(2008) 03 DEL CK 0094

In the Delhi High Court

Case No : Writ Petition (C) No. 7226 of 2003

Smt. Alka Gupta APPELLANT

Vs

The Registrar Cooperative Societies and Another RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 60
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 420, 467

Citation : (2008) 149 DLT 615

Hon'ble Judges : Reva Khetrapal, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Rajender Aggarwal, for the Appellant; R.K. Gupta, for the Respondent

Judgement

Reva Khetrapal, J.—The aforesaid three writ petitions, which are proposed to be disposed of by this common judgment, are directed against the non-allotment of flats to the petitioners by the respondent No. 3 Society and seek quashing of order dated 19.09.2003 passed by the respondent No. 2, the Joint Registrar of Delhi Cooperative Societies.

2. Since almost similar facts with some variations in the amounts paid to the respondent No. 3 Society and the dates thereof have led to the filing of the writ petitions and the relief prayed for is also similar, it is proposed to set out the facts as narrated in W.P.(C) No. 7226/2003 Smt. Alka Gupta v. The Registrar, Cooperative Societies and Anr.

3. The factual matrix leading to the filing of the aforesaid writ petition is as follows.

4. The respondent No. 3 is a Cooperative Group Housing Society registered under the Delhi Cooperative Societies Act, 1972 vide registration No. 498 GH. The petitioner who claims to be a regular and bonafide member of the respondent No. 3 Society was issued a share certificate by the respondent No. 3 after receiving the membership fee and share money in accordance with the rules as a

member of the Society and as per her entitlement, the petitioner is entitled to the allotment of a three bed room HIG flat in category B. It is an undisputed fact that from 15.01.1989 to 09.09.2000, the petitioner paid various amounts to the respondent No. 3 and that in all she has paid Rs. 6 lakhs towards her contribution for the construction of the flat being claimed by her. The share certificate issued to her, certain copies of letters including the demand letters sent by the respondent No. 3 Society to the petitioner and receipts issued to the petitioner are annexed with the petition as Annexure-1 and Annexure-2 (collectively). The petitioner had also applied for a loan from the Life Insurance Corporation Housing Finance Ltd. and on the request of the petitioner, the respondent No. 3 had issued a letter dated 11.05.1998 to the said Life Insurance Corporation Housing Finance Ltd. confirming that the petitioner was a bonafide member of the Society and as such entitled to the allotment of a B-Type flat measuring 1096 square feets. In the aforesaid letter, the respondent No. 3 further confirmed that the tentative cost of the flat was around Rs. 4,40,000/- and that the petitioner had already paid Rs. 3,15,000/- by then and further that no other dues of the Society were outstanding against her. It was also confirmed in the said letter issued by the respondent No. 3 that the petitioner was a bonafide member of the Society and had been issued a share certificate bearing No. 11530 dated 15.01.1989 (Annexure-3 to the petition).

5. The further case of the petitioner is that she availed of housing loan of Rs. 90,000/- from the LIC Housing Finance Ltd. in April, 1999 and a tripartite agreement was entered into for the aforesaid purpose between the petitioner, the respondent No. 3 and the LIC Housing Finance Ltd. Thereafter, in August, 2000, the petitioner availed of another housing loan of Rs. 1,07,000/- for the purpose of making payment to the respondent No. 3, which respondent No. 3 utilised for the construction of the flat. Copies of both the tripartite agreements dated 12.04.1999 and 29th June, 2000 are enclosed with the petition (Annexure-4 collectively). Significantly, the payment of the said loan amount of Rs. 1,07,000/- was made by the petitioner to the Society on 29th August, 2000, i.e., just ten days before the draw of lots, which took place on 09.09.2000. On the day of allotment, however, the petitioner was taken aback to find that though her name was appearing in the list of names for draw of lots, allotment was denied to her on the pretext that her name and the names of certain other members were withheld by the Registrar, Cooperative Societies. The list containing the names of 93 members including that of the petitioner is enclosed with the petition as Annexure-5.

