
(1998) 08 DEL CK 0049
In the Delhi High Court
Case No : C.W. No. 3039 of 1989

P. Bhandari

APPELLANT

Vs

Retreat Co-operative Group Housing Society Ltd. and Others

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 5 AD 981 : (1998) 76 DLT 450 : (1999) 48 DRJ 413

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Lalit Bhasin and Ms. Kiran Kalra, for the Appellant; Mr. Sanjay Poddar, Mr. Rakesh Munjal, Mr. Rohit Aggarwal, Mr. Krishna Kumar, Mr. Ashok Kashyap and Mr. Vijay Nair, for the Respondent

Judgement

Arun Kumar, J.—The short point for consideration in this writ petition is whether a co-operative society can deviate from the principle of seniority of its members in the matter of allotment of flats/plots. The Retreat Co-operative Group Housing Society Limited (hereinafter referred to as the Society) is a group housing society as its name suggests. The object of the Society was to acquire land for development and construction of residential flats for its members. The Society acquired land at Patparganj, Delhi where it proposed to construct residential flats in two blocks. The first block of flats was to be constructed in Phase I and the second was to be constructed in Phase II. The flats to be constructed were of two types, type A having a covered area of 1,050 sq.ft. and type B having a covered area of 1,400 sq.ft. The petitioner is one of the founder members of the Society her membership number being 9. She had registered for a type B flat in Phase I on 17th October, 1979. The payment by the members of the Society for the flats for which they registered was to be made in installments. It appears that on account of some defaults in making timely payment of the installments for the flats, the petitioner as well as some other members were relegated from Phase I to Phase II.

2. For purposes of deciding the legal question, it is not necessary to give the complete history about the demands made by the Society for payment of the installments by the members from time to time and failure of some of the members including the petitioner to make payments of the installments to the Society by the due date. It is sufficient to state that on 26th June, 1987, a circular was issued by the Society giving another opportunity to the defaulting members to pay by 15th July, 1987. It was also stated in the circular that in case of default, the defaulting members could be relegated from Phase I to Phase II. By that time the petitioner had paid only a sum of Rs.90,500/-. On 22nd July, 1987 some of the defaulting members including the petitioner were relegated to Phase II on account of their failure to make the payments as demanded by the Society. On 2nd December, 1987 the Managing Committee of the Society also passed a resolution that all those members who had not paid a sum of Rs.2,30,000/- by 15th November, 1987 be shifted to Phase II. It has been pointed out that on 16th January, 1988, three members out of the nine members who had been relegated to Phase II were brought back to Phase I. By 30th November, 1988 the petitioner had deposited with the Society Rs.2,85,500/-. As a matter of fact, by 30th November, 1988 other members who are also caught in the whirlpool of this controversy and who are arrayed as respondents in the present writ petition had deposited the requisite amounts with the Society as per a chart showing payments made by members placed on record by the Society. According to the petitioner, she had deposited an amount of about Rs.3,35,000/- by that time and she had offered to pay a further sum of Rs.28,000/- in order to complete the payment of Rs.3,63,000/- by 20th November, 1988 this being the price fixed by the Society for the bigger flats. A draw of lots for purposes of allotment of flats was held on 25th October, 1989. The petitioner made efforts with the Society as well as Registrar of Co-operative Societies to stop the allotment of flats in Phase I because her name was not being included in the draw. Ultimately she approached this Court by way of the present writ petition praying that the petitioner be allotted a flat in Phase I and her relegation to Phase II by the Society was illegal. She stated that by 20th November, 1988 she had paid the total amount demanded by the Society which was much before the date of proposed draw of lots for allotment of flats in Phase I, Therefore, she could not have been relegated to Phase II and was entitled to type B flat in Phase I. She also alleged discrimination and arbitrariness on the part of the Society in as much as certain new members were taken in place of the members like the petitioner who were relegated from Phase I to Phase II. Further it was alleged that some of the members relegated to Phase II were brought back to Phase I while the petitioner and some others were allowed to remain in Phase II even though they had made full payments. The main thrust of the case of the petitioner is on the principle of seniority. It is submitted that the petitioner being the seniormost member amongst those who are now left in this controversy and being one of the founder members of the Society could not have been relegated to Phase II. The action of the Society in this behalf was wholly illegal, unjustified and contrary to the provisions of the Delhi Co-operative Societies Act and the

Rules and the Bye-laws of the Society.

3. It may be pointed out at this stage that another member, namely, Shri N.N.Seth was also similarly placed as the petitioner. He sought a reference to arbitration u/s 60 of the Act. The Arbitrator upheld the case set up by Mr.Seth and decided that the seniority principle had to be followed in the matter of allotment of flats and merely on account of non-payment of installments by the due date, a member could not be relegated to a backward position. The Arbitrator held that the only course open under the Act regarding a defaulting member is to expel him/her from membership with the approval of the Registrar of Co-operative Societies. In the alternative for delay in payments, the Society can call upon the members to pay interest. Relegation was not envisaged under the Act or the Rules and could not be resorted to. The Society went in appeal against the decision of the Arbitrator. The appeal of the Society met the same fate and was dismissed by the Delhi Co-operative Tribunal vide its judgment dated 15th April, 1991. The Tribunal held "in the matter of allotment of flats in a Co-operative Society, the seniority has to be made the basis for allotment. It has nowhere been laid down that the Managing Committee of a Co-operative Society has the power to relegate the seniority regardless the fact that a member becomes a defaulter. For such lapses, separate provision of charging interest and/or taking steps for expulsion of the concerned member exists." The Society challenged the said decision of the Tribunal by way of a writ petition in this Court. The said writ petition C.W.No.2131/1991 is being disposed of along with the present writ petition.

