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**(2018) 07 DEL CK 0484**

**In the Delhi High Court**

**Case No :** WRIT PETITION(CIVIL) No. 7057, 6355, 6053 OF 2018

Parveen Arora & Anr

APPELLANT

Vs

Registrar Cooperative Societies & Anr

RESPONDENT

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**Date of Decision :** 10-07-2018

**Acts Referred:**

Gujarat Co-operative Societies Act, 1961 — Section 36, 36(1)

**Citation :** (2018) 07 DEL CK 0484

**Hon'ble Judges :** SANJIV KHANNA, J;CHANDER SHEKHAR, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

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SANJIV KHANNA, J",,,,,

These writ petitions are a deliberate conceited attempt by the petitioners to start another round of litigation immediately after and on dismissal of their,,,,

Special Leave to Appeal (C) Nos.,,,,,

12168-12170/2011, Seema Sharma and Others versus Registrar Cooperative Societies and Others by the Supreme Court on 3rd May, 2018.Â Â",,,,,

2. Within three weeks thereafter, on 28th May,2018 Writ Petition (C) No. 6053/2018 was filed by Seema Sharma and twelve others,Â predicated their",,,,,

claim on pretence of new facts and cause of action. A Division Bench of this Court vide order dated 30th May, 2018 has issued notice.",,,,,

3. Thereafter, on 30th May, 2018, Writ Petition (C) No. 6355/2018 was filed by Bishan Swaroop Vat. By order dated 1st June, 2018, this writ petition",,,,,

was directed to be listed with the writ petition filed by Seema Sharma and others.Â Writ Petition (C) No. 7057/2018 by Parveen Arora and Gouri,,,,

Shankar was filed on 7th July, 2018. This writ petition has been listed today for the first time before this Court." , , , ,

4. Shivaji Cooperative Group Housing Society ('Society'), formed and incorporated in 1971, on 25th July, 1991 were allotted two acres of land at Rohini" , , , ,

for construction of flats for members.Â Society had enrolled 120 members, who had paid for the cost of land and construction of flats. On 27th" , , , ,

September, 1998,Â the society decided to expel twenty two (22) members on account of default in making timely payments towards cost of" , , , ,

construction. List of these members for approval was sent to the Registrar of Cooperative Societies (Registrar, for short) on 3rd October, 1998.Â" , , , ,

Registrar vide order dated 3rd December, 1999 approved expulsion of 8 members. Case of one expelled member, namely, A.N. Mohan, it was noted,Â" , , , ,

was to be dealt with in separate proceedings. Eight expelled members (and two other members) had thereupon preferred a revision petition, which was" , , , ,

allowed by the Financial Commissioner vide order dated 20th April, 2000. Their expulsion was set aside, subject to payment being made. This" , , , ,

compliance it is accepted was made.Â Thus, the twenty two expelled members would continue to remain members of the society, their seniority and" , , , ,

entitlement being maintained.Â" , , , ,

5. During pendency of the proceedings before the Registrar,Â on 28th March, 1999, the Society perilously, if not dubiously, passed a resolution for" , , , ,

enrolment of new members. Petitioners before us are the new members, who were enrolled on 11th April, 1999.Â These new members paid" , , , ,

equalization amount and were granted share certificates.Â Â" , , , ,

6. On 16th May, 1999, the governing body of the society passed another resolution approving membership of the newly enrolled persons and took a" , , , ,

decision that those members who had not paid the dues on time would not be eligible on priority. , , , ,

7. Consequently there was litigation. To avoid prolixity we would refer to judgment dated 3rd November, 2008 in Writ Petition (C) Nos. 2338-53/2005," , , , ,

Neelam versus Financial Commissioner and Others and other connected writ petitions.Â The judgement is a detailed one and records various reasons, , , , ,

and grounds why the twenty two newly enrolled members could not have been enrolled and affirms rights of the twenty two initial members.Â For the" , , , ,

purpose of present litigation, we may briefly record the reasoning and grounds recorded in this decision." ,,,,

i) Expulsion of twenty two members was not approved by the Registrar/Financial Commissioner. The said decision had attained finality.Â Hence, " ,,,,

twenty two expelled members were entitled under law to allotment of flats. ,,,,

ii) Society had acted illegally in enrolling new members in March/April, 1999 when the issue of expulsion of the earlier members was pending" ,,,,

consideration before the Registrar/Financial Commissioner. ,,,,

iii) Registrar vide order dated 9th October, 2000, had refused to approve membership of the 22 newly enrolled members.Â " ,,,,

