

(2011) 08 DEL CK 0057

In the Delhi High Court

Case No : Writ Petition (C) No. 522 of 2011

S.P. Marwah

APPELLANT

Vs

Registrar of Societies and Another

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 DEL CK 0057

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : S.C. Tripathi and Mohit Kr. Gupta, for the Appellant; Sandeep Agarwal and K.A. Singh for R - 2, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The present case is one where a member of a society post-allotment withdrew from the allotment of the plot, collected the money and is later on urging that he should be allotted plot at earlier costs as another person similarly situated was subsequently permitted to once again claim a plot at the prevailing price when she made such request.

2. The Petitioner is a retired member of the Indian Administrative Service. The Petitioner and other Officers joined Respondent No. 2, Civil Service Officers Welfare Society (for short, 'the Society?'), which was registered with the Registrar of Societies in 1997. The Greater Noida Industrial Development Authority (for short, 'GNIDA?') allotted 30 acres of land to the Society on 27.03.1997 for the benefit of its members where plots had to be carved out. The Petitioner was allotted a plot of 500 sq. mtrs. in 1997. The Petitioner deposited certain amounts, but in the year 1998 opted to withdraw his name from the initial allotments to be made by Respondent No. 2. Apparently, there were nine such members, who opted out and to whom the money was returned after consideration of the matter by the Governing Body in its meeting held on 23.11.1998. The amount refunded to the Petitioner was Rs. 2,89,500/- after

deducting certain expenses for withdrawal of his name at the stage after first instalment had already been paid to GNIDA. This amount was accepted by the Petitioner without any demur or protest. The Petitioner claims to have sent a letter dated 12.05.1999 expressing his wish to acquire a residential plot in the complex and requested that as and when possible his case may be considered for re-allotment of a residential plot admeasuring 500 sq. mtrs. The Society, however, claims that the said letter was possibly delivered by hand to somebody in the office of the then President and was never placed on the file of the Society and, thus, never came to the notice of the Governing Body. The documents on record also do not show any follow up in this behalf by the Petitioner.

3. It is only in the EGM of 06.08.2004 that two plots of 300 sq. mtrs. each were allotted from amongst 10 members, who had paid the deposit requested. The grievance of the Petitioner is that the request made by the Petitioner on 12.05.1999 was ignored while allotting these two plots to members, who were not the original members/the request was made after the request of the Petitioner and, thus, the Petitioner assailed this allotment by filing WP (C) No. 2998/2008.

4. The aforesaid writ petition was disposed of by the Order dated 10.11.2009 on a statement of the counsel for the Society that an Arbitration Committee as contemplated under Clause 24 of the Memorandum of Association of the Society had been constituted and the entire dispute could be referred to that Committee. The counsel for the Petitioner withdrew the petition with liberty to make a reference to the Arbitration Committee.

5. The Arbitration Committee examined the dispute and gave its decision on 20.12.2010, which was sent to the Petitioner under the cover of the letter dated 07.01.2011 of the Society.

6. A perusal of the Order of the Arbitration Committee shows that the claim of the Petitioner was predicated on the plea of a continuing membership of the Society coupled with the request made vide letter dated 12.05.1999, while the stand of the Society was that by seeking cancellation of the allotment of the plot already made and obtaining refund, the Petitioner had also withdrawn from the membership of the Society. It is noticed in that order that the Petitioner claimed parity with the case of one Smt. Asha Nayar, who is also one of the persons who had withdrawn from the allotment of the plot, but subsequently sought re-admission to the Society and was re-enrolled. She was one of the persons, who was given the allotment in the draw held on 06.08.2004 and had been re-admitted to the Society on 12.12.2003. The Society claimed that the letter of the Petitioner dated 12.05.1999 did not contain any request for re-admission.

7. An Arbitration Committee constituted by the Society re-examined the case of Smt. Asha Nayar and found that the Petitioner was entitled to be treated at parity with Smt. Asha Nayar. It was observed that since the clock could not be set back physical possession having been delivered of the plots, the Society may

take a view on the request dated 12.05.1999 of the Petitioner on the lines of the case of Smt. Asha Nayar.

8. Respondent No. 2 Society acting in pursuance to the aforesaid decision of the Arbitration Committee issued a communication dated 17.01.2011 informing the Petitioner that a piece of land had been restored by GNIDA some time back and that applications had been called by the Society from eligible persons for membership for allotment of land vide letter dated 08.11.2010. The Society went on to aver in this letter that even though the last date for receipt of those applications had elapsed, it could still include the name of the Petitioner without insisting on a formal application or affidavit or a bank demand draft in the sum of Rs. 50,000/-, a requirement which other members had to fulfil in order to participate in the draw of lots likely to be held on 31.01.2011, if the Petitioner was to give his acceptance for being considered qua plots then available.