4. The learned counsel appearing for the Registrar of Co-operative Societies Mr.Sanjay Poddar emphasised that in such matters the principle of seniority of members must be followed. In a Co-operative Society the concept is of co-operation rather than any member being allowed to steal a march over the other on account of his economic power. If merely for the reason of failure to pay the Installment within time, a person was to lose seniority, that would militate against the very concept of co-operation. The basis of the co-operative movement is to help the weaker sections of the Society by mutual adjustment. In this connection he drew our attention to a Full Bench decision of this Court reported in (1983) 2 Delhi 487 Shri Daulat Ram Mehindratta Vs. Lt. Governor and Others where it was observed:

"A co-operative society is a union of persons established according to principles of equality, the number of whose members is not limited, and the purpose of which is, by the joint performance of economic acts, to improve the financial position of its members or the conditions under which they carry on their possession, by means of either pure self help, or self help with Government support, provided that all profit made by joint action shall be distributed in proportion to the extent to which each member has taken part in the business, and not in proportion to the capital invested.

A co-operative Society may be defined as a voluntary association of individuals

combined to achieve an improvement in their social and economic conditions through the common ownership and democratic management of the instruments of wealth." (Vide Rewis Encyclopedia of Cooperative Societies law in India, Vol.2 page 1). Experience has shown that voluntary organisations in cooperative is the best system which can suit the needs of poor and weaker sections. The object of co-operative society is not to earn profits but to enable the members to improve their economic conditions by helping them in their pursuits. Thus the cooperative societies like the present one which have the effect to obtain the land at concessional rate from the government and to build houses must necessarily have limitation that only members who are in real need of houses would be permitted to become members and to take the benefit of land allotment. In the grab of cooperative society a person cannot be permitted to avoid the stress of market prices and take a concessional advantage in obtaining a plot."

5. He further submitted that it is only in order to ensure that the above principles are strictly adhered to that the Registrar, Co-operative Societies is associated with every major decision which a Co-operative Society takes by virtue of the provisions of the Delhi Co-operative Societies Act. For instance the list of members is to be approved by the Registrar. Similarly expulsion of any member from the Society is to be approved by the Registrar. In this scheme of co-operation, mutual help has to be the moto as against leaving behind an economically weaker member. No member can be allowed to take the advantage of the economic weakness of another member. Simply because one member is affluent enough to pay the entire demand in one go should not entitle him to jump over the rest.

6. The learned counsel for the Society has justified the action of the Society on the ground that expulsion would have been a very drastic step. Instead of taking recourse to such a step, the Society resorted to relegation of defaulting members to a slightly lower position. It was submitted that timely payment by the members is essential in a Group Housing Society. The Society undertakes construction and plans out the expenses and how they are to be met. The resources for payment for construction are the funds raised from the members. If the members default in payments, the entire working schedule gets upset. Further it is submitted that no serious prejudice has been caused to the petitioner. She will certainly get a flat in the Society, though in Phase II.

7. So far as the question of power to relegate is concerned, the learned counsel for the Society conceded that there is no such express power either in the Act, the Rules or the Bye-laws of the Society. The Society has admittedly not framed any Rules or Bye-laws on its own in this behalf. The learned counsel relied upon clause (28) of Bye-laws 25 of the Society which runs as under:-

"to carry out the development and construction work in the manner as may be decided by the General Meeting and allotment of house/flat to members in accordance with the rules framed by the Society with the approval of the Registrar."

8. On the basis of this provision it was urged that power to allot flats will include power to determine the manner of allotment and power to make adjustments as has been done in this case.

9. About the provisions in the Act for expulsion from membership the contention is that it is an enabling provision. It is not mandatory. The impugned action was justified on the ground that expulsion would have left the petitioners totally high and dry. By resorting to relegation, the Society has at least ensured that the petitioner gets a flat. Relegation in other words is a lesser penalty. The interest of the members in the Society remains preserved. Finally the learned counsel for the Society made an offer. According to him at present eight "B" type flats in Phase I are available for allotment while there are ten members, including the petitioner and the respondents who are due for allotment of these flats. He submitted that out of the ten members, R.L.Khurana, respondent No.1 was never relegated to Phase II and, Therefore, must get a type "B" flat in Phase I. Further S.S.Rana and Rahul Rasgotra had made substantial payments by 16th January, 1988. They must also get "B" type flats in Phase I. This leaves seven members and five flats. Counsel submits that a draw be held. Two members who will be left out will be accommodated in Phase II at old rates. This offer was not acceptable to any party. The problem has arisen because the number of type "B" flats available for allotment in Phase I is eight while claimants are ten. The position of the ten members as per seniority is as under:-

S.No.	Name	Membership No.	1.	Mrs. P. Bhandari	9	2.	Mr. Durgesh Shakar	27
3.	Mr. R.L. Khurana	33	4.	Mr. N.N. Seth	47	5.	Mr. B.C. Goel	89
6.	Mrs. Mridula Gosh	124	7.	Mr. S.S. Rana	154	8.	Mr. N.B. Singh	163
9.	Mr. B.N. Bajpai	215	10.	Mr. Rahul Rasgotra	229.			

