

(2022) 03 DEL CK 0194

In the Delhi High Court

Case No : Civil Writ Petition No. 11325 Of 2021

Kanwarjeet Singh

APPELLANT

Vs

Registrar Cooperative Societies & Ors.

RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Delhi Co-operative Societies Act, 2003 — Section 70, 105

Citation : (2022) 03 DEL CK 0194

Hon'ble Judges : Mukta Gupta, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Ankur Arora, Anupam Srivastava, Vasuh Misra, Ashim Vachher, Kunal Lakra, Ashok Kumar Verma, Ajesh K. Chawla, Saket Gautam

Judgement

Mukta Gupta, J

1. Respondent No.4 i.e. the Society has been served through ordinary process as per the service report dated 15th November, 2021. However, till date, no reply affidavit has been filed on behalf of respondent No.4.

2. This present petition reveals the ordeal faced by the petitioner in getting a flat allotted to him in Category-'A' despite being a member of the Society.

3. The petitioner became a member of the respondent No.4/ Society in the year 2004 and till October, 2006, he deposited a sum of Rs. 26 lakhs with the Society towards costs of Category-'A' flat which was the total cost of the said flat. Since the society did not allot a flat to the petitioner, the petitioner filed an Arbitration claim under Section 70 of the Delhi Co-operative Societies Act, 2003 (in short the 'DCS Act') pursuant where to an Award dated 25th September, 2014 was passed in favour of the petitioner. As per the Award, the membership of the petitioner and his entitlement for allotment of Category-'A' flat was upheld and objections of the Society against the membership of the petitioner were rejected. The Society filed an appeal against the Award, which was dismissed by the Tribunal vide order dated 15th May, 2017. The Society, thereafter, filed a Writ Petition

(Civil) No.14078/2018 against the Award and the order of the learned Tribunal, which was dismissed by this Court vide order dated 28th December, 2018. Despite the Award having attained finality, the respondent No.4/Society has managed to not implement the Award till date.

4. The petitioner filed an application under Section 105 of the DCS Act before respondent No.2 i.e. the Assistant Collector, Office of the Registrar Co-operative Societies for execution of the Award dated 25th September, 2014. However, till date the petitioner has not been allotted and given possession of the flat as per the Award.

5. It may be noted that the petitioner and one Smt. Anita Gupta had enrolled as members of the respondent No.4/ Society on 12th June, 2004 against the vacancies of two persons, namely, Rakesh Bajaj and Bipin Bajaj, who had filed various litigations before this Court, which finally culminated in Writ Petition (Civil) No.262/2019 and 291/2019, which were dismissed with costs of Rs. 1 lakh vide the order dated 14th January, 2019, which reads as under:

"1. These two petitions have been preferred by two brothers.

2. Before we proceed further, we may observe that on our perusal of these petitions, they, prima facie, appeared to be have been filed as an abuse of the process of the Court. Therefore, at the outset, we gave liberty to the petitioners to withdraw the same. We had made it clear to the petitioners that, in case, after hearing the submissions, we do not find any merit in the petitions, we would be inclined to subject them to costs for abusing the process of Court and wasting the time of the Court. Despite the aforesaid position, the petitioners have chosen to press the petitions and taken valuable time of this Court in pressing the same.

3. The petitioners, it appears were members of the respondent No.2- Skylark Cooperative Group Housing Society Ltd. Their respective membership was sought to be seized on 03.06.1998 with the approval of the Registrar of Cooperative Societies. The petitioners Revision Petition was dismissed by the Ld. Financial Commissioner on 16.09.2008. This Court dismissed the petitioners writ petitions i.e., W.P.(C) Nos. 8124/2008 and 8125/2008 on 23.04.2010. That decision to seize the memberships of the petitioners was affirmed by the Supreme Court with the dismissal of the Special Leave Petitions i.e., SLP (C) No. 17582/2010 & SLP (C) No. 17458/2010 preferred by the petitioners. Consequent upon the seizure of the memberships of the petitioners, since they were out of the respondent No.2 Society, it appears that respondent No.3 was enrolled as one of the members.

4. It appears that certain disputes arose between respondent No.2 Society and respondent No.3-Mr. Kanwarjeet Singh, which were referred to Arbitration. Even though, the petitioners had no concern with the said arbitration—since they were already out of the picture after their memberships in the respondent No.2 Society was seized, they sought to interdict the Arbitration by seeking impleadment in the two appeals preferred by the respondent No.2 Society i.e.,

Appeal No. 153/2014/DCT and Appeal No. 169/2014/DCT. These appeals were preferred against the reference of the claim of Respondent No.3 to Arbitration. They were dismissed vide orders dated 16.01.2017 and 06.02.2017 respectively.