iv) Society had illegally conducted draw of lots of the constructed flats on 31st December, 2000. Names of twenty two newly enrolled members, in" ,,,,

whose case membership had not been approved by the Registrar, were included. Names of twenty two initial members, notwithstanding that their" ,,,,

expulsion had already been set aside vide orders of the Registrar and Financial Commissioner dated 3rd December,1999 and 20th April,2000, were" ,,,,

excluded. ,,,,

v) Newly enrolled members were also illegally permitted to occupy the flats, which were occupied by some of them." ,,,,

vi) The erstwhile expelled members, whose membership was restored, had thereupon filed Writ Petition (C) No. 361/2001, which was disposed of vide" ,,,,

common judgment dated 7th January, 2002 observing that the draw of lots held on 31st December, 2000 was contrary to law and in violation of the" ,,,,

directive dated 31st May, 1984 of the Delhi Development Authority as it was not held by the Delhi Development Authority and without approval of the" ,,,,

list of members of the Registrar.Â Draw of lots was quashed with the direction that fresh draw of lots would be held in accordance with the directive, ,,,,

dated 31st May, 1984.Â As an Administrator had been appointed, he was directed to take consequential action by taking possession of the flats, which" ,,,,

had been handed over.Â Â ,,,,

vii) After pronouncement of the aforesaid judgment, twenty two newly enrolled â??membersâ? approached the Delhi High Court and had filed Writ" ,,,,

Petition (C) No. 3409/2002 challenging their non-approval by the Registrar.Â This writ petition was disposed of vide order dated 28th May, 2002" ,,,,

directing the Registrar to take a decision and pass a speaking order.Â Pursuant to

the said directions, the Registrar heard the petitioners/parties and",,,, passed the order dated 30th July, 2002 again reiterating that enrolment of twenty two new "members" was illegal as there was no vacancy on 11th",,,, April, 1999.Â Further expulsion of the earlier members was not approved and the strength of the society had not been increased. Financial",,,, Commissioner vide order dated 31st January, 2003 dismissed the revision petition filed by the twenty two newly enrolled "members".Â Review",,,, application was also dismissed by the Financial Commissioner on 9th December, 2004.",,,,

viii) In the aforesaid factual background, the Society could not have enrolled any members as expulsion of the twenty two members had been set aside",,,, and thus had not created any vacancy.Â Â Â",,,,

ix) On the issue of increase in Floor Area Ratio (FAR) and the contention that additional flats could be constructed, it was observed that Delhi",,,, Development Authority had issued letter dated 3rd December, 1999 Â increasing the strength from 120 to 138.Â Twenty two persons had been",,,, enrolled as "members" on 11th April, 1999, i.e. before the letter dated 3rd December, 1999.Â",,,, Enrolment was illegal.Â Hence, the order of the Financial Commissioner could not be faulted on this ground and the petitioners could not take shelter",,,, behind or under the increase in FAR.,,,,

8. Having held against the petitioners, the Division Bench tried to balance equities in view of the benefit of increased FAR.Â",,,, As there was no definitive response from the Delhi Development Authority (DDA) and the Municipal Corporation of Delhi (MCD), on the said aspect",,,, the following operative directives were issued:-",,,,

â??28. As no definite response has come forward from the MCD or the DDA, we proceed on the premise that there is an increase in the FAR",,,, pursuant to which the Society is permitted to construct additional flats. It would, therefore, be open to the SocietyÂ toÂ prepareÂ andÂ submit",,,, appropriate plans for additional construction to the MCD and/or DDA and those authorities shall sanction those plans, subject to fulfillment of other",,,, requisite formalities, thereby enabling the Society to carry out the construction and accommodate the petitioners.",,,,

Sl.

No.,"Name

Â",Rev. Pet No.,Flat No.,Status

1,Jaidev Dahiya,10,B-1/7,"Shri Dinesh Rana was

found to be in

possession as per the

report of the localÂ

2,Abheshek Kumar,"Review petitioner, but did not file the writ p",etBiti-  
o1n/8,"Locked

Â Â Â Â Â Â Â Â Â

since allotted.

3,HarishKumar Sethi,"Review

petitioner, bu did not file

the

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

wri

petition","B-2/1

t

t","Has inducted tenant

vide agreement to sell

dated 01.05.2006

4,"Ms. Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Shakuntala

Bhagat",8,B-3/2,"Ms. Ritu was found to

be in possession since

2008

5,Prakshwati RathiÂ,12,B-3/7,"Ms. Alka was found,

but she couldÂ not

given convincing

answer about her

relationship with the

petitioner.

