

(2016) 05 DEL CK 0185

In the Delhi High Court

Case No : W.P.(C) 4093 of 2013 and C.M. No. 9629 of 2013

Jagmohan Singh Wadehra

APPELLANT

Vs

Sarai Julaina Cooperative House Building Society Ltd.

RESPONDENT

Date of Decision : 03-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Co-operative Societies Act, 1972 — Section 105(b), 60

Citation : (2016) 230 DLT 8

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Sh. V.K. Tandon, Advocate, as amicus curiae and Sh. Jagmohan Singh Wadehra, petitioner-in-person along with his son Sh. Baljit Singh Wadehra, for the Appellant; Sh. Rajeshwer Kumar Gupta with Sh. Sachin Garg and Ms. Sumati Sharma, Advocates and Sh. Nausha

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—The writ petitioner challenges an order dated 18.02.2013 whereby his appeal was dismissed by the Delhi Corporative Tribunal (in short ?DCT?).

2. This case has a long and chequered history. The petitioner became member of Sarai Julaina Cooperative House Building Society Limited (in short ?the Society?) through resolution dated 26.03.1978 and was issued a share certificate dated 22.07.1978 No. 432 and deposited the share and security money. Since no plot was allotted to him, he wrote a letter to the society enquiring about the status of allotment, to him and the society by its letter dated 30.09.1983 informed him that the plots were allotted in terms of seniority shown in approved waiting list dated 01.10.1982 (approved by the Registrar of Cooperative Societies). In the said list he was shown at Sl. No.16 and the members listed from Sl. No. 1 to 10 were allotted the plots. The society told him that no plot was available for allotment to him. He was also informed while the nine plots were allotted to the

nine members of the waiting list in terms of their seniority, no allotment of Plot No.124 had been made in view of the order of status quo of the civil court passed on 05.11.1981 in a suit titled as Dewan Suraj Prakash Chopra v. The Registrar.

3. In the year 2003 the petitioner raised a dispute before the Registrar under Section 60 Delhi Cooperative Societies Act 1972 (hereinafter called as 'the DCS Act') claiming allotment of a plot. This was registered as Arbitration Case No.3084/AR/ARB/2003-04. The claim petition was dismissed by order dated 04.11.2003 on the finding that there was no arbitral dispute. The petitioner preferred an appeal before the DCT which was allowed on 07.08.2006 and the matter was remanded back for fresh consideration. This remanded matter was registered as Arbitration case 2315/DR/ARB/2006-07 and by order dated 07.11.2006 the claim (of the petitioner) was again dismissed. This time it was held:

"I have gone through the contents of the claim petition, perused the various documentary evidence attached along with the claim petition and also gone through the written statement, application and reply filed by all the parties. The society has got only one plot viz. plot No.124 which is subject matter of another case pending in the Court of Sh. Sanatan Prasad, Senior Civil Judge, Delhi and there is a 'status quo' order passed on 5.11.81 which is still in operation. No other plot is available with the society and the society has allotted plots to the members of the waiting list from Sl.No.1-9. The name of the claimant is at Sl. No.16. I am of the considered opinion that there does not exist any dispute, which touches the constitution, management and business of a co-operative society. The petition is, therefore, dismissed."

4. The petitioner challenged this order in appeal to DCT and urged that though his name was placed by the society at Sl.No.16 in 1983 in the waiting list, yet the said waiting list was manipulated. He alleged that "the waiting list was fiddled with by the society at a later stage and that the members who were junior to him were allotted plot behind his back". The DCT was however of the opinion that the claim raised in 2003 was prima facie beyond the period of limitation and remanded the matter to RCS with the following directions:

".....We, therefore, feel that the authority exercising the powers u/s 60 has now only to decide the issue of limitation in the matter of the claim filed by the appellant. If required, he may ask both the parties to lead evidence on this issue in order to enable him to take a proper and legal decision.

In view of the above position, we accept the appeal and set aside the Deputy Registrar (Arbitration)'s order dated 07.11.2006 and remand the matter back to the RCS with the direction that fresh proceedings U/s 60 should be held only with a view to deciding the issue of limitation since all the other issues have already been decided in favour of the appellant."

The registrar by order dated 16.10.2007 decided to continue with arbitration and

held

"I have gone through the file and am of the considered opinion that as the claimant started disputing the list from 08.05.2002 onwards and no response was given by society. The first petition u/s 70 was filed on 25.04.03 i.e. well within the limitation period of six years as per section 60 of DCS Act 1972. The petition is well within the limitation period and hence admitted u/s DCS Act. The claimant is hereby directed to deposit the requisite arbitration fee within 15 days from today, failing which the case shall be dismissed in default."

