

(2001) 05 DEL CK 0033

In the Delhi High Court

Case No : CW No. 2838 of 2001 and 2840 of 2001

Mohd. Kamil

APPELLANT

Vs

New Vindhyachal Cooperative Group Housing Society Ltd. and
Another
 Mohd. Arif Vs New Vindhyachal Cooperative
Group Housing Society Ltd. and Another

RESPONDENT

Date of Decision : 07-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Co-operative Societies Act, 1972 — Section 60, 61, 76

Citation : (2001) 59 DRJ 584

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. V.B. Andley and Mr. Rajinder Mathur, for the Appellant;

Judgement

Manmohan Sarin, J.—By this common order, I would be disposing of CW No.2838/2000 and CW No.2840/2000 as the facts are common except for the difference in the amount paid.

2. The petitioners assail the order dated 22nd December, 2000 passed by Delhi Co-operative Tribunal, dismissing the petitioners' appeals u/s 76 of Delhi Cooperative Societies Act against the award made by the Arbitrator. These cases have a chequered history, which may be briefly noted:

3. Petitioners were members of respondent No.1 Society A sum of Rs.2,48,500 out of the total sum of Rs.2,75,000/- as cost of flat had been paid by the petitioner in CW No.2838/2000. A sum of Rs. 2,38,500/-out of the total sum of Rs.2,75,000/- as cost of flat had been paid by the petitioner in Cw No. 2840/2000. Petitioners' case is that they have been wrongly and illegally expelled as members of the Society. Firstly Mr.V.B.Andley learned senior counsel for the petitioners urged that there was no agenda for expulsion of the petitioners in the General Body Meeting of 29th October, 1995. Moreover, the alleged expulsion was not approved by the Registrar. Resultantly there was non

compliance with the statutory Rule 36, of the Delhi Co-operative Societies Rules 1973. The entire expulsion proceedings are vitiated on this account. It is further urged that the society without intimation to the petitioners on its own, deposited the refund amount in the accounts of the petitioners. The petitioners came to know of it only in April, 1996, while getting the pass book updated that substantial amount of Rs.2,48,500/- & Rs.2,38,500/- had been deposited by the Society in the accounts in the second week of July,, 1996. The petitioners thereafter raised a dispute u/s 60 and 61 of the Delhi Co-operative Society Act and filed claim petitions.

4. The petitioners claim to be bubaline members of the Society. The case of the respondent of the other hand is that the petitioners were habitual defaulters. Notices for expulsion had ben served vide letter No.NVCG/92 dated 7.2.1992, followed by 10.3.1992. Repeated opportunities had been given to petitioners to make good the short fallow. Their expulsion was approved as far back as 29th November , 1993 in the General Body meeting on 29th November, 1993. However before implementing the said decision time was given to the petitioners for rectifying their defaults. The cheques given by petitioners were dishonoured the petitioners failed to make good than payment and as a result expulsion was re-affirmed in October, 1995.

5. It is further denied that petitioners did not come to know of the deposit of the money in their account. On the other hand, it is stated that the cheques were sent by the society to the petitioners only be registered post. Petitioners themselves had deposited these in the account and withdrawn and utilised the money. The petitioners, Therefore, had not come to the Court with clean hands and had knowingly made wrong representation. Besides the other members in the place of the petitioners and other defaulters were already inducted. The petitioners failed to take action in accordance with law by challenging their expulsion u/s 76 on the ground of non-compliance with Rule 36. Petitioners instead had preferred to take the proceedings under Sections 60 and 61. Now that the award has been made against them, wherein one of the points considered is the failure of the petitioners to file the appeal within the statutory period of 60 days. The petitioners have chosen to file the writ petitions but have not come to the Court with clean hands. Petitioners haven been found to have taken false positions and misrepresented facts. Petitioners by their own conduct are dis-entitled to invoke the writ jurisdiction Under Article 226 and claim relief. Besides, the petitioners themselves accepted the refund of money on expulsion, utilised the same and later on chose to file the claim u/s 60 and 61, after the statutory remedy u/s 76 had become time barred. It is also to be noted that other members have been inducted on vacancies of petitioner and other defaulters.

6. The writ petitions are, accordingly, dismissed.