5. The Arbitration proceeded, wherein the Award dated 25.09.2014 was rendered in favour of the respondent No.3. The Arbitral Tribunal held, that respondent No.3 was entitled to a Category 'A' flat in the Society.

6. Respondent No.3 sought to execute the Award and, at that stage, the petitioners again tried to interfere in the proceedings by moving an application for impleadment. The said application was dismissed on 06.12.2018. Consequently, at this stage, after passage of over four years from the date of the Award, the petitioners have preferred these petitions to challenge the Award dated 25.09.2014 passed by the learned Tribunal in favour of the respondent No.3. The induction of respondent No.3 as a member of the respondent-Cooperative Society is also under challenge. The petitioners also assail the order dated 06.12.2018, whereby the petitioners endeavoured to intervene in the execution proceedings, has been rejected.

7. From the aforesaid narration itself, it would be evident that the petitioners are incorrigible. Their memberships have been seized, upon their expulsion from the respondent no.2-Society, as aforesaid, decades ago. The said issue has attained finality. Thus, they are no longer members of the respondent No.2 Society. Yet, they continued to intermeddle in the affairs of the respondent No.2 Society and in the affairs of the members who were enrolled upon the seizure of their membership. The petitioners have absolutely no locus standi in the matter. The submission of learned counsel for the petitioners is that one appeal (Appeal No. 110/2018) preferred by the petitioners against the order refusing appointment of Arbitrator is pending before Hon'ble DCT. The same has absolutely no bearing on the present case. In any event, since the petitioners' memberships stand seized and the said aspect has attained closure, we fail to appreciate as to how any such appeal can survive.

8. In the circumstances, we dismiss the present petitions with costs of Rs.1,00,000/- upon each of the petitioners. The costs shall be deposited with the Prime Minister's Natural Disaster Relief Fund. In case the costs are not deposited by the petitioners, they shall remain personally present in Court.

9. Petitions stand dismissed.

10. List on 18.02.2019 for reporting compliance."

6. A perusal of the order dated 14th January, 2019 and the facts noted above show the manner in which both the respondent No.4/ Society and its erstwhile members, whose memberships were cancelled, harassed the petitioner. The ordeal of the petitioner did not end here. Though Smt. Anita Gupta, who was awarded the membership of the Society on the same date was issued a demand notice seeking a sum of Rs. 27,79,230/- payable as on 31st March, 2005 and

was allotted Category-'A' flat, however, in case of the petitioner, the Society raised the demand at the present Circle Rates and vide its letter dated 17th August, 2019 raised an outstanding demand of Rs. 84,52,002/- towards construction/ land money dues against the flat; Rs. 5,78,093/- towards maintenance charges and electricity charges/ common charges due along with interest applicable on the flat, which could have been charged only if the possession of the flat was given to the petitioner; an outstanding of Rs. 98,332/- against various demands raised by the society for Capex along with the applicable interest against the flat, which demand also could have been raised after the flat was allotted; as also an outstanding demand of Rs. 2,20,960/- against the demand raised by the society for ground rent/vacant tax which outstanding amount, the petitioner agreed to pay.

7. Since the petitioner failed to pay the outstanding amounts, as noted above, the Society did not take steps under Schedule 7 of the RCS Rules to forward the claim of the petitioner to the RCS, who on satisfaction would have put up the matter to the Committee under Rule 90 of the RCS Rules, which Committee would have then directed the DDA to allot the flat.

8. It is, thus, evident that by raising exorbitant demands, the respondent No.4 scuttled the Award which was passed in favour of the petitioner. Despite the petitioner submitting a reply also noting the discrimination caused to the petitioner, vis-a-vis similarly placed member – Smt.Anita Gupta and also making a representation to the RCS reporting non-compliance of the Award and the discrimination caused by the malafide action of the respondent No.4 in its submissions dated 19th September, 2019, it is evident that till date the RCS shut its eyes on the malafide harassment caused to the petitioner and neither took any action against the respondent No.4/ Society nor took steps to get the flat in the Category-'A' allotted to the petitioner.

9. The demand raised by the Society as noted above is clearly discriminatory, malafide and unfair and in case, the petitioner shows the proof of demands as raised from Smt.Anita Gupta, the RCS will ensure to implement the Award. The writ petition is disposed of with the directions that Registrar, Co-operative Societies will take immediate action against the respondent No.4/Society for malafidely denying the allotment of flat to the petitioner as also take actions for allotment of flat in the Category-'A' to the petitioner, which process should be completed within a period of three months from today.

10. Order be uploaded on the website of this Court.

CM APPL. 34884/2021 (filed by petitioner to direct respondents to allot and handover possession of Category-'A' flat to petitioner)

CM APPL. 3647/2022 (to implead applicants as respondent Nos.5, 6 filed by the applicants)

1. In view of the orders passed in the writ petition, the applications are disposed

of as infructuous.