5. This order was not challenged by any party. Thereafter, RCS issued the award on 24.07.2008. The petitioner's claim that his juniors had been allotted was rejected. The arbitrator in his award on the basis of documents (filed by respondents and also produced before RCS on request of petitioner and duly perused by him) held that no one junior to petitioner was allotted the plot out of turn. The petitioner took this award in appeal before the DCT under Section 112 of the DCS Act.

6. The DCT by order dated 29.06.2011 allowed the appeal and directed the society to allot a plot to the petitioner within one month from the date of order at the same rates at which it was given to the last member before him in the waiting list dated 01.10.1982. Pursuant to these directions the petitioner wrote a letter to the society asking them to allot the plot to him and also sent a reminder dated 24.08.2011. On getting no response from the society the petitioner sent a legal notice through his counsel. He then filed an application under Section 105 (b) of the DCS Act for the execution of the order of DCT dated 29.06.2011. The society challenged the said order dated 29.06.2011 of DCT before this court in W.P.(C) 3541/2012. This court set aside the order dated 29.06.2011 and remanded the matter to DCT for fresh consideration. The DCT after hearing the parties passed a fresh order dated 18.02.2013 rejecting the appeal. That order has been impugned before us on the grounds that the petitioner was a regular member and as such entitled to allotment of plot, and also that the society had allotted flats to members whose membership is shrouded with suspicion as many of them did not fulfil the requisite qualifications.

7. The dispute raised by petitioner under Section 60 of the Act is that despite availability he had been illegally deprived of a plot though plots had been allotted to his juniors and sought directions for allotment of a plot to him. In his claim petition he had also given a list of 19 members who according to him were junior to him but were allotted the plots.

8. The undisputed facts of the case are that the petitioner is a valid member of the society since 22.07.1978, holding a membership No.432 and he has been shown as a waiting list member in the waiting list dated 01.10.1982 duly approved by the Registrar of Cooperative Societies. This list was challenged before this court in the case C.W. No. 3878/82 titled as Kailash Nath Sharma and Anr. vs. RCS and Anr. and by order dated 06.12.1982 the said list was confirmed.

The order of this Court is reproduced as under:

"Mr. P.R. Sengupta is present. We have seen the record. Dismissed."

9. This order clearly shows that the court dismissed the challenge to the seniority list after going through the record. Since this order was not challenged at any stage by anyone; this waiting list is final. It is also an admitted fact that the copy of this waiting list too was received by the petitioner way back on 30.09.1983. It is also a fact that he had never challenged his status as a wait listed member and his seniority in the waiting list at Sl. No. 16. The petitioner's case all along, in the arbitration and before the appellate courts, had been that his juniors had been allotted plots while he had been denied one. He had at no stage disputed his status as a waiting list member. For the first time before this court in the present writ petition he has raked up a new issue that he had been wrongly shown as a waiting list member claiming that he in fact was a regular member.

10. There is no dispute that the petitioner was given regular membership no.432 at the time when he was enrolled as a member. However, it is also a fact that the society had enrolled more members than the plots available with it. It had started enrolling members way back in the year 1959. It is also apparent from the circular of society dated 19.08.1981 i.e. before the preparation of waiting list the exercise of allotment of plots was completed and only few plots were available for allotment and it was for this purpose the waiting list was prepared and this list was finalized by RCS and is dated 01.10.1982. The list is final. At no stage did the petitioner challenge the initial allotment of plots by draw of lots. He however now contends that many allottees were not even eligible members due to various reasons. First of all, none of them have been made parties, and this plea has been urged after decades. It suffers from laches and gross delay. No fresh grounds which were not before the lower authorities and not dealt with by them can be urged, especially when the determination of such contentions requires factual findings in respect of third parties.

11. The Court further notes that the petitioner's claim before the Arbitrator was confined to the allegation that his juniors were allotted the plot, by which he meant that those enrolled by the society after him i.e. in the years 1984 onwards were allotted the plots. The order of learned arbitrator shows that he had examined the records of the society and allowed the petitioner to inspect the record to prove if any member junior to him was allotted a plot. The observation of the learned Arbitrator in his award dated 24.07.2008 which was challenged before the DCT whose order has been impugned by the petitioner is reproduced as under:

"10. I have repeated this question of allotment of plots to the members junior to the claimant, because in the claim petition, the claimant has mentioned names of 19 persons, who were junior to him and have been allotted plots. This issue is the focus of entire case. The Society in their reply have given details of all these 19 persons as to how their membership number appears junior to the claimant.

