

(2013) 10 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

Rajaswa Karamchari Grih Nirman Cooperative Society Ltd

APPELLANT

Vs

Prakash Chand Gangwal

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 711 : 2013 4 CPJ 402 : 2013 4 CPJ 423 : 2013 4 CPR 10

Hon'ble Judges : J.M.MALIK J.

Advocate : DEEPESH JOSHI , B.S.BANTHIA

Judgement

1. THE facts of this case hardly need reiteration. Section 19 C of the M.P. Co operative Societies Act, 1960, is the crucial provision, which reads, as follows: "19.C. Expulsion of members . (1) The Board of Directors may, by a resolution passed by three fourth majority of the members present and voting at a meeting held for the purposes, expel a member, if he - a) intentionally does any act likely to injure the credit of the society or bring it to disrepute; or b) wilfully deceives the society by false statements; or c) carries on any business which comes or is likely to come into conflict with the business carried on by the Society; or d) persistently makes default in payment of his dues or fails to comply with any provisions of the bye laws; Provided that no such resolution shall be valid unless the member concerned has been given seven days " notice, either personally or by registered post, of the proposal to expel him and has been given an opportunity to represent his case to the Board of Directors ".

2. IT is, thus, clear that allotment of a Member can be cancelled only if the above said procedure has been followed. It is true that the complainant waddled out of the commitment made to the Society. He attempted to bury the head under the sand. He kept the realities under the hat. He was served in this case through his son, Sh. Shailesh Gangawal. They also have not come to the Commission with clean hands. It is well settled that if a notice is sent to a party, at his correct address, and is received by some body, it is the complainant and nobody else to carry the ball in proving, as to who had received this notice. We have also

compared the signatures of Sh.Shailesh Gangawal, with his specimen signatures obtained in the open court. The same appears to be of the same person.

3. THE dispute swirls around the question, "Whether the Membership of the complainant was cancelled, in accordance with law? ". From the facts, it is apparent that the said order was passed because Mr.Jaisingh Rao Jadhav, the previous President of the Society was having animosity with the complainant. The cancellation of his plot was subsequently revived vide order, dated 14.07.2000. He was still a Member of the Society. The complainant had been depositing the amount, as demanded by the Society. The house was allotted in his favour. Consequently, the status of the complainant as "consumer ", remains intact.

4. EVEN if it is assumed that Sh.Shailesh Gangawal received the said letter dated 01.01.1999, even then, it does not turn the corner. Letter dated 01.01.1999, clearly goes to show, as under : " The valuation of the property allotted to you was done immediately on the basis of equivalency, from whom, it is clearly evident that the valuation of the developed land of the Society would be Rs.65.00 (Rupees sixty five) per sq.ft. On this basis, the Society is expecting from you to deposit minimum, a sum of Rs.60,000/ with your Account, just to maintain the seniority and to develop the land speedy by the Society. At present, a sum of Rs.24,000/ (Rupees twenty four thousand) is deposited in your Account. After adjustment of the same, you have to deposit a sum of Rs.36,000/ (Rupees thirty six thousand) immediately. For the sake of your convenience, the deposit amount is divided into two instalments. Hence, you may deposit a sum of Rs.16,000/ (Rupees sixteen thousand) immediately prior to 15th January, 1999. Balance instalment of Rs.20,000/ (Rupees twenty thousand) may be deposited between 10th February, 1999 to 25th February, 1999. You have to deposit the aforesaid amount with the Office of Society at 1 B, Press Complex (Vishwa Bhraman Parisar), A.B.Road, Indore (MP), between 2.00 - 4.00 PM, on the working days (Monday to Friday). The amount shall be payable in any of the Bank of Indore and the payment order shall be made in the name of the Society Rajaswa Karamchari Grih Nirman Sahakari Sanstha Maryadit ".

It is clear that the complainant defaulted and did not deposit the amount, in time. On 23.11.2002, the Membership of the complainant was cancelled. It is thus clear that the complainant was served with only one notice. There was no persistent demands of the amount. He was not warned that if he did not pay the amount, his Membership would be cancelled. Section 19 C was given the go bye. There is not even an iota of evidence which may go to show that provisions of Section 19C, were ever followed. The proceedings were conducted in an arbitrary and illegal manner. At least one or two reminders should have been sent. He should have been given a notice, as to why his Membership should not be cancelled, for such and such a reason.

5. IT must also be mentioned here that before cancelling the Membership, another notice was sent on 27.09.2002, wherein it was stated that : "You are

hereby intimated that as you are the defaulter member of the Society and despite the information, you have not deposited the required amount with the Society, but if you are intending to involve in this Scheme, proposed to be launched by the Society, then you may deposit a sum of Rs.75,000/ (Seventy five thousand) towards the first instalment, in the Society. The Society is affording last opportunity to that members for allotment of flat looking to their benefits. If you are interested to be benefited under the said proposed Scheme, then you may submit your consent and deposit the first instalment amount, within the prescribed period. In absence of your reply, the Society would be having sufficient reason that you are not in need of the said "Residential " Scheme and you do not want any relation with the Society. In absence of the reply, the amount deposited by you, would be refunded to you ".

6. THIS is just like "putting the cart before the horse ". Without cancellation of the Membership, how they can give such like a notice, concerning altogether, different scheme. As per the majority view, the revision petition is hereby dismissed and the orders passed by the fora below are upheld.