

(2016) 11 DEL CK 0077

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6610 of 2015

Neelima Amodekar

APPELLANT

Vs

Registrar of Cooperative Societies

RESPONDENT

Date of Decision : 25-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Co-operative Societies Act, 2003 — Section 70

Citation : (2017) 1 ADDelhi 439 : (2016) 235 DLT 443

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Manoranjan, Advocate, for the Respondent No. 2; Mr. Varun Nischal, Advocate, for the Respondent No. 1; Mr. S.K. Sharma and Mr. Vishal Thakre, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J. - This writ petition by Neelima Amodekar and her two children Kshitij Amodekar and Nijatma Amodekar impugns the order dated 16th March, 2015 passed by the Delhi Cooperative Tribunal, whereby Appeal No. 189/2011/DCT filed by Police Computers Cooperative Group Housing Society Limited has been allowed and the award dated 27th August, 2011 has been set aside.

2. The petitioners herein are legal representatives of Jayant Amodekar, the claimant in the Arbitration Case No. 3042/DR/ARB/2010-2011, which was allowed by the Arbitrator vide the award dated 27th August, 2007 on the following terms:-

"1. The society is directed to raise a demand against the claimant if any amount is due and thereafter forward the name of the claimant to the RCS for clearance and allotment.

2. Allot and hand over possession of a flat thereafter which may either be no. 38 or convey in writing it's willingness to construct a new flat for the claimant

within 6 months of this award. The communication shall be sent to the claimant within 15 days of this award.

In case the society complies with the above, there shall be no damages/costs payable to the claimant. However in case of failure to comply within the stipulated period, the society shall in addition to 1 & 2 above, be liable to:

3. Pay a sum of Rs.12,90,000/- (Rupees twelve lacs ninety thousand only) to the claimant being the loss of rentals/damages due to denial of possession from the date of allotment in the year 2000 of flats to other members till date.

4. Pay another sum of Rs.1,35,450/- being the costs @ 10.5% of the awarded amount to the claimant.

The above payments shall be made within 15 days of the award failing which the entire amount same shall incur interest @ 10 p.a. from the date of the award till actual payment."

3. Police Computers Cooperative Group Housing Society Limited (hereinafter referred to as the, Society) was granted registration on 19th December, 1979. The Society had submitted a list of 51 members to the Assistant Registrar, which was treated as a freeze list as per the report of the committee dated 28th May, 1982. The cooperative society was allotted land by the Delhi Development Authority at B-16, Vasundhara Enclave, Delhi and had constructed 51 flats, which commenced in 1989 and was completed by 1994. However, allotment of flats to the individual members for some reasons could take place only in the years 1999-2000.

4. The Society had initiated action for expulsion of three members, namely, P.V. Rajan, Kamlakar Kaul and Pratibha Bhatia on the ground of dual membership or disqualification for owning property in their names. Membership of Pratibha Bhatia was cancelled by the Registrar, Cooperative Societies vide order dated 18th February, 1998, but enrolment of P.V. Rajan and Kamlakar Kaul was upheld as the allegations against them were found to be incorrect. While the question of expulsion of the aforesaid members was pending, the then Management Committee of the Society had enrolled Jayant Amodkar as a provisional member on 8th July, 1997. Jayant Amodkar had deposited share money of Rs.110/-, in cash, on 16th July, 1997 and was issued a "provisional share certificate". He had made another payment of Rs.2,70,000/- on 29th January, 1998 towards cost of construction. As per the minutes of the Management Committee dated 10th January, 1999, which have been placed on record by the petitioners along with the rejoinder and relied by them, Jayant Amodkar had been enrolled against cessation of membership of P.V. Rajan, which enrolment was purely provisional. The resolution also records that the Society might challenge the order of the Registrar, upholding the membership of P.V. Rajan, in the High Court. Lest there be any confusion or debate, we would like to reproduce the relevant portion of the minutes of the meeting of the Management Committee held on 10th January, 1999, which read:-

"It was also resolved after discussions on the subject of cessation of membership of Smt. P.V. Rajan and Sh. Kamla Kaul whose case is likely to be taken up in High Court against the decision of the Registrar Coop. Societies. It was resolved unanimously that RCS may be requested not to consider them for allotment of flats. It was further resolved that Sh. Jayant Amodekar who was enrolled against cessation of Smt. Rajan and Shri S.C. Tiwari against cessation of Sh. Kamalakar Kaul who have been enrolled on purely provision basis. It was resolved that the society may appeal in the High Court against restoration of membership of Smt. Rajan and Sh. Kamalakar Kaul. It was resolved that the RCS may be apprised of facts accordingly."