All these 19 persons are either the legal heirs of the original allottees or the purchasers from the original allottees. The Society has also given the original membership number of the original allottee in respect of each of the cases. I have personally perused the original Membership Register of the Society. The name of the claimant appears at serial 432 and he was admitted on 2nd April, 1978, between 21st of December, 1977 (Membership No.431) and 16th of May, 1978 (Membership No.433). In fact, the Society has two registers; one, the original and old members' register, which is in very critical condition as a large number of pages are torn or have worn out. Nonetheless, the details are clearly visible. In fact, the Society started enrolling members way back in November 1959. The first member Shri Ratti Ram was enrolled on 12.11.1959. The Society then made, from this old register, a new Membership Register, where particulars of the members were rewritten. Both registers were made available to the claimant in my office for considerable time for his inspection and perusal. In fact on 16th of May 2008, when I asked the Society to bring the registers again these registers were placed before the claimant, to prove, if any of the members junior to him has been allotted a plot. He gave various names. In each of the cases, the person was either new purchaser or a legal heir of the original owner. The representatives of the respondent society and their counsel also showed the original members' names in the register to prove, in each case, that the name of the person alleged to be junior to the claimant whose name appears in the Membership Register, is either a purchaser from the original allottee, or the legal heir of the original allottee. I myself verified the details, which were found to be correct. The claimant was also given liberty to check at random, if any person who he thinks was junior to him in the Membership Register and had been allotted a plot. The claimant could not name a single person on the basis of records of the society who was enrolled later than the claimant and has been allotted a plot by the society.

CONCLUSION

11. From the perusal of the record of the society, I am satisfied that the society has been able to maintain correct records and has produced the original Membership Register. In fact, the claimant confirmed his signatures, when he was confronted with entry No.432 where his name appears. I am, therefore, of the considered opinion that the seniority list has been correctly prepared by the society and the society has not manipulated the Membership Register as alleged by the claimant; nor the society has concealed any information from me. The waiting list, on which the name of the claimant appears at serial no.16 has been prepared by the Registrar, Co-operative Societies. I am convinced beyond doubt that no person enrolled later than the claimant as member of the Sarai Julaina Co-operative House Building Society Ltd. has been allotted a plot by the Society. The claim of Shri Jagmohan Singh Wadehra, therefore, falls and not admitted."

12. Even the DCT gave the petitioner an opportunity to prove if members junior to him were allotted plots while he was overlooked. The DCT records as follows:

"Present: Appellant in person with his son.

There is only 1 respondent.

On 29/01/2013 it was ordered that the matter shall be taken up at 2:30 p.m. It is already 2:45 p.m. Counsel for the respondent has not appeared.

The appellant intended to make a few more submission.

Now Sh. Rajeshwar Kumar Gupta, advocate for the respondent has appeared. Ld. Counsel for the respondent has filed an affidavit and copies of a few orders. Copies supplied to the appellant.

Ld. Counsel for the respondent has now completed his arguments.

Since the affidavit of the Secretary of the society has been filed today, therefore, time is given to the appellant to go through the same and to make submissions, in reply, if any.

Since the appellant has submitted that his membership no. is 432 and a flat had been allotted to the member having membership no. 435, therefore, on the face of it, it can be said, without entering into the legalities or technicalities of the allotment, that a junior member who was enrolled on 22/05/1978 i.e. much after the enrolment of the appellant, who got enrolled on 04/04/1978, had been allotted the flat.

We need not express any opinion on this argument as we would like to allow both these parties to conclude their argument in the first instance.

However, the society should file an affidavit clarifying the position in respect of the membership having no. 435.

The affidavit should contain entire detail in respect of membership no. 435 i.e. it should contain inter-alia, the date of enrolment of the original member, the payment of the charges, if any, withdrawal of charges, if any, transfer of membership, if any, the dates of changes etc so as to give an idea to the appellant as to why the allotment had been made and on which date.

Similarly the affidavit should contain such details in respect of membership no. 432 and 437. The respondent should also file an affidavit as to whether any member, junior to the appellant has been allotted the plot or not. Clarification in r/o Sh. Roshan Lal Behal, member be also filed in the shape of affidavit.

Since arguments have been heard on different dates, therefore, both the parties are directed to file memo of arguments in not more than 6 pages, so as to include their each and every arguments.

It will facilitate this bench to take into account the rival contentions.

Both the parties should, in the memo of arguments, stick to the documents available on the file of the arbitrator. Page numbers of the documents intended to

be referred be also mentioned.

For the affidavit of the society, as ordered above, and reply on behalf of the appellant and for filing the written arguments, the file shall be taken up on 05/02/2013.