10. This shows that from the point of view of seniority there is lot of disparity between these ten members. If one goes strictly by seniority the last two will have to forego "B" type flats in Phase I. They may have to be accommodated in Phase II at original cost as per the promise held out by the Society. The Society justifies the claim of junior members solely on account of the fact that their payments were prompt while the senior members were in default of payment. On the other hand the petitioner claims that the principle of seniority must be adhered to strictly and defaults can be taken care of by way of imposition of liability to pay interest, the ultimate weapon against defaulters being expulsion from membership of the Society. Relegation to a lower category or to a comparatively disadvantageous position is without any authority and has to be struck down.

11. In the backdrop of these facts we have to answer the following questions:

1. Is the seniority principle inviolable?
2. In the absence of any Rules and Bye-laws, is relegation of a member to a comparatively lower position on account of default in payment of installments towards the cost of flat permissible?

Seniority Principle

12. For deciding this question it is of utmost importance to keep in mind that we are dealing with a co-operative society. Co-operation means mutual help, mutual adjustment, mutual give and take. Pure commercial approach has no place here. Each member is expected to work for common good. When there are several members, all cannot be expected to be similarly placed. There are bound to be some who at a given time may not be able to keep pace with the rest. Are such persons to be left behind? It cannot be so. Effort has to be to take along such persons. The strong cannot be allowed to push out the weak. They have to carry the weak along. From this it follows that the seniority principle has to be respected and followed. This principle fits in the co-operative ethos. Nothing else will work. If a senior member is unable to meet the deadline regarding payment at a given time, he/she cannot be pushed aside. If this is permitted, societies may abuse this power. The managing committees will keep on shuffling members back and forth. As it is experience has shown that there are often allegations against the managing committees of co-operative societies of corruption. But this should not mean to encourage defaulters. It should not be understood that members can pay as per their sweat will. They have to maintain discipline. If members stop paying their dues as per schedule fixed by the Society, how will the construction work proceed? The funds for construction of flats in a group housing co-operative society have to come from the members. Defaulters cannot stall the progress of the works, thereby holding everyone else to ransom.

13. The emphasis has to be on finding out genuine cases of hardship where accommodation may have to be given. If, however, it is felt that a member is misusing the accommodation shown to him, his expulsion from the Society may have to be resorted to. The final say in matters of expulsion of members is left with the Registrar of Co-operative Societies. A defaulter can be expelled from membership of the Society. The action has to be with the approval of the Registrar. A lesser action can be to charge interest on delay in payment of installments.

14. The learned counsel for the Society submitted that expulsion is only an enabling provision and is not mandatory and, Therefore, it need not be resorted to. This may be so, but what follows from it. If you do not expel a member, he/she continues to be a member and on what basis you deny to him/her the flat booked by such a member. One who remains a member retains his/her membership - meaning thereby maintains the seniority as a member. The Act does not envisage any other action against a member.

Relegation

15. This brings us to the next question of relegation of a member to a lower category. Admittedly there is nothing in the Act or the Rules which permits this. Either somebody is a member in a cooperative society or not - there is no third thing. You cannot send member No.9 in the seniority list of members to

membership No.19, 90 or 900. In other words membership position of a member cannot be altered. The position of a member in the seniority list determines his status in the Society.

16. The Society might have bona fide felt that those who were not paying their dues as per schedule should give way to those who were prompt in paying or who were willing to make up for the defaults of those whose positions they would take. But this is not in keeping with the spirit of co-operation. Economic power cannot be permitted to push out the lesser endowed. If that were so it will be just like any other private builder/promoter who in pursuance of his greed is ready to sell his flats again and again depending on the price he gets.

17. Even the Bye-laws of the Society admittedly have no provision which empowers its managing committee to relegate defaulting members to lower positions. Reliance placed on Bye-law 25(28) is misconceived. It only talks of allotment of flats. Relegation of members to lower positions is a serious issue and cannot be supported on the basis of the said provision. Thus we find that relegation of members to lower position or less advantageous position is without any authority.

18. In view of our answers to the two questions posed above, the writ petition is allowed. The respondent Society is directed to strictly follow the principle of seniority of members and allot the remaining type "B" flats in Phase I on that basis. Members who may be denied allotment in pursuance of this order may be compensated by the Society in whatever best possible manner it may be possible to do so keeping in view that actually there is no fault as such on their part. No costs.