5. Two subsequent proposals of the Society must be adverted to. First, a proposal was mooted by C.P. Sharma, Secretary of the Society for converting the electrical sub-station located on the ground floor into an additional flat and for increase of membership of the society from 51 to 52. A letter dated 17th May, 1999 was written to the Assistant Registrar for conversion of the electrical sub-station into a type B flat. The sub-station had to be relocated in view of the policy of the Delhi Development Authority (DDA for short). It was prayed that the membership may be increased from 51 to 52. The Registrar, Cooperative Societies did not accept or affirm the said proposal. The membership of the Society was not increased from 51 to 52.

6. The second proposal mooted was to increase membership of the society from 51 to 60. By letter dated 8th June, 2000, the Assistant Registrar, Cooperative Societies informed the DDA and the Society that the competent authority had concurred with the proposal to increase the membership strength from 51 to 60 in terms of the DDA office order dated 15th February, 1999, but this increase was subject to the condition that 3 out of 9 vacancies shall be reserved against dispute/court cases and the Society shall advertise only 6 vacancies in the newspaper. This was followed by another letter dated 30th October, 2000 by the Assistant Registrar, clarifying that 3 vacancies mentioned earlier were for Jayant Amodekar, S.C. Tiwari and Saroj Madan.

7. The Society in turn wrote a letter dated 17th June, 2000 to Jayant Amodekar informing him that the Registrar had accepted their request for increase of strength of the Society to accommodate him. They had requested the DDA to increase the FAR under the new guidelines, which request had been accepted. It was specifically averred that the Society would not be able to accommodate Jayant Amodekar in the first phase, i.e., 51 flats, but his name would be regularised or included in the second phase, subject to his concurrence, and subject to the Delhi Cooperative Societies Act, and the Rules made thereunder.

8. It transpires and it is an accepted position that 9 flats, which were to be constructed in the second phase, have not been constructed and the said project had fallen through.

9. The petitioners' case is now predicated on their contention that the built

space, which has fallen vacant on shifting of the electrical sub-station, is in fact a category B flat and it should be allotted to them. Jayant Amodekar had written letters to which he did not get a positive response. Jayant Amodekar had then invoked and initiated arbitration proceedings under Section 70 of the Delhi Cooperative Societies Act, 2003 which vide the order dated 23rd March, 2011 of the Deputy Registrar were referred to arbitration.

10. As already noticed above, by award dated 27th August, 2011 the claim petition was accepted with the direction that the Society should allot either flat No. 38, or convey in writing their willingness to construct a new flat within six months. This communication was required to be sent by the Society within fifteen days. The Society was required to raise demands and forward Jayant Amodekar's name to the Registrar, Cooperative Societies for clearance. In case the Society was unable to comply with the direction to allot flat No. 38 or construct a new flat, they would be liable to pay damages/cost of Rs.12,90,000/- towards loss on rentals, etc. on account of denial of possession from the year 2000 and in case of default pay interest @ 10% per annum till actual payment. Costs of Rs. 1,35,450/- was also awarded, and on this amount the claimant was entitled to interest @ 10.5%.

11. The aforesaid directions were issued in view of the finding of the Arbitrator that the Act and the Rules as well as the bye-laws of the Society did not recognise/permit enrolment of provisional members. Hence, Jayant Amodekar was enrolled as a member, as he had paid the share money as well as membership fee. Jayant Amodekar had partly paid towards cost of construction, which payment was accounted for in the ledger account of the member. The Society, therefore, was estopped from turning around or claiming that Jayant Amodekar was not a regular member. Jayant Amodekar was never intimated or informed by the Society that his membership was subject to cancellation of P.V.Rajan's membership. The Society vide letter dated 2nd December, 2002 had raised objection regarding non-payment of dues and this was the only ground for non approval of Jayant Amodekar's membership. The contention of the Society that the then existing Management Committee had acted illegally was rejected, as the members of the said committee had not been arrayed and made parties to the arbitration proceedings. The Society, it was advised, could have gone against the then Management Committee. The contention of the Society that the claim was barred by limitation was rejected. The argument that Jayant Amodekar had failed to make payment within the stipulated period was held to be untenable, because another member Minto Roy Chaudhary had been issued a similar demand letter on the same date as Jayant Amodekar and had made the payment later, yet Minto Roy Chaudhary was given confirmed membership and was allotted a flat.

