

(2004) 11 DEL CK 0031

In the Delhi High Court

Case No : Writ Petition (C) No. 12876 of 2004

Mrs. Nidhi

APPELLANT

Vs

The Rao Cooperative Group Housing Society Ltd. and Another

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Citation : (2004) 115 DLT 216 : (2005) 81 DRJ 46

Hon'ble Judges : V.K. Jain, J;Anil Kumar, J

Bench : Division Bench

Advocate : Ranjan Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J

1. The petitioner has impugned the order dated 16th March, 2004 passed by the Delhi Co-operative tribunal dismissing the appeal of the petitioner against the award dated 11th August, 2003 passed by the Learned Arbitrator.

2. The petitioner has impugned the action of the society on the grounds that the area of flat of type C is less than what was represented by the Society; the society increased the number of members from 122 to 130 illegally, instead of 'A' Class construction, the society has done 'C' class construction in the flats; provision of additional lift made by the society was illegal; expenditure of the society was not approved by the general body; land cost claimed was higher by three to four times and that the petitioner is entitled to Rs. 25, 87,550.00 from the society.

3. We have perused the entire record and also the finding of the Arbitrator which is as follows:-

"" I have heard the oral submissions of both the parties and have also carefully gone through the documents and written arguments filed by the parties.

In the end of her claim petition the claimant has claimed the alleged relief of Rs. 25,87,550/- without giving any details or basis in the petition. It is important to mention that out of 130 members only claimant has raised the dispute of cost of flat, addition of new members etc. It appears from the documents that claimant is a persistent defaulter was expelled from membership. Expulsion of claimant was also ratified by the General Body and referred to the Registrar, Co-operative Societies for approval which is still pending. In the meantime the father of the claimant asked for refund of the deposits of the claimant as they got some deal to purchase another property. However, the Society asked for resignation from the claimant as they got some deal to purchase another property. However, the Society asked for resignation from the claimant first, which claimant refused to do and filed the present claim petition.

In the claim petition the claimant has asked for refund of Rs. 25,87,550/- though admittedly she has only paid Rs. 5,55,000/-. As per the Society, the claimant is in default of Rs. 6,03,520/- as on 30.9.02.

The actions of the claimant are contradictory as on the one hand she is challenging each and every action of the Society and on the other hand she is demanding the refund of her deposits with huge premium.

So far as the issue raised by the claimant regarding the additional flats and members enrolled are concerned, I am of the view that the same cannot be disputed as the same has been done as per law, i.e., after taking permission from General Body and after taking the necessary approval from D.D.A. And R.C.S. The vacancies were duly notified in newspaper. The claimant has failed to show any loss caused to her by the same. Even the grievance of the claimant against the allotment is without any basis as the allotment was done by the D.D.A. and not by the Society, after the due verification and clearance from the Registrar, Cooperative Societies Office.

The challenge of the claimant to the cost of flat and payment to Contractor is totally vague and ambiguous. The claimant has failed to prove by producing any proof that the construction is of inferior quality or cost of flat is wrong. No other member has raised any such objection.

The society has stated that land cost was asked higher than the actual cost to ensure timely payment and thereafter the Society has given the credit of surplus amount to deserving members. Even regarding Type-A1 flats, the claimant should not have any grievance as she was registered for Type-C flat. If claimant has any grievance against the election, she should have challenged the same at the right time. The claimant has miserably failed to show any infirmity in the demands of the Society or any of the issues raised by her. The claim of the claimant is, Therefore, without any basis and is accordingly dismissed.""

4. The petitioner is the only member out of 130 members of the society who has raised such objections regarding quality of construction and demands by the society. It has been disclosed that the petitioner paid only Rs. 5,50,000.00

though the demands raised by the society were for more amounts and the petitioner had defaulted in payment of about Rs. 6,03,520.00. For the defaults committed by the petitioner, notices were issued to her for her expulsion in accordance with the rules and regulations and her expulsion is pending approval of the registrar, co-operative society. It is also apparent that the petitioner has raised the claim of Rs. 25,87,550.00 without any basis. It is apparent that neither before the Learned Arbitrator nor before the Learned Delhi Cooperative Tribunal any details or justification for recovery of the amount of Rs. 25,87,550 were given by the petitioner nor the details for alleged demand has been disclosed in the petition. A demand was also raised on behalf of the petitioner by her father that the amount paid to the society be returned as the petitioner has to acquire another property.

5. The learned Arbitrator has given his reasons and the award and the reasons given in the award can not be faulted on the grounds as raised by the Petitioner. The allegations of petitioners are without any merit.

6. The petitioner remained a chronic defaulter and she defaulted in payment of about Rs. 6,03,520 and paid less than fifty percent of the amount demanded by the Society. A Society cannot function and construct if the timely payment are not made by the members. There is an appropriate procedure in accordance with law which is followed by the Cooperative Societies in expelling a member on account of default. If there is a default of one single member all the members suffer on account of either imposition of the burden of interest or increase in the costs of construction.

7. There are no grounds for interfering with the award dated 11th August, 2003 nor the order of the Co-operative tribunal can be faulted on the grounds raised by the petitioner.

8. The writ petition is devoid of any merit and is dismissed with costs.