9. The Petitioner filed the present writ petition under Article 226 of the Constitution of India (for short, 'the Constitution') on 25.01.2011, which was listed for the first time on 28.01.2011. The Petitioner made a grievance that since Smt. Asha Nayar was allotted a plot of 300 sq. mtrs., the Petitioner was entitled to a plot of the same size. The Petitioner also disputed the right of the Society to charge current rate from the Petitioner. The prayer made is as under:

a. set aside the letter dated 17.1.2011 written by the Respondent No. 2 and direct the Respondent No. 2 to comply the decision rendered by the Committee pursuant to the order dated 10.11.2009 passed by this Hon'ble Court in WP (C) No. 2998/08;

10. On 21.02.2011, an interim order was passed in favour of the Petitioner that in case his name had not been included in the draw of lots on 31.01.2011, a plot be kept reserved for the Petitioner. This order was confirmed on 27.04.2011.

11. The Society/Respondent No. 2 has contested the writ petition and filed its counter affidavit. It has been submitted that the Petitioner has concealed from this Court that the Petitioner sent a response to the letter dated 17.01.2011 only on 28.01.2011 after notice was issued by this Court. In terms of this letter, the Petitioner instead of giving acceptance to the Society for inclusion of his name in the draw of lots held on 31.01.2011 insisted upon a plot of 300 sq. mtrs. to be allotted at the old rate. Thus, the name of the Petitioner could not be included in the draw of lots, which was carried out for 15 plots amongst 83 members. One plot was kept reserved for the Petitioner in view of pending litigation. Plots were also kept reserved for other pending cases before the Arbitration Committee.

12. It has been pointed out that insofar as Smt. Asha Nayar is concerned, she subsequently agreed for a plot of 300 sq. mtrs. and agreed to participate in a draw where she happened to be one of the two successful persons, out of ten persons in the draw. The allotment was made at the prevalent rate and not at the original rate. On the other hand, the Petitioner insisted on 500 sq. mtrs. plot and that too at old rate. Thereafter, on the order being passed by the Arbitration

Committee, he continued to insist for a plot of 300 sq. mtrs. at old rate though there were 16 plots, which were carved out of 200 sq. mtrs. each and there was no plot of 300 sq. mtrs. available. The other important aspect was that the Petitioner was insisting on the allotment of plot at the old rate.

13. A reading of the letter dated 28.01.2011 of the Petitioner shows that the Petitioner alleged that the letter of the Society dated 17.01.2011 was contrary to the recommendations of the Arbitration Committee since a plot of 200 sq. mtrs. was sought to be offered to the Petitioner, though Smt. Asha Nayar was given a plot of land measuring 300 sq. mtrs. The Petitioner also claimed that the additional land made available did not cost the Society any amount and, thus, the Petitioner should not be asked to pay the current rate, when Smt. Asha Nayar was given a plot of land at old rate, in conflict with the decision of the Arbitration Committee. He thereafter in the said letter referred to filing of the writ petition and in the last para stated that his name should be included in the draw of lots to be held on 31.01.2011 in terms of the offer made in the letter dated 17.01.2011 without prejudice to the rights and contentions available in the writ petition.

14. We have examined the aforesaid factual matrix and the rival submissions of learned Counsel for the parties.

15. The first aspect to be noted is that the Petitioner of his own volition after making some initial payment and after the land was allotted to the Society withdrew the request for allotment of a plot. The amount was refunded back to the Petitioner and the matter rested at that. This happened in the year 1998 and the Petitioner had a second thought in the year 1999 when he made a request for fresh allotment. There is some controversy about how the said letter dated 12.05.1999 was delivered, but suffice it to say that there was no follow up in this behalf till the draw of lots was held in the year 2004 allotting two plots in a draw of lots held between 10 members, who agreed to accept 300 sq. mtrs. plot as larger plots were not available. Smt. Asha Nayar was one such person.

16. The proceedings of the Arbitration Committee only show that the Petitioner was granted limited relief predicated on the plea of parity with Smt. Asha Nayar as otherwise the Petitioner would have no case. We may also notice that Smt. Asha Nayar submitted the initial deposit amount of Rs. 10,000/- prior to the draw, agreed to acquire a plot of 300 sq. mtrs. at then prevailing rate after participating in a draw.

17. The Petitioner continued to insisted on a plot of 500 sq. mtrs. and after the order of the Arbitration Committee for a plot of 300 sq. mtrs. even though plots of the relevant size were not available. The best option for the Petitioner was to have participated in the draw of lots held on 31.01.2011, which may have resulted in allotment of the Petitioner since the draw would have been held of 84 members for 16 plots (the Petitioner withdrew, thus, 83 members participated for 15 plots as one plot was kept reserved for the Petitioner). The Petitioner also

continued to rake up the issue of the rate of land at which he should be allotted as he claimed allotment at the original rate for which the Petitioner had no basis. The Petitioner at best could have got allotment at the current rate as in case of other members.

