

(2003) 10 DEL CK 0004

In the Delhi High Court

Case No : CWP 2412 of 2003 and CM 4027/03

S.P. Maken

APPELLANT

Vs

Sargodha Vihar Cooperative Group Housing Society Ltd. and
Others

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Co-operative Societies Act, 1972 — Section 60

Citation : (2003) 7 AD 451 : (2003) 107 DLT 608 : (2003) 71 DRJ 642

Hon'ble Judges : H.R. Malhotra, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Manmohan and Sanjay Jain, for the Appellant; Sudhir Nandrajog, for respondent Nos.1 to 4 and Sujata Kashyap, for R-5, for the Respondent

Judgement

Dalveer Bhandari, J.—The petitioner has preferred this writ petition with the prayer that he is a member of Sargodha Vihar Cooperative Group Housing Society Limited (in short `respondent society') and has paid all dues so he be handed over the vacant possession of flat allotted to him in draw of lots bearing No.214, category B-2, Plot No.13, Papankalan, Dwarka, New Delhi - 110 045.

2. Brief facts which are necessary to dispose of the writ petition are inter alias as follows:

3. One Anil Sehgal was a member of the respondent society with membership No.119. As on 14.4.1995, there was a credit of Rs.91,400/- deposited by him with the respondent society for the allotment of a flat in the B-2 category. The Managing Committee of the respondent society in its meeting held on 26.12.1993 decided that resignation of any member shall not be accepted till the time he arranges to bring a new member in his place. Meaning thereby that the newly inducted member would be given credit of all payments made by the outgoing member and the inducted member would become a member of the respondent society and be at par with the other members of the respondent

society. After deducting the late payment charges, penalties, etc. to be deducted from the amount lying to the credit of the outgoing member, the balance would be credited into the account of the inducted member.

4. Mr.Anil Sehgal tendered his resignation as member of the respondent society on 14.4.1995 and relinquished his membership in favor of the petitioner. The respondent society acknowledged the said relinquishment of his rights by Shri Anil Sehgal in favor of the petitioner who was inducted as a new member on 14.4.1995 with membership No.516.

5. The respondent society calculated Rs.86,206/- being the amount due from Mr.Anil Sehgal in respect of membership No.119 till 14.4.1995 as the cost of land, inclusive of late payment charges and demanded the said amount from the petitioner. On 14.4.1995, the petitioner paid Rs.88,206/-. The respondent society admitted and acknowledged the receipt of the said money from the petitioner and adjusted Rs.86,206/- towards the cost of land and the remaining Rs.2,000/- towards share money. With the said payment, the petitioner was enrolled as a member of the respondent society and he came at par with other members of the respondent society on that date.

6. The main submission of the petitioner is that there was a credit of Rs.91,400/- in the account No.119 of Mr.Anil Sehgal as on 14.4.1995 but only Rs.86,038/- was transferred from the said amount to the account No.516 of the petitioner after deducting interest, penalties, etc. As such, the total amount in the credit of the petitioner's account No.516 as on 14.4.1995 came to Rs.1,74,244/- and till that date the respondent society had demanded a total amount of Rs.1,70,000/- from the other members in the said category. In other words, the petitioner had over-paid Rs.4,224/- as on 15.5.1995.

7. It is mentioned in the writ petition that the respondent society informed the petitioner that there are no arrears of any call money, interest or penalty payable by the petitioner and he has come at par with other members of the respondent society. On 7.5.1995, 10 shares of Rs.100/- each were allotted to the petitioner and a share certificate No.1776 was issued in his name.

8. It is incorporated in the petition that there has been an escalation in the cost of category B-2 flat by respondent society from Rs.5,78,888/- to Rs.7,40,000/- and subsequently to Rs.8,50,000/-. Admittedly this amount has been paid by the petitioner. According to the petitioner he has paid the entire amount demanded by the respondent society from time to time and there is no outstanding amount to be paid by the petitioner to the respondent society.

9. It is also incorporated in the writ petition that on 10.3.2003, the petitioner came to know that certain members of the respondent society have been handed over the possession of the flats but the petitioner has not been handed over the flat till this date. On petitioner's enquiry why he was not allotted the possession of his flat, no specific reply was given by the respondent society though the petitioner was verbally assured that the respondent society would issue

necessary possession letter to him in a few days.

