

(2010) 10 DEL CK 0198

In the Delhi High Court

Case No : Writ Petition (C) No. 19 of 1991

Surendra Kumar

APPELLANT

Vs

The Registrar of Cooperative Societies and Another

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Delhi Co-operative Societies Rules, 1973 — Rule 36

Citation : (2010) 120 DRJ 117

Hon'ble Judges : Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Rakesh Tikku, for the Appellant; Ajit Pudussary and Dinesh Khurana, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

C.M. No. 12904/2010 in WP (C) No. 19/1991

We have indicated on the last date of hearing on 27.9.2010 itself that we would entertain this application only if the petitioner is willing to proceed with the hearing on merits. The petitioner has now engaged a counsel who has expressed willingness to proceed with the merits.

In view of the aforesaid despite the fact that this writ petition was earlier dismissed for non-prosecution and the second dismissal took place on 5.7.2010, we recall the order dated 5.7.2010 and take the matter for final hearing.

Application stands disposed of.

W.P. (C) No. 19/1991

1. By this writ petition under Article 226 of the Constitution of India, the petitioner challenges his expulsion from the respondent No. 2 Cooperative Group Housing Society.

2. The facts of the case are that on account of the repeated defaults/failure of the petitioner in paying the installments due and the call monies payable, the respondent No. 2 society after complying with the due procedure expelled the petitioner from its membership as per the resolution of the General Body Meeting dated 22.2.1990. In pursuance to the provisions of the Delhi Cooperative Societies Act, 1972, this resolution was sent to the Registrar for approval. Originally, the society claimed a deemed approval of the Registrar as no decision was taken by the Registrar within a period of six months of communication of the same in terms of Rule 36 of the Rules framed under the Act, however, during the pendency of the petition, the Registrar vide his order dated 12.8.1991 approved the expulsion of the petitioner besides various other members pursuant to the resolution of the General Body Meeting dated 22.2.1990. The Registrar, however, gave a last opportunity to all the defaulting members, including the petitioner to clear their dues in four weeks. The petitioner, in spite of the same, failed to clear the dues by 13.9.1991. This Court post 13.9.1991 by its order dated 23.9.1991 stayed the expulsion of the petitioner pursuant to the order of the Registrar, however, subsequently, on 21.10.1994, this Court ordered in case the petitioner pays the amount due to the society from the due date the calls were made with interest at the rate of 18% per annum, only then, would the court consider the matter further. The respondent No. 2 consequently issued its letter dated 24.10.1994 in which it gave breakup of the dues including interest and demanded a sum of Rs. 8,68,122/- from the petitioner. The petitioner however, deposited only a sum of Rs. 5,20,000/- in this Court on 28.11.1994. The petitioner claimed that he had already deposited Rs. 50,000/-. The petitioner, therefore, claimed to have deposited Rs. 5,70,000/-. A reference to the calculations as shown in the letter dated 24.10.1994 shows that the amount of Rs. 5,70,000/- was only the principal amount. Obviously, therefore, the petitioner in spite of repeated opportunities granted, first by the society, thereafter by the Registrar as per his order dated 12.8.1991 and then by the court as per its order dated 21.10.1994, did not pay the dues of the respondent No. 2 society.

3. The counsel for the petitioner after arguing the case on behalf of the petitioner when was put the query that whether the amount due as per the order of this Court dated 21.10.1994 has been complied with or not, could not dispute the fact that the complete dues as claimed by the respondent No. 2 society vide its letter dated 24.10.1994 of Rs. 8,68,122/- was not deposited but only Rs. 5,20,000/- was deposited, and taking into account Rs. 50,000/- already deposited, a sum of Rs. 5,70,000/- was only deposited out of the demand of Rs. 8,68,122/-. The attitude of the petitioner therefore leaves a lot to be desired. This aspect has been commented upon by a Division Bench of this Court while dealing with the same resolution dated 22.2.1990 of the respondent No. 2 society with respect to other members who were expelled. The decision of the Division Bench is reported as *Satish Chandra and Anr. v. Registrar Cooperative* 1993 (II) AD (Delhi) 81. The relevant paragraphs of the judgment are paras 4 to

7 and the same reads as under:

4. Aggrieved by the said order the petitioners filed a writ petition in this Court being Civil Writ No. 454 of 1989 on 6th April, 1989. The said writ petition was dismissed on 7th April, 1989 in limine. The petitioners instead of filing a SLP in the Supreme Court for reasons best known to them, though as pointed out earlier both are lawyers by profession, filed a writ petition being CW 58 of 1989 under Article 32 of the Constitution of India before the Hon^{ble} Supreme Court. In the said writ petition the petitioners say they have prayed for the same prayers as have been agitated in the present writ petition before us. However, the said writ petition filed before the Supreme Court was withdrawn by the petitioners on 25th January, 1990, before even notice was issued therein, with the liberty to the petitioners to file a writ petition in the High Court for the same relief. The order of the Supreme Court dismissing the petition as withdrawn does not show if the Court was made aware of fact of dismissal of earlier writ petition by this Court. In the meanwhile, the petitioners were expelled from the membership of the Society with effect from 22nd October, 1990 when the period of six months for granting approval by the Registrar, Cooperative Societies under the amended Rule 36 of the Rules expired. It is strange that the order of expulsion has not been challenged either in this writ petition or in any other writ petition. Obviously, the reason is very simple. Under the grab of one technicality or the other what the petitioners are trying to achieve is to constantly engage the Society into litigation without making any payment towards cost of construction of the flats. It is noteworthy to mention that other members of the Society had paid about Rs. 6 lacs in relation to the flats of the Society since 1983 whereas the contribution of both the petitioners is Rs. 20,000/- only. It has become a trend that members who do not make payment on one pretext or the other either, by challenging certain short-coming in appointment of contractor/ architect or finding fault with the procedural matters thwart the whole construction process thereby depriving the benefits to those members who had contributed for the construction activities. This results in delays in construction and also burdening the members on account of escalated cost. The case of the petitioners is an example in this regard.