6. On the same day, i.e., on 09.09.2000, the petitioner sent a phonogram to the respondent No. 1, the Registrar of Cooperative Societies, subsequently followed by representations dated 12.09.2000 and 25.09.2000 (Annexures-6, 7 and 8). In response thereto, she received letters from the office of the respondent No. 1 dated 12.12.2000 and 09.03.2001 (Annexures-9 and 10), which were replied to by her vide letter dated 19.03.2001 (Annexure-11). The petitioner also submitted about 24 documents to prove and establish the fact that she had

made payment of Rs. 6 lakhs from 1989 till 2000. Thereafter, the petitioner on 23.10.2000 applied to the respondent No. 1 for certain copies of various documents which were not made available to her by the respondent No. 3 Society vide her applications dated 23.10.2000, 25.09.2000 and 19.03.2001 (Annexure-12 collectively). The respondent No. 1 through their Assistant Registrar by letters dated 10.11.2000, 12.12.2000 (referred to hereinabove) and 15.05.2001 asked the respondent No. 3 to produce the relevant records (Annexure-13). The respondent No. 3 instead of doing so, sent a show cause notice dated 07.02.2001 (Annexure- 14) to the petitioner, alleging that as per her application dated 20.11.1992, the membership of one Mrs. Santosh Kumari, sister of the petitioner, was transferred in the name of the petitioner and since it was noticed that Mrs. Santosh Kumari was not the petitioner''s sister, the petitioner was not entitled to the membership of the Society. By her reply dated 19.02.2001, the petitioner categorically stated that the entire story of Mrs. Santosh Kumari was a pure fabrication and concoction and that she did not know or identify any person by the name of Mrs. Santosh Kumari, that hers was a case of original membership and the illegal withholding of allotment of flat to her amounted to breach of trust on the part of the President and Secretary of the Society by creating a fake dispute.

7. Being aggrieved by the issuance of the show cause notice, the petitioner also filed a Civil Writ Petition bearing No. 4381/2000 before this Court challenging the decision of the respondents denying allotment of flat to her. A Division Bench of this Court vide order dated 20th December, 2002 observed that the dispute between the petitioner and the respondent involved disputed questions of fact and accordingly the appropriate remedy for the petitioner would be to approach the Registrar, Cooperative Societies for redressal. The writ petition was disposed of with the said observations.

8. Pursuant to the order dated 20th December, 2002, the petitioner made a reference of dispute u/s 60 of the Delhi Cooperative Societies Act against the respondent No. 3 Society as case No. 1098/AR/ARB/2002-03/548-49, which was dismissed by the impugned order dated 19th September, 2003 passed by the Joint Registrar. The ground for dismissal was that the petitioner''s membership of the Society arose by way of transfer from a previous member Smt. Santosh Kumari and such transfers, not being within first degree blood relations, were not permissible. Therefore, the membership of the petitioner was void ab initio and the payments made by her to the Society could not regularize the same. It was further held that since the claimant had not been enrolled as a member as per law, her claim was not covered within the scope of Section 60 of the Delhi Cooperative Societies Act.

9. Aggrieved by the aforesaid order, the petitioner has preferred the present petition before this Court praying for quashing of the aforesaid order and seeking allotment of a three bed room HIG flat in category B in the respondent No. 3 Society.

10. We have heard the Learned Counsel for the parties at length and gone through the allegations and counter allegations made by the parties as also the documentary evidence in support thereof. Counsel for the petitioner has vehemently urged before us that malafide and cooked up allegations have been made by the Society in order to deprive the petitioner of her entitlement to the flat in the Society as the petitioner does not know any person by the name of Smt. Santosh Kumari and even otherwise, the question of transfer of membership does not arise since on 15.01.1989, the petitioner was issued a share certificate by virtue of which she became the original member of the Society. It is urged that fraud has been played upon the petitioner by the respondent No. 3 in connivance with the said Smt. Santosh Kumari by fabricating and bringing on record an alleged letter dated 20th November, 1992 showing that a request was made by Smt. Santosh Kumari to the respondent No. 3 Society for transfer of her share to the petitioner herein, her alleged sister. Counsel for the petitioner also brought to our notice the contents of an additional affidavit filed by the petitioner dated 2nd December, 2003 affirming on oath the following significant facts:

1. That as I have already stated in my writ petition that I have no connection or relationship with ''Ms. Santosh'' the alleged transferor of membership of Respondent No. 3 in my name. I have also made it clear that the letter of ''Ms. Santosh'' is a conspiracy hatched by the officials of Respondent No. 3 Society. A copy of the letter dtd.20-11-92 is annexed as Annexure P-1 to this affidavit.

2. That after filing the preset petition I have come to know that the alleged transferor ''Ms. Santosh Kumari'' (with whom I have been connected by falsely saying that she and me represented to the ''Society'' to be real sisters) is none else but is the real sister-in-law (i.e. widowed wife of his real brother) of Sh. Sita Ram Gautam himself, the then Secretary of the respondent No. 3 Society and that both Sita Ram Gautam and Ms. Santosh Kumari are working in the same department and that both the same are residing in the same vicinity of the Govt. allotted flats by the income tax department. This fact has come to my knowledge on information which has been verified by me to be true.