18. The Petitioner cannot be permitted to harp on the issue of being an original member when he withdrew his request for allotment. It is a matter of common knowledge that land prices have been escalating. Members, who do not want to invest at the time when land rates are not high, but seek to jump in when land rates escalate, cannot be given priority as the very concept of a co-operative society is pooled payment for all members. The default of withdrawal of any one member can prejudice the whole project. It is after allotment of land and the first instalment for the same being paid that the Petitioner withdrew his request for allotment.

19. The Petitioner got a fresh lease of life only on account of the case of Smt. Asha Nayar, who was also similarly situated and for reasons best known to the Society, was again re-admitted and allotted the plot. The Petitioner did not even try to take advantage in the correct perspective of the orders of the Arbitration Committee putting the case of the Petitioner at parity with the case of Smt. Asha Nayar as he kept on insisting for an allotment of a larger plot as in the case of Smt. Asha Nayar, though no such plot was available. More importantly, the Petitioner kept on harping on the issue of allotment at old rates. We are unable to accept the plea of learned Counsel for the Petitioner that the letter dated 28.01.2011 was an unconditional letter to participate in the draw of lots for 31.01.2011. The Petitioner was insisting on the plot of 300 sq. mtrs. and that too at the old rate as is apparent from para 3 of that letter. The relevant portion of the letter is reproduced as under:

3. Your letter dated 17-01-2011 is contrary to the findings/recommendations of the Arbitration Committee as -

(a) Smt. Asha Nayar was given a plot of land admeasuring 300 sq. mts. whereas I have been offered a plot measuring 200 sq. mts.

(b) The additional land now made available does not cost the Society any amount.

Therefore, asking me to pay at the current rate whereas Smt. Asha Nayar was given the plot of land at old rate is in conflict with the decision of the Arbitration Committee.

4) Under these circumstances, I was constrained to file a Writ Petition (bearing No. W.P. (C) No. 522 of 2011) before the Hon"ble High Court of Delhi. Vide Order dated 28-01-2011 the Hon"ble High Court has been pleased to issue Notice to you thereby fixing the next date of hearing as 21-02-2011.

5) In view of the fact that you have already fixed draw of lots to be held on 31-01-2011 and considering paucity of time, I hereby give my consent to the offer made by you in your letter dated 17-01-2011 without prejudice to my rights

and contentions as available in my aforementioned Writ Petition, copy of which is enclosed.

(emphasis supplied)

20. The Petitioner sought to straddle in two boats at the same time. The Petitioner wanted to keep alive the issue of the size of the plot and the current rate and also take a chance in the draw in which if he had been unsuccessful he would have challenged the same. The Society, thus, did what was reasonable and proper and did not include the name of the Petitioner in the draw of lots, especially in view of the letter having been handed over at the last minute on 28.01.2011, while the Petitioner knew of the offer vide letter dated 17.01.2011 and in between filed the writ petition.

21. In order to put the controversy at rest, we even considered an equitable solution of permitting the draw of lots for the remaining one plot between the Petitioner and those who were still waiting for the allotment. However, learned Counsel for the Petitioner on instructions stated that the Petitioner was unwilling to do so as the other persons, who participated in the draw held on 31.01.2011, had taken a chance in the draw while the Petitioner had not been given a chance and, thus, the Petitioner should be given the allotment of the plot reserved for the Petitioner.

22. We are unable to accept this plea as it would be extremely inequitable and unfair to the members who participated in the draw held on 31.01.2011. The Petitioner at best would have had a chance or a probability of allotment and could not have got an assured allotment in the draw held on 31.01.2011. This is so since there would have been 16 plots available for possible allotment among 84 members. No doubt, the probability has declined now if the draw is held for one plot among 69 members including the Petitioner, but the Petitioner has to blame himself to blame for coming to this pass.

23. Learned Counsel for Respondent No. 2 stated that effort is still being made to obtain further additional land so that all the members are able to ultimately get an allotment. If that be so, the case of the Petitioner can be considered for allotment when such a land is made available. We clarify that in such an eventuality, unless there are enough plots, once again the Society would have to hold draw of lots and allotment would be on current costs.

24. We are not inclined to exercise jurisdiction under Article 226 of the Constitution in view of the facts set out hereinabove to give the reserved plot to the Petitioner even at current costs. The plot reserved can, thus, be allotted by Respondent No. 2 Society by holding a draw of lots.

25. In the end, we may emphasize that the Petitioner has clearly over-pitched his case as he is a member, who having been allotted a plot withdrew from the allotment, accepted the refund amount without demur or protest, wanted a fresh allotment of a plot of 500 sq. mtrs. when such plots were not available, and that

too at the old rate. As noticed above, but for the allotment made to Smt. Asha Nayar, he would have had no case.

26. We, thus, dismiss the writ petition leaving the parties to bear their own costs.