
(2002) 01 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 8885 of 2000

Surinder Kumar

APPELLANT

Vs

Union Territory Chandigarh and Others

RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Citation : AIR 2003 P&H 77 : (2002) 3 RCR(Civil) 482

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : B.S. Walia, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner was enrolled as a member of the Silverton Co-op. House Building Society Ltd. on December 15, 1987. He was allotted membership No. 345. The main object of the Society was to construct and manage residential accommodation for its members. The Society applied for the allotment of land to the Chandigarh Administration. When the needful was not done, it filed C.W.P. No. 1454 of 1992. The petition was admitted vide order dated May 11, 1992. Certain interim directions were also given. It was inter-alia directed that the petitioner shall deposit 10% of the tentative price within the time permitted by the Court.

2. In pursuance to the interim directions given by the Court the Society called upon the eligible members including the petitioner to make the deposit. The petitioner deposited an amount of Rs. 12,200/-. The Draft submitted by the petitioner to the Society was forwarded to the Estate Officer, Union Territory Chandigarh. Subsequently, the petitioner was forwarded to the Estate Officer, Union Territory Chandigarh. Subsequently, the petitioner was informed that this Draft had been returned by the Estate Officer with the direction that the deposit be made with the Chandigarh Housing Board.

3. After the lapse of about seven years the Housing Board called upon the

Society to deposit 25% of the earnest money towards the cost of the land. A copy of this letter has been produced on the record as Annexure P-9. A perusal of this letter shows that the deposit had to be made along with the affidavits and other documents "in respect of the members screened upto 31.10.90 by the Registrar Co-operative Society, U.T. Chandigarh within a period of two months....". ON receipt of this letter, the Society asked the petitioner to deposit the money and to complete the other formalities. It is alleged that he got the Draft prepared. However, when he presented the Draft and the documents to respondent No. 4, he was informed that his name did not figure in the list of eligible persons circulated by the department. On further enquiry the petitioner learnt that a screening had been conducted by a Screening Committee constituted by the Registrar, Co-operative Societies, Union Territory Chandigarh. His name had been removed from the list of eligible persons. Aggrieved by the action, the petitioner represented and sought to know the reasons for his exclusion. The reply was sent to him vide letter, a copy of which has been produced as Annexure P-15 with the writ petition. The Joint Registrar, Co-operative Society, U.T. Chandigarh, informed the petitioner that the information could not be supplied to him. Hence this petition.

4. The petitioner alleges that he had been duly enrolled as a member. His name figures in the list of members of the Society. He had made the requisite deposit of 10% at the relevant time. Despite this and without the grant of any opportunity whatsoever, his name was deleted from the list. This was done under the garb of screening the members included in the list. No opportunity whatsoever having been granted to the petitioner, he claims that the action is violative of the principles of natural justice. Thus, it deserves to be quashed. The petitioner further prays that the respondents be directed to accept the requisite deposit so as to entitle him to the allotment of residential accommodation.

5. A written statement has been filed on behalf of respondent Nos. 1 to 3 by the Joint Registrar, co-operative Societies, U.T. Chandigarh. It has been pleaded by way of a preliminary objection that the petitioners' name was excluded from the list of eligible members in the year 1991. Thus, the petition is highly belated. It has been further pointed out that while scrutinising the record of the Society he was found to be ineligible. Consequently, it was decided by the Committee to exclude his name. In the reply on merits the petitioner's plea that there was non-compliance of the principles of natural justice has been controverted. It has been averred that "before making decision by the Screening Committee, the Screening Committee heard each and every Society". On these premises, it is maintained that the action is legal and valid.

6. A separate reply has been filed on behalf of respondent No. 4 viz the Society. It has been admitted that the petitioner was enrolled as a member on December 15, 1987. It has been further averred that "the Society was not associated during the proceedings of the Screening Committee".

7. Counsel for the parties have been heard.

8. Mr. B.S. Walia has contended that the action of the respondents in excluding the petitioners' name from the list of eligible members is violative of the principles of natural justice. No opportunity whatsoever having been afforded to the petitioner, his exclusion from the list of members is illegal. Resultantly, he prays that the petitioner should be restored to his original position and that the respondents be directed to accept the deposit.

9. No one has put in appearance on behalf of respondent No. 4. However, Mr. K..K. Gupta, learned counsel for respondent Nos. 1 to 3, has not disputed that the petitioner's name was excluded from the list of eligible members without the grant of any opportunity. Resultantly, the deposit on his behalf was not accepted.

10. The short question that arises for consideration is - Have the respondents acted fairly in excluding the petitioners' name from the list of eligible members?

11. Admittedly, only members of the Society were eligible for the allotment of land/accommodation for residence. It is also not disputed that the petitioner had made the requisite deposit of 10% in pursuance to the interim orders passed by this Court and the communication sent to him by the Society. However, he was not allowed to make deposit of 25% of the amount only on account of the decision of the Screening Committee. Thus, the screening as conducted by the Committee was of great consequence so far as the petitioner's rights were concerned. It's decision to exclude the petitioners' name from the list of eligible members had resulted in depriving him of the right to the allotment of land/accommodation. This was admittedly done without the grant of any opportunity whatsoever.

12. Mr. Gupta, learned counsel for respondent Nos. 1 to 3, has pointed out that notice was given to the Society. This has been controverted in the reply filed by respondent No. 4. Irrespective of that, it deserves notice that the rights of the petitioner were likely to be affected. The Society could not have been bothered by the inclusion or exclusion of one of its members. The petitioner was, admittedly, given no opportunity. If an opportunity had been granted, the petitioner may have been in a position to remove the doubts which may have been entertained by the Screening Committee. He may have shown that he was fully eligible and that there was no cause for his exclusion. The failure to grant him an opportunity caused prejudice to the petitioner.

13. Mr. Gupta contends that there is no rule requiring the Screening Committee to grant an opportunity to the individual members of the Society.

14. Learned counsel is unable to refer to any rule under which the Screening Committee may have been constituted. However, the Registrar, Co-operative Societies, having passed the order for the constitution of the Committee, it was bound to act fairly. The rules of the natural justice cannot be put in a strait jacket. These are merely rules of fair play. These are calculated to ensure that the Society does not act arbitrarily. The basic rule is that nobody's rights in respect of his purse or property shall be affected without the grant of an opportunity. In

the present case, the petitioners' right to property has been adversely affected by the ex-parte action of the respondents.

15. No other point has been raised.

16. In view of the above, the writ petition is allowed. It is directed that the petitioners' claim for the allotment of land shall be considered in accordance with law. In the circumstances, there will be no order as to costs.