3. That I say and submit that the above relationship makes the things clear that the officials of Respondent No. 3 Society entered into a deep root conspiracy in order to deprive the petitioner from allotment of B category flat for which she is very much entitled.

4. That I further say and submit that an affidavit sworn on dtd. 25th July, 2000 by the President of Respondent No. 3 Society was filed by the Respondent No. 3 Society thereby mentioning in para No. 7 that resolution was passed by the Respondent No. 3 Society for the transfer of membership from Mrs. Santosh Kumari to Mrs. Alka Gupta the petitioner herein as 27-11-92. (A copy of the affidavit is annexed hereto and marked as Annexure P-2 to this affidavit) whereas dtd.27-11-92 itself the Respondent Society has issued receipt No. 1949 showing the receipt of Rs. 30,000/- from the petitioner a copy of which is already

on record on page 76 as Annexure 2 colly.

11. Our attention has also been drawn to the contents of para 2 of the counter-affidavit filed by the respondent No. 3 to the present writ petition and para 4 of the short counter-affidavit filed by the respondent No. 3, by counsel for the petitioner, to urge that the stand taken by the respondent No. 3 in the earlier writ petition bearing No. 4387/2001 is entirely contradictory to the stand taken in the present writ petition. In para 2 of the counter-affidavit, the respondent No. 3 categorically asserts that the share certificate of the petitioner is a forged one. In the earlier writ petition [W.P.(C) No. 4387/2001] in para 4 of the short counter-affidavit, it was asserted as follows:

So far, share certificate allegedly issued by the society is concerned, the same was issued only for the purpose of raising a loan and is not sufficient to hold that the petitioner was the original member of the society.

12. We pause here to notice that the petitioner was asked by this Court to bring the original certificate to the Court, whereupon the respondent immediately admitted before this Court that the said certificate was issued by the Society and bore his signatures. Thus, it is undisputed that the petitioner was issued a share certificate as an original member of the Society.

13. Counsel for the respondents No. 1 and 2 in their counter-affidavit and during the course of arguments have adopted a most peculiar stand that it was incumbent upon the petitioner to produce receipt of admission fee, proof of membership, proof of payment, share certificate, but the petitioner could not produce the same. In paragraph 2 of the counter-affidavit, it is stated thus:

2. ...It is submitted that the name of the petitioner was withheld on the ground that membership of Smt. Santosh Kumari has been transferred to her although it was not transferred in the first degree blood relation. The petitioner was sent letter dated 12-12-2000, 19-3-2001 and 15-5- 2001 by the AR(NW) for production of receipt of admission fee, proof of membership, proof of payment, share certificate, but the petitioner could not produce the same. Moreover, the petitioner was given ample opportunity in the Arbitration case No. 109/AR/Arb/2002-03 filed u/s 60 of DCS act 1972 and her claim was dismissed as she was held not to be a member of the society enrolled as per law.

14. On behalf of the respondent No. 3, an equally peculiar stand is adopted, being that the petitioner is at liberty to prove that she acquired the membership as per procedure laid down under Rule 30 read with bye-law No. 5 of the Society''s Bye-laws (paras 14 and 16 of the reply to the show cause notice filed by the respondent No. 3). In paragraph 2 of the aforesaid reply as noticed above, the share certificate filed by the petitioner is stated to be a forged one. During the course of hearing also, the counsel for the respondent No. 3 urged before us that it was for the petitioner to produce the relevant documentary evidence, that is, the receipt of admission fee, proof of payment of Rs. 20,000/- paid by her as admission fee, share certificate, etc.

15. We are baffled by the aforesaid plea taken in the counter-affidavits of the respondents and the stand taken by the respondents, that it is for the petitioner to prove that she was a member of the Society, but she has failed to prove the same. The petitioner having placed the share certificate issued by the Society on record, it is not understandable as to how else the petitioner is required to prove her membership.

16. As noticed above, in the counter-affidavit filed by the respondent No. 3 in W.P. (C) No. 4387/2001, the issuance of the share certificate to the petitioner has been admitted by the respondent No. 3 though it is sought to be urged that the same was issued only for the purpose of raising a loan. On behalf of the respondent No. 3, it has also been admitted before us that the share certificate filed by the petitioner is not a forged one as pleaded in the reply to the show cause notice filed in the present case. Thus, it is an admitted fact that a share certificate was issued to the petitioner as an original member of the respondent No. 3 Society, being share certificate No. 11530 dated 15.01.1989.