10. On 16.3.2003, instead of handing over possession of the flat, the petitioner was handed over a statement of accounts that he was required to pay an interest liability of Rs.1,50,589/-. According to the petitioner, no such demand was raised on the petitioner prior thereto nor any demand letter has been given to him. The said statement of account shows that there were certain arrears as on 31.12.1992 despite the fact that the petitioner became a member of the respondent society only on 14.4.1995 and no such demand was ever earlier made by the respondent society on the petitioner. According to the petitioner the said amount of Rs.1,50,589/- is totally illegal, arbitrary and respondent society is not entitled to this amount.

11. In reply, the respondent society had filed its counter affidavit. A preliminary objection has been taken that the petitioner has an equally efficacious alternate remedy u/s 60 of the Delhi Cooperative Societies Act, 1972 and this petition under Article 226 of the Constitution of India is not maintainable. It is also incorporated in the reply on merit that the petitioner has defaulted in payment of dues of the respondent society as a result of which construction of the flat got delayed and escalated cost had to be paid by all the members. It is also mentioned in the reply that there could be no transfer of membership from an outgoing member to any incoming member as transfer of membership is permissible only amongst blood relations. In reply it is incorporated that correct account shows that an outstanding amount of Rs.1,33,312/- is due and payable by the petitioner to the respondent society.

12. Ordinarily, in a case where there is only dispute regarding the payment of amount, this court would not interfere and would relegate the petitioner to a remedy u/s 60 of the D.C.S.Act but in the instant case, the stand taken by the respondent society seems to be totally inconsistent. On the one hand, it is stated that transfer of membership is only permissible amongst the blood relations and it could not have been transferred from the account of Mr.Anil Sehgal to the petitioner and on the other hand the society itself has given credit of Mr.Anil Sehgal's amount to the petitioner and acknowledged him as a member and shows certain outstanding amount against him. Similarly, as on 14.4.1995 when the petitioner became member, there was credit of Rs.91,400/- in the account No.119 of Mr.Anil Sehgal and out of that amount Rs.86,038/- was transferred to the account No.516 of the petitioner after deducting interest, penalties, etc. The total amount in the credit of the petitioner's account No.516 as on 14.4.1995 came to Rs.1,74,244/- and till that date the respondent society had demanded a total amount of Rs.1,70,000/- from the members in the said category. According to the petitioner, he has paid the entire amount which has been paid by the other members of the same category. Those members have been allotted flats but the petitioner has not been given possession of his flat No.216, category B-2 till date. We find force in the submission of the petitioner. From the pleadings of the parties, it becomes evident that the respondent society has not been observing

consistent norms in dealing with members uniformly.

13. The statement of account given to the petitioner on 3.9.2002 reflect that the petitioner has already paid Rs.9,05,409/-. Despite this the petitioner has not been given possession of the flat whereas others in the similar category have been given possession of their respective flats and from the petitioner, the respondent society has asked interest liability of Rs.1,50,589/-. Prima facie, this does not seems to be justified particularly when no such demand has been ever raised from the petitioner. The petitioner has been deprived of the possession of the flat for a very long period because of respondent society functioning in rather arbitrary manner without following uniform norms for all members.

14. We have heard learned counsel for the parties at length and perused the pleadings of the parties carefully. In our considered opinion, in the interest of justice, it would be proper to direct the respondent society to hand over the possession of the flat No.214, category B-2, Plot No.13, Sector-7, Papankala, Dwarka, New Delhi 110 045 to the petitioner, on petitioner's giving undertaking to the society that he would abide by the decision of the Registrar Cooperative Societies. The dispute regarding whether the respondent society is entitled to any further amount from the petitioner would be looked into by the Registrar Cooperative Societies. He would examine the entire record, give personal hearing to the parties and determine the controversy. In case the Registrar Cooperative Societies directs that the petitioner has to pay any further amount, then that amount shall be paid by the petitioner within three weeks of determining the liability by the Registrar Cooperative Societies. The Registrar Cooperative Societies shall pass the final order within two months from the date of conclusion of the arguments by the parties.

15. This order we are passing in the peculiar facts and circumstances of this case.

16. No further directions are necessary in this writ petition and this writ petition is accordingly disposed of. The parties are directed to bear their own costs.