Copy of the proceedings recorded today be given to both the parties free of cost of compliance."

13. Thereafter on the basis of evidence before it, the learned DCT in its order, held as under:

"9. The appellant has submitted, that persons whose names were mentioned at Sl. No. 435 and 437, who were junior to him, had been allotted the plots. Sh. Subhash Sharma, the Hony. Secretary of the society, in his affidavit dt. 4.2.2013 has clarified the position with regard to membership no.435. It has been mentioned that Sh. Chet Ram S/o Sh. Pokharmal was one of the original member vide membership no.74. Though the original ledger is not available for informing the date of deposit of share money by him yet the membership of Sh. Chet Ram was transferred on his request in his blood relation (permissible under the Rules) i.e. in the name of his father Sh. Pokharmal vide resolution No. 194 dated 2.4.1966. In the affidavit in para II, the details of the deposits of the money from 1.7.1973 onwards have been mentioned. After the death of Sh. Pokharmal, the membership was transferred (u/s 26 of the DCS Act 1972 read with Rule 35 of the DCS Rules 1973) to his nominee son Sh. Jai Bhagwan w.e.f. 22.5.1978 (membership no.435), page 23 of the original membership register produced before the Tribunal. Sh. Jai Bhagwan was neither a new member nor junior to the appellant but he was substituted after the death of his father Sh. Pokharmal. The name of Sh. Jai Bhagwan was not in the waiting list dated 1.10.1982 which was prepared by the then Assistant Registrar and had been perused by the Hon?ble High Court in WP(C) No. 3878/82 and the writ was dismissed.

10. The appellant had become a waiting list member w.e.f. 2.4.1978. His waiting no. is Sl.No.16 in the waiting list dated 1.10.82.

11. So far as the membership no.437 (Smt. Kamla Rani Sharma) is concerned, the Secretary of the society in his affidavit dated 4.2.2013 has in para (iv) asserted that since after 31.7.1978 she had not deposited the amount and had withdrawn from the membership in August 1979, she was no more member of the society. And as such there was no allotment to her.

12. Now, with regard to Sh. Roshan Lal Bahl, in respect of whom also the arguments had been advanced, the Secretary in his affidavit dated 4.2.2013 has in para (v) asserted that Sh. Roshan Lal Bahl was original member of the society from 21.7.1963. The details of his deposits from 1.7.1973 onwards were then incorporated. It has been asserted that the plot was allotted to him much earlier i.e. on 12.3.1973. However, due to membership dispute of Sh. Bahl, the deposited amount was kept in suspense account and the plot was reserved. After

the Court order dated 10.4.2001 the sub-lease was executed on 19.4.2001.

13. Now, with regard to the missing names in the list sent to the appellant along with the letter dated 8.3.2001, the Secretary in his affidavit dated 31.1.2013 has clarified the position, in his affidavit.

14. It is worthwhile to mention the same in its entirety as it would satisfy both the parties. The contents of the affidavit, so far as relevant to the disposal of this appeal are concerned, are as under:-

"2. That as per directions of the Hon'ble Tribunal dated 29.1.2013, my submissions with regard to queries in the list filed by the appellant at page 59 to 81 are as follows:

At the outset it is stated that Serial Nos. 39, 60, 100, 108, 124, 151, 194, 231, 243 and 244 as blanks of the list are the plot Nos. which were allotted subsequent to the preparation of list on 17.10.1985 and to the wait listed members, except plot No.124 which was stayed by the court of Ld. Civil Judge and now stayed by the court of Financial Commissioner in the case of Sarvesh Chopra v. RCS & Ors, which is still pending.

(i) Plot No.39 was allotted to Smt. Kanta Talwar after the death of Sh. Jia Lal Talwar (M. No.428 Page No.79, Wait List Sr. No.5 Page No.82). Para II page 8 of the Reply of the Society dated 4.11.2008 on record may be perused along with copy of Perpetual Sub-lease Deed Annexure R1/4 (Colly.) page 95 to 108.

(ii) Plot No.60 was allotted to Smt. Duwari Dalwani after the death of Sh. Ramesh Chand Dalwani (M. No.425 Page No.78, Wait List Sr. No.10 Page No.83). Para II page 8 of the Reply of the Society dated 4.11.2008 on record may be perused along with copy of Perpetual Sub-lease Deed Annexure R1/4 (Colly.) page 109 to 118.

(iii) Plot No.100 was allotted to Sh. Raj Kumar Gupta (M. No.422 Page No.78, Wait List Sr. No.8 Page No.83). iv)Plot No.108 was allotted to Sh. Sushil Kumar (M. No.429 Page No.79, Wait List Sr. No.6 Page No.83).