17. It is also an admitted fact that the petitioner has paid the entire cost of a HIG flat of B category, inasmuch as receipts filed by her showing payment of a sum of Rs. 6 lakhs (approximately) have not been denied by the respondent No. 3. It is also not denied by the respondent No. 3 Society that on the confirmation of petitioner''s membership and the recommendation made by the respondent No. 3, loan was sanctioned in favor of the petitioner by the Life Insurance Corporation Housing Finance Ltd., in which recommendation also reference was made by the Society to the share certificate issued to the petitioner and the amount paid by the petitioner, being a sum of Rs. 3,15,000/-. It is also not in dispute that two tripartite agreements were entered into between the petitioner, the LIC Housing Finance Ltd. and the respondent No. 3 Society on 12th April, 1999 and 29th June, 2000 and that as a result thereof, loan Installments of Rs. 90,000/- in the first instance and Rs. 1,70,000/- were advanced to the petitioner by the LIC Housing Finance Ltd., which were paid by the petitioner to the respondent No. 3 Society. As noticed above, the last Installment of Rs. 1,70,000/- was paid by the petitioner to the respondent No. 3 Society ten days prior to the date on which draw of lots took place, i.e., on 09.09.2000. Thus, clearly the respondent Society all along treated the petitioner as a bonafide original member of the Society.

18. We are also not inclined to believe the version of the respondent No. 3 Society with regard to the letter issued by Smt. Santosh Kumari @ Santosh Sharma for transfer of her membership to her sister Alka Gupta (the petitioner herein) for two reasons. The first is that an additional affidavit has been filed by the petitioner to state that the petitioner is not related to Smt. Santosh Kumari and as a matter of fact, does not even know the said Smt. Santosh Kumari and on the other hand the said Smt. Santosh Kumari is the sister-in-law of Shri Sita Ram Gautam, the then Secretary of the Society. There is no rebuttal to the said affidavit nor it is denied anywhere in the counter-affidavits filed by the

respondents that Smt. Santosh Sharma is the sister-in-law of the then Secretary of the Society. The second is that it emerges from the record that in the course of investigation of case FIR No. 822/2004, Police Station Prashant Vihar against the then President and the then Secretary of the respondent No. 3 Society, i.e., Shri Sita Ram Gautam and Shri Vijay Kamra, when shown the photocopy of the letter dated 20th November, 1992 Smt. Santosh Kumari denied having written any such letter to the respondent No. 3 Society.

19. This is apparent from a perusal of the order dated 15th July, 2005 passed by the learned Additional Sessions Judge, which reads as follows:

State v. S.R. Gautam

State v. Vijay Kamra

FIR No. 822/04

P.S. Prashant Vihar

Under Section 406/420/467/468/471 r/w Section 120B/34 IPC

15.7.05

Present: Counsel for the applicants

Sh. Raj Narain Addl. PP for the State with I.O.

Counsel for the complainant

Heard. The case against the applicants is that they had forged the letter of Santosh Kumari showing that she had transferred the membership to Alka Gupta. IO had produced the letter of Santosh Kumari that she had not written any such letter. Santosh Kumari is the sister-in-law of the applicant-S.R. Gautam, President of the Society and even before the Registrar affidavit submitted on behalf of the Society is that Alka Gupta is a bonafide member. Prima facie, there is a case of committal of forgery on the part of the applicants. No further indulgence can be given. The applications are dismissed.

Sd/-

(N.K. Gupta)

Addl. Sessions Judge: Delhi

20. It also bears mention that except for the photocopy of the aforesaid letter of Smt. Santosh Kumari, there is no other document on record to suggest that the petitioner could be a transferee member. Had it been so and had there been any such transfer by Smt. Santosh Kumari to the petitioner, undoubtedly the Society would have taken a transfer request application from the petitioner coupled with her affidavit and other papers requesting the Society to transfer the membership of her alleged sister Smt. Santosh Kumari in her name.

21. There is yet another aspect of the matter which deserves to be taken note of. On 25th October, 2000, at the time of hearing of the anticipatory bail application of Shri Vijay Kamra and Shri Sita Ram Gautam in FIR No. 822/2004, Police Station Prashant Vihar in the Court of learned ASJ Ms. Indermeet Kaur Kochar, when the said bail applications were about to be dismissed, the counsel for the applicants offered to work out a via media by virtue of which possession of the flats could be handed over to the petitioner and the five other complainants and upon this, interim protection was granted to the applicants, on the complainant agreeing to the proposal put forth by the counsel for the applicants. The said interim protection was thereafter extended upon the applicants addressing the following letter to the Registrar, Cooperative Societies on 25th November, 2004:

Regd. No. 498(GH)

Jyoti Co-op. Group Housing Society Ltd.