6,Vishnu Sarup Vats,"Review

petitioner, bu did not file

the

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

wri

petitionÂ","B-4/2

t

t","Dr. N.K. Kaul was

found to be in

possession.

7,"Mrs.

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

G.

Ahlawadhi","Review

petitioner, bu did not file

the

Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

wri

petition","B-6/2

t

t","B.B. Jain was found

to be a tenant since

2005-06

8,Ms. Divya Syal,"Review

petitioner, bu did not file writ petition

Radhey Syal is the then Secretary of

the society","B-6/5

t",Locked

(12). It is agreed that none of the members or non-members will continue to prosecute any proceedings against each other, including the proceedings" ,,,,

before the Financial Commissioner regarding dual membership. In any case, it is agreed that any pending proceedings or complaints or Any other",,,,

existing litigation between the parties will stand terminated/withdrawn. Similarly, any proceedings or complaints made with any authority",,,,

either by the RCS or the new administrator against Shri Onkar Singh will not be prosecuted by such authority and will stand terminated/withdrawn and in,,,,

future also no proceeding will (sic) be initiated against him in his capacity as the administrator of the Society. This will subject to Sh. Onkar Singh,,,,,

handing over the entire records to the present Administrator.,,,,

10. All the proceedings stand disposed of.â??,,,,

10. Thereafter, another set of applications was filed before the Division Bench, which were dismissed vide order dated 21st January, 2011. While",,,,

disposing of CM No. 20419/2010, prayer made by the applicant that he should be allowed to stay in the existing flat till the new flats were constructed on",,,,

the ground that order dated 28th July, 2010 was not a consent order was rejected and the application was dismissed. However, the Court noticing",,,,

apprehension of the applicant that the Administrator could go slow and there could be delay in process of construction, had directed the Administrator to",,,,

submit a report. 11. In the meanwhile, eighteen out of twenty two newly inducted members whose membership was cancelled, had approached",,,,

the Supreme Court by way of Special Leave to Appeals, in which notice was issued. Interim relief was also granted protecting dispossession of the",,,,

appellants. Special Leave to Appeals were dismissed vide order dated 3rd May, 2018 which reads:-",,,,

Application for impleadment/intervention are allowed. In the facts and circumstances of the case, no case for interference is made out.",,,,

We are satisfied that the High Court has passed an equitable order in favor of the petitioners in spite of their being inducted as members, subsequently",,,,

certain directions have been issued for construction of flats and thereafter to hand over to them.,,,,

In the facts and circumstances of the case, complete justice has been done by the High court.",,,,

Mr. Ravindra Shrivastava, learned Senior counsel has also raised a submission that in view of Rule 36(3) as the order was not passed by the Registrar",,,,

of the co-operative Society within stipulated period he became functus officio and

could not have passed order reinducting the member who were,,,,  
expelled by the society.,,,,

Learned Senior counsel has relied upon the decision in *Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others*?,,,,

(1987)1 SCC 606 in *The Gujarat Co-operative Societies Act, 1961*, in which Section 36(1) of Gujarat Co-operative Society Act came for consideration",,,,

of this Court.Â The second proviso of said Section 36 laid down that in case the order was not communicated within a period of three months from the,,,,

date of such submission and in the absence of such communication, the resolution passed by co-operative Society shall be effective.Â There is no such",,,,

provision in Rule 36 in question.Â It only provides that within six months the Registrar shall decide the dispute, however, there is no stipulation as to the",,,,

consequence as in Section 36 of the Gujarat Act.Â In our opinion, not passing order within six months would not invalidate the order passed after six",,,,

months.Â As such, no such consequence is provided in the Rule in question.Â Thus, the decision relied upon cannot be said to be of any application.",,,,

Apart from that, we are constrained to observe that order of the High court is just and equitable the petitioner has dragged this matter unnecessarily for",,,,

the last seven years.,,,,

In view of the aforesaid, the Special Leave Petitions are dismissed.",,,,

Pending application(s), if any, stand(s) disposed of.Â",,,,

12. Referring to this order of the Supreme Court, counsel for the petitioners, i.e. twenty two newly enrolled *members*?, whose membership has",,,,

been cancelled, has submitted that the Supreme Court has recognized and accepted their enrolment as *members* of the society.Â This is not",,,,

correct. Supreme Court has dismissed the SLP, and thus the judgment and order dated 3rd November, 2008 as modified by consent order dated 28th",,,,