(v) Plot No.124 is not allotted as yet being in litigation and stay is still operating by the court of Financial Commr.

(vi)Plot No.151 was allotted to Sh. Sehdev Singh (M. No.390 Page No.78, Wait List Sr. No.3 Page No.82).

(vii) Plot No.194 was allotted to Sh. S.C. Poddar (M. No.423 Page No.78, Wait List Sr. No.4 Page No.82).

(viii) Plot No.231 was allotted to Sh. Hari Bijlani (M. No.424 Page No.78, Wait List Sr. No.9 Page No.83).

(ix)Plot No.243 was allotted to Sh. Bal Kishan Dass, (M. No.120, Wait List Sr. No.1 Page No.82).

(x) Plot No.244 was allotted to Sh. Jaydev Giri (M. No.427 Page No.79, Wait List Sr. No.7 Page No.83).

3. That plot No.63 was allotted to Sh. Mahabir Singh by a registered Sub-lease Deed dated March, 1975, a copy of which is already on record at page 56 to 65."

15. In the affidavit dated 4.2.2013, the Secretary, has in para (iii), stated that the society has not allotted any plot out of turn or to any member junior to the appellant. Out of the waiting list, only nine members have been allotted plots. Only one plot no.124 remains un-allotted against which order of status-quo is operating. The name of the appellant stands at Sl.No.16 in the waiting list. Members who are senior to the appellant in the waiting list are still waiting.

14. This court had, by order dated 28.05.2015 appointed a Local Commissioner and issued the following directions:

(i) The four registers aforesaid shall be retained in court in the safe custody of the Assistant Registrar (Writs).

(ii) We hereby appoint Sh. Uday Joshi, Chamber 318, Lawyers Chamber Block-II (Mobile 9711765722) as a local commissioner in the matter to prepare a compilation of the names of the members; date of enrolment; the membership number; the particulars of the plots allotted to the members and the dates thereof from the above registers produced before us. The information shall be compiled in the order of seniority.

(iii) The Assistant Registrar (Writs) shall make available the above registers for scrutiny by the local commissioner on dates and timings informed by him, to prepare the compilation aforesaid. It shall be open to the local commissioner to take secretarial assistance.

(iv) The local commissioner shall be paid fees of 30,000/- and incidental expenses by the respondent-society.

(v) The record of Delhi Cooperative Tribunal has been produced today. Let the same be produced on the next date as well."

15. The report of the Local Commissioner is on record. During the course of arguments the petitioner made no attempt to refer to this report to point out the name of a single allottee junior to him who was allotted a plot. The facts recorded by RCS and DCT show that 10 plots were available for allotment with the society and they were allotted to 10 listed members in terms of their seniority in the waiting list dated 01.10.1982. It is also apparent that besides the petitioner there are other members who are senior to him, from Sl. No.11 to 14 who are to be given priority. The facts found by RCS and DCT show that the plots which petitioner alleges were transferred to his juniors, were in fact transferred by the original allottees by various modes like sale, to the nominees and new members who were substituted in all these cases either on request of original allottee or upon his demise, in terms of provision of DCS Act and its Rules. No

restrictions have been placed on the rights of owners of such property to transfer them to others and in the event of such transfer by the owner (allottee), the society is bound to substitute the name of such transferee (and to issue him the shares certificates as well as enroll him as a member in place of the original allottee of the plot). Such inclusion cannot be termed as allotment of a plot by the society. It can only be termed as recognition of transfer of the plot by the owner to other person.

16. The impugned order also shows that every contention of the petitioner was dealt with and membership record of all 19 persons whose name had been given by petitioner in para 2 (m) of his claim petition (under Section 60 of Delhi State Cooperative Societies Act, 1972 before the Registrar in the year 2003) were examined and on the basis of the evidence produced, findings were rendered that the 19 members whom the petitioner alleges to be his juniors were in fact either the legal heirs of the original allottees or purchasers of plots from the original allottees. The petitioner has failed before every forum to prove that the society had allotted any unallotted plot to a member junior to him.

17. Although the petitioner has been contesting the issue that junior members were allotted the plots over him, he never made any of them parties in the arbitral proceedings. The learned arbitrator in his award and the DCT in the impugned order have rendered concurrent findings, that no junior member was allotted a plot overlooking him.

18. In view of the above discussion, we find no illegality or infirmity in the impugned order. The writ petition has no merit, it is dismissed along with pending application with no orders as to costs.

19. We fully appreciate the valuable contribution of Mr. Tandon as amicus curiae for the petitioner. It has helped us in appreciating the facts and law in its correct perspective. We are thankful to him.