Plot No. B-2, Sector-14 Extn., Rohini, New Delhi-110085

25th November 2004

Before the Registrar Co-op. Societies

Parliament Street New Delhi

Sir

Please refer to this society letter dated 25.10.2004 received in your office on the same day where in a list of detained members in draw of lots were furnished. As per the suggestion of the Hon''ble A.S.J. Tishazari, the society requested to your good self vide letter dated 27.04.2004 to depute an officer from your office to help the society for bringing out a formula and modality for compromise between the society and detained members. The society vide letter dated 03.11.2004 received in your office on 04.11.2004 furnished again a list of detained members for clearance by your office, the list is given as under:

1) Smt. Alka Gupta

2) Smt. Neerja Jindal

3) Shri Baljeet Kapoor

4) Shri A.C. Bagga

5) Shri Deepak Singh

6) Shri Naresh Kumar

7) Shri T.M.G. Menon

8) Shri Jagmohan Goel

9) Smt. Anita Kumar

10) Shri Pradeep Kumar

11) Shri Deepak Sharma

In this letter the society mentioned that there is no objection from the societie''s side if clearance is given by your good office. It is requested that a early decision is take by your good self in the clearance of detained members as the A.S.J. has given the society last date of hearing on 08.12.2004 Counsel for the applicant states that parties are negotiating settlement. Last opportunity is granted to the applicants to work out the modality of settlement and to report about the settlement on the next date. Application is adjourned to 08.12.2004 Till then interim order to continue. In the light of the above it is requested to take a early decision on this issue.

Thanking you

Yours faithfully

Sd/-

(S.R. Gautam)

Copy to the S.I. (I.O.) Prasant Vihar, Police Station Copy to the Council of the complainant members Shri A.K. Singhla Advocate

22. Reference may also be made to a writ petition filed by Shri Sita Ram Gautam for quashing of FIR No. 822/2004 under Sections 406/420/467/468/471/120B/34 IPC, Police Station Prashant Vihar containing substantially the same allegations as contained in the present writ petition, which was dismissed by a learned Single Judge of this Court after recording the following findings:

5. It is apparent from these facts that prima facie a fraud was played upon the complainant''s wife by the accused persons in connivance with Smt. Santosh Kumari who seems to be a party to entire fraud because of writing a false and forged letter. It is not a case where no offence is disclosed from the Complaint. The accused persons prima facie played dubious role by issuing original share certificate and accepting the payment as original member. The order of Registrar Cooperative Societies does not help the accused persons rather brings to light the role played by the accused persons.

6. An FIR can be quashed only if a complaint prima facie does not disclose commission of an offence or it is barred under some law. The plea taken by the petitioner that the claim of the complainant about membership would be decided by the Registrar Cooperative Societies alone and criminal complaint was barred, is a misconceived argument. The criminal complaint is not in respect of membership dispute but the complaint is in respect of fraud played upon the complainant''s wife. Membership issue is not to be decided by the Criminal Court. I find no force in the petition. The petition is hereby dismissed.

23. In view of the aforesaid, in our considered opinion, it is crystal clear that the petitioner was an original member of the respondent No. 3 Society and was sought to be deprived of the flat which should rightfully have been allotted to here as far back as on 09.09.2000. The case has a chequered history, and a long and protracted battle has been fought by the petitioner from September, 2000 till date on account of the stand taken by the respondent No. 3 Society in respect of the petitioner''s membership and the membership of certain other members, two of whom are petitioners in the connected writ petitions. We are satisfied that the petitioners are entitled to the allotment of the HIG Flats in category B as opted by them. We accordingly set aside the impugned orders dated 19.09.2003 in W.P.(C) 7224/03 and 7226/03. Similarly, the impugned order dated 06.11.2003 passed by the respondent No. 2 and order dated 04.03.2004 passed by the Presiding Officer, Delhi Cooperative Tribunal in W.P.(C) 18492/04 are also accordingly set aside. We further direct the respondent No. 3 to allot and deliver to the petitioner the actual physical and vacant possession of a three bed room HIG flats in category B built on plot No. B-2, Sector 14,, Extension Rohini, Delhi to the petitioners as per their entitlement not later than 1st May, 2008. We further direct the respondent No. 3 to pay costs of Rs. 20,000/- to the petitioner, which shall be paid to the petitioner within two weeks. In case possession of the requisite flat is not handed over to the petitioner pursuant to this judgment, liberty is granted to seek further directions from this Court.

24. W.P.(C) Nos. 7226/2003, 7224/2003 and 18492/2004 stand disposed of accordingly.

Copy of this order be given dusty to the respondent No. 3 and be also sent to the Delhi Development Authority to ensure compliance.

