

(2016) 07 RAJ CK 0009

In the Rajasthan High Court

Case No : Special Appeal (W) No. 628 of 2015 IN Civil Writ Petition No. 3056 of 2015

Shiv Shakti Grih Nirman Sahkari Samiti Limited

APPELLANT

Vs

Prem Chand Kala

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Rajasthan Co-operative Societies Act, 2001 — Section 59(1)(b), 60(c)

Citation : (2016) AIRCC 2928 : (2016) 3 DNJ 1175

Hon'ble Judges : Mr. Navin Sinha, C.J. and Mr. Vijay Kumar Vyas, J.

Bench : Division Bench

Advocate : Mr. Ram Kumar Sharma, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. The present appeal arises from order dated 01.05.2015 dismissing S.B. Civil Writ Petition No.3056 of 2015. The learned Single Judge declined to interfere with the order of the Arbitrator dated 09.03.2007, passed under Section 60(c) of the Rajasthan Co-operative Societies Act, 2001 (hereinafter called "the Act"), cancelling the allotment letter dated 20.01.1995, issued in favour of respondent No.2 directing restoration of the allotment made to respondent No.1 originally.

2. Learned counsel for the appellant has made twofold submissions before us. The first submission was that the application filed by respondent No.1 before the Registrar, Co-operative Societies was barred by limitation under Section 59(1)(b) of the Act as it was preferred much beyond the statutory period of six years from the date for cause of action. The second ground urged was that it was not accompanied by any application for condoning delay. In absence of any application for condoning delay, the appellant was denied the opportunity to oppose the application on grounds of limitation. In absence of a specific application for condoning delay, the original application was not maintainable. The Arbitrator has not passed any specific order condoning delay. In absence of any such formal application, the question of any deemed condonation does not

arise. No other ground has been urged before us to assail the order.

3. We have heard the Counsel for the appellant.

4. It is not in dispute that respondent No.1 became a member of the appellant Society and deposited the requisite amount as far back as 15.06.1990. In the list of members submitted by the appellant to the Jaipur Development Authority, the name of respondent No.1 was shown as allottee of Plot No.49. The contention that the cause of action arose to respondent No.1 as far back as 1990 and therefore presentation of the dispute in 2006 was highly belated and time barred, does not appeal to us for more than one reason. Respondent No.1 had further pleaded that he had lastly requested in September, 2005 to handover the allotment letter to him and the dispute instituted in the year 2006.

5. Learned counsel for the appellant strenuously sought to persuade us that a communication was allegedly made on 04.12.1996 by respondent No.1 in writing that he had voluntarily surrendered the plot in favour of respondent No.2 after receiving consideration. The cause of action, if any, therefore, arose to respondent No.1 as far back as 04.12.1996, if not in 1990. Then also the application under Section 60(1)(b) of the Act was time barred.

6. The appellant-Society was registered under Section 6 of the Act as a body corporate by name having perpetual succession and a common seal. It is not a proprietorship concern, but has a continuity in which office bearers may come and go. Such body cannot and does not function on oral orders and its actions and decisions have necessarily to be in writing as part of the record for perpetuity, where individual office bearer may come and go and which decisions would continue to bind their successors.

7. The learned Single Judge has arrived at a finding of fact that if the request by respondent No.1 for transfer of the lands in favour of respondent No.2 was made on 04.12.1996, grant of "Patta" in favour of respondent No.2 on 20.01.1995 makes it highly suspicious. We have no hesitation in holding that it smacks fraud on part of the appellant. There is no challenge to this finding of fact.

8. If the actions of the society are vitiated by fraud, limitation becomes irrelevant. An order passed on the basis of fraud stands vitiated from nativity. No order based on fraud can be allowed to continue.

9. In the facts of the case, the question of limitation, if any, becomes irrelevant. Even otherwise, a Court or statutory authority vested with powers to condone delay, can suo motu also condone delay in the interest of justice, without the need for a formal application, including deemed condonation in the facts of a case.

10. The appellant being a society registered with common seal and perpetual succession and its decisions being required to be put on record, we do not find that at any stage either before the Arbitrator or before the learned Single Judge, the appellant took any stand that in pursuance of the purported communication

dated 04.12.1996 allegedly from respondent No.1, the appellant at any time communicated to respondent No.1 the formal acceptance of his request and determination of his rights and interests in the lands in question.

11. The order of the learned Single Judge merits no interference. The appeal is dismissed.