

(2007) 02 DEL CK 0149

In the Delhi High Court

Case No : R.P. No. 13012 of 2002 in WP (C) No. 4847 of 1998

Subhash Behari Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Delhi Co-operative Societies Act, 1972 — Section 60

Citation : (2007) 02 DEL CK 0149

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : R.K. Saini and Abhay Chauhan and V.P. Chaudhary and Sushma, for petitioner No, for the Appellant; Monica Sharma, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—This is an application moved by Shri Vinay Kumar Srivastava seeking review of the judgment dated 11.4.2001. The Review Applicant prays for setting aside the impugned judgment in the alternative, a direction to include the name of the applicant in the draw of lots and/or alternatively to reserve one plot in respect of the claim of the applicant.

2. This case has a long history of Applications/Review Petitions. For the sake of clarity and comprehension, it would be necessary to recapitulate the facts and events, culminating in the present Review Petition.

3. On 11.4.2001, this Bench took up for disposal CWP No. 4847/1998 titled "Subhash Behari Lal v. The Registrar, Cooperative Societies and Ors." after issuance of Rule. The parties to the writ petition were Subhash Behari Lal-petitioner No. 1, Col. A.N. Bhatnagar-petitioner No. 2, Dr. Shalini Nigam nee Miss Shalini Saran-petitioner No. 3, Respondent No. 1 is The Registrar, Cooperative Societies, Delhi Government, respondents No. 2 is the Administrator, Bhatnagar Cooperative House Building Society Ltd. and respondent No. 3 is D.D.A.

4. The issue of membership and eligibility for participation in the draw of lot for allotment of plots had been pending for quite some time. It was urged before the Court by the counsel for the petitioners Mr. Chaudhary as well as the counsel for respondent-Society and the Administrator of the Society Mr. V. Shankara that the aspirants in the waiting list were 29 against 11 available plots. Further, after an elaborate exercise, the Administrator had finalized the list, which had been approved by the Registrar of Cooperative Societies. In these circumstances, the writ petition was disposed of directing that the list, as prepared by the Administrator dated 10.2.1994 and after completion of all formalities, be submitted to D.D.A. for purposes of draw of lots and D.D.A. would also comply with the requisite formalities and conduct a draw of lots within three months.

5. Subsequently, after the disposal of the writ petition, petitioner Subhash Behari Lal and Shalini Nigam moved the Court that although the Registrar of Cooperative Societies had included their name at Serial No. 2 and 9, however, due to non-clearance of certain dues, their case for allotment was being held up and their name was not being included in the draw of lots. Vide orders dated 5.3.2002, the Court took cognizance of the deposit of Rs. 5,85,000/- each by the said members and directed inclusion of their names in the draw of lots. We are informed that pursuant thereto, the draw of lots has taken place and the said petitioners have been found to be eligible and also allotted plots. It is at this stage that the Review Applicant enters the arena of battle.

6. The Review Applicant Vinay Kumar Srivastava moved CM No. 613/2002 in the present writ petition. As matters of Cooperative Societies were being listed before Division Bench, as per amended roster, it was also so listed. The Review Application came to be listed before the Division Bench. In the said application, the applicant averred that his membership of the Society based on succession from his late Grandfather was being questioned by the Administrator. There was also the question of their being a nominee. Consequently, the applicant was constrained to file a case u/s 60 of the Delhi Cooperative Societies Act, 1972 and the pendency of the aforesaid case for reference of dispute to Arbitration was within the knowledge of the Administrator, which was filed in 1994, but the same remained pending till 2001. He submitted that the pendency of the Arbitration case was not informed by the Administrator to the Court and this has adversely affected the applicant by passing of the orders dated 11.4.2001, wherein the applicant had not been included as a party. Suspension of the order dated 11.4.2001 was, Therefore, prayed for. This was accompanied by another application bearing No. CM No. 1051/2001 under Order 1 Rule 10 CPC for impleadment. The Division Bench disposed of the application CM No. 613/2002. It also noted the applicant's prayer of not being a party to the writ petition. Petitioner had filed objections to the said application. However, the applicant prayed for withdrawal of the application with liberty to the application to take appropriate remedy. Application was accordingly dismissed as withdrawn with liberty as aforesaid.

7. The applicant Mr. Vinay Kumar Srivastava thereafter filed an appeal against the order dated 11.4.2001 being L.P.A. No. 782/2002. The said appeal was dismissed as withdrawn vide orders dated 11.10.2002 with liberty to file a Review Application.