12. The Society appealed and as is apparent has succeeded vide appellate order dated 16th March, 2015 passed by the Delhi Cooperative Tribunal. The Tribunal has held that Jayant Amodekar was given provisional membership as per letter

dated 10th July, 1997, which was conditional. Jayant Amodekar had failed to make entire payment within thirty days of the receipt of the letter. Secondly, provisional membership was subject to approval of the competent authority, which was never granted and, therefore, membership of Jayant Amodekar had not crystallised. Reliance was placed upon decision of the Supreme Court dated 2nd May, 2006 in Civil Appeal No. 306-07/2005 titled A. Jitendranath v. Jubilee Hill CGHS and Another wherein it has been held as under:-

"The allotment of plot no. 39 in favour of the mother of the appellant was a provisional one. By reason of such provisional allotment, the allottee did not derive any legal right far less an indefeasible right. Such provisional allotment would have acquired permanence provided the requirements therefor were complied with."

The Arbitrator had arrived at a wrong conclusion as to the effect of provisional membership and had accordingly erred in making the award. The Arbitrator had also failed to notice that Jayant Amodekar had failed to comply with the conditions mentioned in the letter dated 10th July, 1997 by which he was granted provisional membership.

13. Jayant Amodekar had died during the pendency of the appeal before the Delhi Cooperative Tribunal and the present petitioners were then brought on record as his legal representatives. They have accordingly challenged the appellate order dated 16th March, 2015 passed by the Delhi Cooperative Tribunal.

14. After having perused the said records, including the files maintained by the Registrar of Cooperative Societies, we are inclined to uphold and affirm the findings of the appellate Tribunal and dismiss the present writ petition.

15. We have already noted the relevant facts, which are substantially undisputed and unchallenged. It is clear to us that Jayant Amodekar was given provisional membership. The word "provisional" was mentioned in the share certificate dated 16th July, 1997 is apparent and unchallengeable. This was the accepted position as recorded in the award dated 27th August, 2007. The reason was, and it is apparent, that the Society had cancelled membership of three persons, including P.V. Rajan, which issue/dispute was pending consideration with the Registrar, Cooperative Societies. The membership of the Society was frozen at 51 and this could not have been increased nor new members enrolled without the consent of the Registrar, Cooperative Societies and the DDA. The contention of the petitioners that Jayant Amodekar was never informed and was unaware that he had been enrolled in lieu and subject to cessation of membership of P.V. Rajan, according to us, is specious and a wrong assertion. By 1997, the flats had already been constructed but possession was still to be given to the members. It is obvious that Jayant Amodekar would be aware and informed as to the facts and the terms on which he was being enrolled and granted provisional membership, and not full membership. Lack of knowledge and ignorance, is unintelligible and has not been accepted by the Tribunal. This finding is rational

and sound. The letter dated 30th October, 2000 written by the Assistant Registrar to the Society is lucid. It states that three vacancies, regarding which there was a dispute, or court cases, had been reserved for Jayant Amodekar, S.C. Tiwari and Saroj Madan. The cooperative society has also placed on record a letter dated 5th August, 1999 written by C.P.Sharma to the Registrar of Cooperative Societies with a copy to Jayant Amodekar. This letter records that Jayant Amodekar was granted provisional membership against six vacancies on the legal advice of the Society's advocate. The share certificate records and states "Provisional". The reason was that Jayant Amodekar's membership was purely provisional. Subsequent correspondence by Jayant Amodekar would show that he had realised that he would be allotted a flat, in case the erstwhile sub-station room was converted into a flat. The Society had, in response, raised allegations against C.P. Sharma, ex-member of the Management Committee, who was responsible for giving the provisional membership. Allegations regarding irregularities and illegalities have been made against C.P.Sharma.

16. We also find merit in the contention of the respondent Society that Jayant Amodekar vide letter dated 10th July, 1997 was required to make payment of the entire demand within a period of thirty days. As per the demand letter dated 10th July, 1997, amount of Rs.4,13,440/- was to be paid but part payment of Rs. 2,70,000/- was made. In any case, the membership of Jayant Amodekar was subject to confirmation and acceptance by the Registrar, Cooperative Societies and also the DDA. It is not the case of the petitioners that any such confirmation or acceptance was accorded.