5. As the petitioners have argued and defended their action in not making the payment to the Society on the ground that the managing committee elected was illegal or the fees of the architect was on the higher side, the petitioners have no business not to pay to the Society, may be under protest and to get their disputes agitated under the machinery provided under Delhi Co-operative Societies Act and Rules framed thereunder. Petitioners have chosen to take advantage of the forum as provided under the Act and went up to the Supreme Court but failed to contribute single paise further to what was initially deposited by them, i.e. Rs. 20,000/- till this date. Petitioners arguments that they were not informed about dues have no force. Even Registrar, Co-operative Societies, respondent No. 1 issued a letter dated 12th August, 1991 to the petitioners granting time to the petitioners of four weeks to square the dues failing which

their expulsion stood approved. In spite of that opportunity the petitioners did not pay a single penny to the Society.

6. Thereafter again on 9th September, 1991 on an interim application this Court further granted time to the petitioners to pay the amount within two weeks from that date. However, the petitioners on the ground that the Society had not informed them about the dues chose not to pay and on that account this Court ordered their expulsion to be stayed till final disposal. We would have agreed with the petitioners shown to us any bona fide intention to make the payment to the Society. Even in the court we had asked the petitioners if they were prepared to pay the amount demanded by the Society with interest for delayed payment from the first call, the petitioners did not agree. We are expressing ourselves in this case in these terms as we would like to make it abundantly clear that the conduct of the petitioners is such that they are not entitled to any relief under the extra-ordinary jurisdiction under Article 226 of the Constitution of India.

7. The provisions of Delhi Cooperative Societies Act and Rules framed thereunder regarding expulsion of members particularly in relation to those who have defaulted in paying the call money by the society, have played havoc to the working of the societies in Delhi. Any member even if his contribution is bare minimum can thwart the process of expulsion on account of various procedural delays in the office of the Registrar, Co-operative Societies and on account of the provision of appeal in the Co-operative Societies Act. We feel that defaulter members should not put the society at ransom and the defaulter member to show his bona fide and equity must deposit the call money with the society under protest and only there the legitimacy of his claim could be examined by the Registrar. It should not be a device to keep one's foot in the society and wait for the completion of the flats at the cost of others who have been regularly paying. After construction starts or is near completion the price of the flats escalates, then such defaulter members claim their right to own a flat. This will be giving premium to such kind of members for their default.

(Emphasis supplied)

4. The aforesaid observations of the decision in the case of Satish Chandra (supra) squarely applies to the facts of the present case also. The decision of the Division Bench in Satish Chandra's case was also upheld by the Supreme Court as per its judgment dated 21.4.1994 in SLP 630/1994 titled as Satish Chandra v. Registrar of Cooperative Society.

5. In fact, under the provisions of the Delhi Cooperative Societies Act, a decision of a Registrar confirming the expulsion is subject to an appeal before the Financial Commissioner, however, no appeal was filed by the petitioner against the order dated 12.8.1991 of the Registrar confirming his expulsion, although, granting a last opportunity for depositing the amount demanded within one month of the order i.e. by 12.9.1991. During the course of hearing, when we put it to the counsel for the petitioner as to why no appeal was filed, and whether

the petitioner would like to file the remedy for filing of an appeal even now, the petitioner, who is an Advocate and was present in person stated that he would want that the issue should be finally decided by this Court, as a lot of time had passed since the passing of the order by the Registrar in the year 1991, and that the present writ petition is pending since December, 1990. We have therefore, proceeded to hear and dispose of this petition.

6. The aforesaid facts of the present case clearly show that the petitioner is a habitual defaulter. Not only, he failed to deposit the dues in spite of repeated demands made by the respondent No. 2 society, he failed to deposit the dues even in terms of the one more opportunity granted by the order of the Registrar dated 12.8.1991 and which thus became final and so did petitioner's expulsion proceedings. Further, the petitioner also failed to pay the complete dues in terms of the order of a Division Bench of this Court passed on 21.10.1994. The observation as made by the Division Bench in the case of Satish Chandra (supra) squarely and aptly applies to the facts of the present case also because no Cooperative Society can function and construct its flats if its members do not pay the monies. Persons such as the petitioner, who do not pay for the cost of construction and thereby others are forced to pay the cost of construction of the flats, then, the petitioner cannot stand up one fine day by seeking to pay amount with interest and thereby claimed allotment of a flat. If this is permitted this would be sheer injustice to the responsible members of the society who have performed their duties and obligations by making the necessary payments to the society when called for.

After all, a person who has to deposit money to a society is not doing any favour to the society but is simply contributing monies towards cost of construction of his own flat only.

7. We, therefore, do not find that the present is a fit case for interference under Article 226 of the Constitution of India. The writ petition is therefore dismissed leaving the parties to bear their own costs. The amount deposited by the petitioner in this Court be released to the petitioner along with interest accrued if any. The respondent No. 2 society is also directed to remit to the petitioner expeditiously amount of the petitioner lying with it.