8. The petitioner thereupon filed R.A. No. 13012/2002 in WP(C) No. 4847/1998. Notice in this Review Application was issued vide order dated 4.12.2002.

9. We may notice, at this stage, that one Mr. Mohit Bhatnagar, whose name appeared as one of the 11 successful members and whose candidature was directed vide orders passed on 11.4.2001 to be forwarded for inclusion in the draw of lots, filed a writ petition bearing No. WP(C)2496/2002. His grievance was that though the Society had communicated to him of the inclusion of his name in the approved seniority list and he was also required to pay the amount and he had paid a sum of Rs. 6,25,000/- (Rupees Six Lacs Twenty Five Thousand), yet respondent No. 3 DDA was giving clearance of only 7 names out of 8 names, omitting the name of the petitioner. This was alleged on account of a dispute sought to be raised by the Review Applicant u/s 60 of the Delhi Cooperative Societies Act. The said writ petition was disposed of vide orders dated 20.1.2003 by the Division Bench. The Division Bench inter alias directed:

...

...As a matter of fact the Registrar, Cooperative Societies had no jurisdiction to refer the dispute for arbitration u/s 60 in relation to a member and plot, which was subject matter of the decision by this Court. The action of the Registrar, Cooperative Societies was per se without jurisdiction and same is illegal. We set aside the same. The petitioner, who has been allotted plot pursuant to the draw of lots held by the DDA, shall be entitled to hold the same. Possession of the said plot be given by respondent No. 2 to the petitioner.

With these observations, writ petition stands disposed of. Rule is made absolute.

10. Review Applicant, being aggrieved by this order, preferred R.A. No. 4969/2003. The Review Applicant urged before the Court in the said application that Review Applicant had raised the dispute with regard to his entitlement to be enrolled as a successor to his late grandfather as far back as in 1994. It was a different matter that the reference u/s 60 of the Act was made sometime only in October, 2001. Review Applicant sought review of the decision in CWP No. 2496/2002 on the ground that in the said writ petition, the Division Bench has quashed the reference concerning the review applicant without the Review Applicant being a party to the writ petition and without the reference being subject matter of the writ petition. The Review Application was then disposed of vide orders dated 29.8.2003. It would be appropriate to reproduce and quote the said order in extenso so that there is no ambiguity left.

It is an application filed by Vinay Kumar Srivastava. Mr. Chaudhary accepted the notice on last date of hearing and he has chosen not to file any reply to the

application. We have heard counsel for the parties. Our Order passed on 20.1.2003 was very explicit in view of direction issued in CW. 4847/98, on the basis of the list prepared by J.N. Gupta, Administrator. A direction was issued to the Registrar Cooperative Society to submit the said list within four weeks, and the Registrar Cooperative Society cleared the name of 11 persons including the petitioner who was at No. 11 in the said list. We had categorically stated in Order dated 20.1.2003 that Registrar Cooperative Societies has no jurisdiction to refer the dispute with regard to these 11 persons whose names have been cleared by the Registrar Cooperative Societies. If the applicant has filed any other complaint it is for the Registrar Cooperative Societies to exercise its jurisdiction pursuant to Section 60 but that certainly would not be in relation to the list containing 11 names which is cleared by the Registrar pursuant to the order passed by this Court.

With this observation application stands disposed of.

11. Mr. Saini submits that the Court by the above order has clarified that it had intended only to hold that the Registrar Cooperative Societies has no jurisdiction to refer the dispute with regard to these 11 persons whose names had been cleared by the Registrar, Cooperative Societies and if the applicant has "any other complaint", it is for the Registrar of Cooperative Societies to exercise its jurisdiction pursuant to Section 60. Apparently, it appears that the petitioner is satisfied by the aforesaid order. Needless to mention that the crux of the matter in this controversy is the claim for plots and eligibility of members. The 11 members who have been found eligible by the Court earlier based on the report of the Administrator and the Division Bench subsequently have been allotted the plots. The number of available plots and vacancies are confined to these 11 members and as held by the Division Bench, the Registrar would have no jurisdiction to refer any dispute in relation to their eligibility and allotment. This being the position the allotment and eligibility of these allottees is not subservient to the reference made by Registrar u/s 60 of the Act.

In view of this, it would be for the petitioner to pursue his remedy for determination and crystallization of his rights and then seek legal remedies against the Society if admissible. No ground for review of order dated 11.4.2001 is made out.

The Review Application has no merit and is dismissed.