the Society pleaded that the monies of Sh Swaraj Parkash was being paid by the Petitioner. The Society, however, failed to establish this fact before the Arbitrator by bringing on record appropriate evidence.

7. The Petitioner had been allotted an MIG flat in a meeting of the General Body of the Society held on 29.10.89 and the same was the position for allotment to Sh Swaraj Parkash. It may be noticed that if this amount is treated as not validly transferred to the account of Sh Swaraj Parkash; Sh Swaraj Parkash's payments would be short by an equivalent amount. The net result would be that Sh Swaraj Parkash would not have perhaps become eligible for allotment of a MIG flat; which he ended up securing for himself.

8. Another fact which emerges is that after the initially constructed 155 flats of both categories allotted by the Society, 3 HIG and 13 MIG flats were constructed subsequently for which allotment was made by the Managing Committee at its meeting held on 25.02.1990. Even at that stage the Petitioner was not given an allotment of HIG flat ostensibly because if the amount transferred to the account of Sh Swaraj Parkash is taken into account, the Petitioner had not paid the full amount towards a HIG flat.

9. The Arbitrator had taken into account the fact that an interim order was passed on 11.04.1990 that an HIG flat may be kept reserved. However, we may notice that the allotment was already made vide meeting of the Committee on 25.02.1990. The Arbitrator seeks to declare the resolution of the Managing Committee and the allotment made in pursuance thereto on 25.02.1990, null and void to sustain his rationale directing allotment of a HIG flat to the Petitioner.

10. We are thus faced with an award which seeks to cancel allotment of 17 members without even a notice issued to them, on the specious plea of a

subsequent interim order after the allotment had already been made. In the absence of any other fact, this by itself makes the award incapable of implementation.

11. We are also of the view that if the Society has been unable to establish that the amount of Rs. 31,550 transferred from the account of the Petitioner to the account of his brother-in-law Sh Swaraj Parkash was a valid transfer, the allotment to Sh Swaraj Parkash could not be said to be a valid one, and that consequently, a flat would have been available for allotment to the Petitioner albeit of MIG category. Once again, this issue cannot be decided in the absence of Sh Swaraj Parkash.

12. The problem that the Petitioner faces arises out of the manner in which the Petitioner sought relief only against the Society and the frame of the award which makes it incapable of being implemented in view of what we have set out above. In case the Petitioner seeks an MIG flat now, as submitted by the Petitioner since HIG flat is not available, the inter se rights between the Petitioner and Sh Swaraj Parkash have to be determined in an appropriate arbitration proceedings. Similarly, if some other flat is sought to be cancelled, the Petitioner can attempt to do so only in an arbitration proceedings where all the relevant parties can be impleaded.

13. We thus leave it open to the Petitioner to take out appropriate arbitration proceedings with a direction to Respondent No. 1 to refer the disputes to arbitration, in case so invoked by the Petitioner, so that inter se rights of the parties can be determined in one set of proceedings.

14. The writ petition accordingly stands disposed of.