July, 2010 stand affirmed.Â Contention of the petitioners, appellants before the Supreme Court, relying upon Rule 36 (3) to assert their right to",,,,

membership for failure the Registrar to decide on their admission within time,Â was specifically rejected.",,,,

13. It is therefore lucid and clearÂ thatÂ the petitioners,Â whose membership and enrolment was held illegal and contrary to law, would have limited",,,,

rights, which flow in terms of the orders passed by the Division Bench dated 3rd November, 2008 read with and as modified vide order dated 28th July,",,,

2010.Â They cannot claim any further or additional right.Â Unfortunately, for the present petitioners, during the pendency of the litigation, there has",,,,,

been a change of policy of the Delhi Development Authority, vide notification dated 13th September, 2012 pursuant to the decision of the Lieutenant",,,,,

Governor. New policy states that utilization of additional FAR in group housing societies shall be approved for construction of additional tower/block and",,,,,

shall not be utilized for additional construction on the existing structure, as this would compromise with the structure safety of the existing building and",,,,,

risk living inhabitants.Â Society would have to comply with and additional construction has to be as per the Notification.Â To a large extent, the",,,,,

petitioners are themselves responsible, as in-spite of favourable order dated 3rd November, 2008 read with order dated 28th July, 2010, they are",,,,,

continued with the litigation.Â This imprudence, was adversely commented upon by the Supreme Court in their order dated 3rd May, 2018, observing",,,,,

that the High Court had done complete justice and the applicants therein had dragged the matter unnecessarily for last seven years.,,,,,

14. The petitioners have now raised the plea and claim that as per verification exercise undertaken by the Registrar/Administrator, there are only fifty",,,,,

four genuine members.Â We do not find any merit in the said contention.Â We may note that pursuant to the directions issued by the High Court for",,,,,

elections, verification exercise was undertaken by the Registrar.Â In the said exercise, verification of fifty four members has been ascertained and",,,,,

confirmed.Â This verification exercise should not be confused with the issue of allotment of flats as the verification exercise is for elections to be held",,,,,

today. Allotment of flats was made on the basis of verification exercise undertaken earlier.Â The plea that some of the original/initial members have",,,,,

sold and transferred their flats is a separate matter.Â This allegation would have to be examined on case to case basis, to decide and adjudicate",,,,,

whether there was a transfer and whether the said transfer would be illegal and contrary to Delhi Cooperative Societies Act, 2003 and the applicable",,,,,

rules. Members concern and the transferee in case of transfer would have to be heard.Â Â This would take time.Â,,,,,

15. Present writ petitions are an attempt to stall implementation of the orders passed in 2008-2010.Â The plea andÂ reasons given cannot be a ground",,,,,

and pretext not to abide by the orders of the Court passed in 2008-2010, after these orders have been affirmed and upheld by the Supreme Court vide",,,,,

decision dated 3rd May, 2018.Â Notably, the petitioners herein could have raised all these grounds and issues before the Supreme Court.Â In fact the",,,,,

respondents assert that the petitioners herein did raise these grounds, including the contention that 124 flats were constructed and, therefore, some of the",,,,,

petitioners should be accommodated as is apparent from the order dated 16th February, 2018 passed by the Supreme Court.Â Â",,,,,

16. In these circumstances, we do not find any merit in the present writ petitions and the same are dismissed.Â It will be duty of the Administrator to",,,,,

ensure compliance of the orders passed by the High Court dated 3rd November, 2008 read with and as modified vide order dated 28th July, 2010.Â The",,,,,

eviction notice, if not complied with, should be complied with within a period of 21 days, failing which coercive action would be taken as per law.Â We",,,,,

may note that in terms of order dated 28th July, 2010,Â flats were to be vacated (see direction 5) and persons who were given four months time to",,,,,

vacate the flat were to pay demurrage charges @ Rs.10,000/- per month.Â These charges have not been paid by the said occupants. We clarify that",,,,,

we have not modified judgment and order dated 3rd November, 1999, read with order dated 28th July, 2000, albeit compliance must be made to",,,,,

handover possession of flats to the twenty two initial members.,,,,,

17. With the aforesaid observations and directions, the writ petitions are dismissed, without any order as to costs.Â All pending applications, including",,,,,

application for impleadment, are accordingly disposed of.",,,,,