
(2001) 05 DEL CK 0186

In the Delhi High Court

Case No : CW. No. 2987 and CM. 5253 / 2001

Smt. Urmil Suneja

APPELLANT

Vs

Delhi Cooperative Tribunal and others

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 15, 32

Citation : (2001) 5 AD 1063 : (2001) 92 DLT 272 : (2001) 59 DRJ 501

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Sanjeev Anand, for the Appellant;

Judgement

Manmohan Sarin, J (Oral)

1. petitioner is aggrieved by the order dated 7.11.2000 passed by the Delhi cooperative Tribunal dismissing the petitioner's appeal u/s 76 against the award dated 16.8.2000, passed by the Joint Registrar.

The controversy in the writ petition relates to the seniority sought to be claimed by the petitioner as member of the Cooperative Society and consequently her entitlement for allotment of a flat.

2. Learned counsel for the petitioner has persuasively attempted to urge that while petitioner has persuasively attempted to urge that while petitioner had become a member on 18.10.1995, respondents 4 and 5 had become members of the society subsequently on 28.10.1995. For this he places reliance on an initial list, which is stated to have been prepared by the society and forwarded to the Registrar of Cooperative Societies. He submits that the names of respondents 4 and 5 are shown at Serial Nos. 211 and 212 with date of admission as 28.10.1995 in the list Annexure-p.7.

3. The Managing committee of the Society had been superseded u/s 32 of the Delhi cooperative societies Act. An Administrator was appointed. Societies Act.

An Administrator was appointed. The case of the parties before the Arbitrator as well as before the Tribunal had been that a large number of members had been enrolled on 18.10.1995. The issue with which the Arbitrator and the Tribunal have dealt with relates to the criteria the adopted for determination of inter se seniority between members, who have been enrolled on the same date i.e. 18.10.1995. The date 18.10.1995 is based on the receipts issued to the members for the share money and admission money paid.

4. I am not persuaded at this stage to entertain this plea of the respondents date of membership being 28.10.1995 on the basis of a list prepared by the Erstwhile management of the Society. M. Sanjeev Anand at this stage states that the administrator had also approved this list.

Be it may in my view once based on the primary documents i.e. the receipts, the date of enrolment is 18.10.1995. It is not possible to negate the primary evidence on the basis of a subsequent list prepared, especially when this plea based on the list was not raised before the arbitrator or the Tribunal.

5. Coming to the question of inter se seniority Mr. Sanjeev Anand, counsel for the petitioner submits that here again the inter se seniority which had been earlier determined based on which the petitioner's name was included in the freeze list, was based on the payments made for the cost of construction i.e. Seniority-cum-merit taking into account the payments made by the members towards construction costs. This would mean that apart from the seniority which a member would get on enrolment upon payment of the admission fee and the share money, the same had to be considered coupled with the promptness with which payments towards construction costs were made. In other words even if two members had been enrolled on the same day, but one of them had made payments towards construction cost earlier than the other member, the former would get priority. This approach has not been accepted either by the Arbitrator or the Tribunal. I find no reason to disagree. Once a member is admitted upon payment of admission fee and share money, his seniority has to be reckoned from that very date. Here inter se seniority has been determined on the basis of the receipt numbers, which were issued on the same date. Introducing the criteria of seniority-cum-merit based on the payments made towards actual construction cost could lead to a number of complications. Moreover there would be no justification for it in as much as once the society accepts the payment even though in some cases belated, there would be no justification to visit the member with reduced seniority. In case a member defaults, the remedy lies in his being disqualified or being expelled as a member of the society. However, as long as payments for construction costs etc. have been belatedly made and are accepted, the delayed payment cannot be accepted as the criteria to change the inter se seniority basis on seniority in admission.

6. Writ petition has no merit and is dismissed.