17. With regard to the conversion of the space where the electrical substation was located, the conversion cannot be claimed as a matter of right. Membership of the Society, numbering 51 in total, was frozen and fixed. These 51 members had paid for the cost of construction and the land. The construction was complete in 1993-94. They have not agreed to the conversion of the said space into a flat. We do not think that the Society can be compelled and forced in the aforesaid facts to accept the conversion. As recorded earlier, Jayant Amodekar initially had not raised or made the said claim, knowing that this would not be acceptable to other members. His claim for membership was being processed on the basis that the new flats could be constructed. The ethos of the cooperative movement requires concurrence and we cannot spurn and disregard their collective will, unless a legal right is established. In the present case it has not been established.

18. We would at this stage refer to and examine the contentions raised by the petitioners in the rejoinder affidavit. The first contention raised is that Jayant Amodekar was not informed that his membership was subject to cessation of the membership of P.V. Rajan. We have already exhaustively discussed this aspect and held that the stand of the petitioners is wrong. The enrolment of Jayant Amodekar was only against cessation of membership of P.V. Rajan and not otherwise. The contention that Jayant Amodekar's membership or enrolment was after restoration/affirmation of P.V. Rajan's membership is factually wrong

and incorrect. No doubt, the Registrar, Cooperative Societies had agreed to increase the membership from 51 to 60 and had stated that six new members would be enrolled and the petitioner and two others would be offered membership, however, this was on the condition that nine more flats would be constructed in view of the increase in FAR. This never happened and no new flats have been constructed. Claim of the petitioners is unacceptable and has to be rejected. Similarly, the contention that a valuable right membership of a housing society cannot be extinguished is without merit. Jayant Amodekar was always aware that his so-called membership was tentative or provisional. He was never granted membership. Provisional is conditional and not membership. We have also dealt with the contention of the petitioners that the place where the electrical sub-station was housed should be converted into a flat and allotted and have held that this plea is untenable and weak. It is for the members of the Society to decide how to use the said space. Members have paid for the construction and land. Amount paid by Jayant Amodekar was much after the construction was completed. It may be noted that both S.C. Tiwari and Saroj Madan have lost their right to claim any flat and they have accepted the said position.

19. During the course of hearing, it was submitted that Minto Roy Chaudhary was junior to Jayant Amodekar for he had deposited the share money etc. afterwards. We would not go into the merit of the said contention as Minto Roy Chaudhary is not a party to the writ petition nor was he a party to the arbitration proceedings. We also do not find any such claim was made in the reference petition or in the order of reference to arbitration dated 23rd March, 2011. The respondent Society have stated that Minto Roy Chaudhary was granted membership along with one M.K. Ahuja on first cum first serve basis. Their membership was not provisional and they were given clear membership. Reliance is placed by the petitioners on the ledger account of the Society which records that Jayant Amodekar had made payment of Rs.100/- and Rs.4000/- on 12th July, 1999, whereas Minto Roy Chaudhary had made payment of Rs.4,100/- on 13th July, 1999. According to us, this would not tilt the issue in favour of the petitioners. It could well depend on the date when, Minto Roy Chaudhary had applied for membership and seniority is not necessarily dependent on the date of payment. These were aspects, which could have been gone into and examined by the Arbitrator, provided the said documents and details were placed before him. Minto Roy Chaudhary was not a party to the arbitration proceedings and we cannot now substitute or alter the award or direct that the flat allotted to him should be cancelled and should be re-allotted to the petitioners. We do not have necessary facts and details to examine the new contention raised by the petitioners before us. Without the said person being a party before us, we would not go into the said aspects.

20. However, there is one aspect on which some clarification and directions are required. The Delhi Cooperative Tribunal vide their order dated 16th March, 2015 had accepted the appeal and the award dated 27th January, 2011 was set aside.

We also record that in terms of the appellate order, the Society has refunded the amount paid and deposited by late Jayant Amodekar by sending a cheque of Rs.91,367/- each to the three petitioners. The Arbitrator had granted interest @ 10% per annum. The Society has retained the said amount since 1997 and had either used the same or kept in an FDR. In either case interest should be paid. In the given facts we would direct the Respondent-Cooperative Society to pay interest to the 3 petitioners @ 8% per annum from the date payment was made by Jayant Amodekar till the refunds were issued. The rate of interest fixed takes into account the factum that Jayant Amodekar had initially voluntarily deposited the said amount, but subsequently could not be enrolled and allotted any flat. We have directed payment for the entire period and not from a later date for the reason that the amount paid by Jayant Amodekar was utilised by the Cooperative Society or would have been kept in an FDR. The rate of interest fixed is neither exorbitant nor minimal.

21. In view of the aforesaid, except for granting interest, we do not find a good ground or reason to interfere with the order dated 16th March, 2015 passed by the Tribunal. In the facts of the case, there would be no order as to costs.