

(2008) 08 DEL CK 0074

In the Delhi High Court

Case No : WP (C) No. 10066 of 2004 & Writ Petition (C) No. 10066 of 2004

The Yogi Raj Krishna Cooperative Group Housing Society Ltd.	APPELLANT
Vs	
Delhi Development Authority and Another	RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Delhi Co-operative Societies Rules, 2007 — Rule 90

Citation : (2008) 08 DEL CK 0074

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : K.C. Mittal, Amicus Curiae, Sujeet Kumar Singh and Sumit Babbar, Rajesh Tyagi and Aparna Bhardwaj, in WPC No. 10066/2004, K.K. Rai and Sanjay Kumar Pathak, in CM Nos. 7568/08 and 6134 and 15387/06, Sandeep Kumar, for Bhagwani, CGHS, R.N. Bhardwaj, for ISI CGHS, Ram Dev, CGHS, Joint Living CGHS, Sarvottam CGHS and Rose Marry CGHS. Fanish Kumar Jain, for Lokpriya Vihar, CGHS, Rekha Palli, CM Nos. 13286-87/06 and for Chinar CGHS, Sanjeev Ralli, for Jan Vikas, CGH Harish Gulati, Anindya Malhotra and A.K. Malhotra, DIG V.K. Tandon, Adv Sanjay Katyal, for the Appellant;

Judgement

Manmohan Sarin, J

CM No. 11864/2006 (by Vishrantika Coop. Group Housing Society)

CM No. 11866/2006 (by New Ekta Coop. Group Housing Society)

CM No. 2840/2007 (by M.V. Janhit Coop. Group Housing Society)

The applicants/Societies contend that they have a vital interest in directions that may be given in this writ petition and, therefore, they may be impleaded in this writ petition. We may note that these Cooperative Group Housing Societies have been present in these proceedings for quite sometime. The said applications are allowed and the societies are formally impleaded as parties. Liberty given to these societies to move the court for appropriate directions depending upon the stage of completion of construction of units in their respective societies. Petitioner is directed to file amended memo of parties on record.

CM No. 1637/2006 (by applicant-Shekhar Vashisht)

CM No. 6134/2006 (by members of Jai Bhagwan Coop. Group Housing Society)

CM Nos. 13286-13287/2006 (by members of Chinar Coop. Group Housing Society)

CM No. 15387/2007 (Association of Coop. Group Housing Society Affected Members (AOCAM))

CM 7157/2005 (by Nav Rachna Resident Welfare Assn.)

The above CMs. are moved by members of the respective Societies and an association of affected members of a society. These applicants are permitted to intervene in the matter.

WP(C)No. 10066/2004

1. On 16th June, 2004 petitioner i.e. Yogi Raj Krishna Cooperative Group Housing Society filed this petition contending that DDA had fixed cut-off date as 31.10.2003, for allotment of land to the societies shortlisted for that purpose. It was contended that much after the cut off date, respondent No. 2 Registrar of Cooperative Societies (RCS) forwarded a list of 35 societies to DDA i.e. respondent No. 1 for allotment of land. It was urged that most of the societies in said list were either non existent or totally defunct or decayed beyond retrieval. Notice of petition was issued to respondents for 30.08.2004 In the meanwhile, operation and effect of communication dated 25th March, 2004, whereby additional list of 35 societies had been furnished, was stayed.

2. On 31.8.2004, an application was filed by Awas Deep Society averring that any decision taken in the writ petition would affect the right of applicant. Notice of the said application was issued and after hearing, Awas Deep Society was made a party in the writ petition and arrayed as respondent. It was also ordered that till the next date no land be allotted to any society. Counter affidavit has been filed by respondent No. 2 i.e. Registrar, Cooperative Societies.

3. During the pendency of proceedings and on consideration of the material on record, it was felt that the matter required further probe and consideration on account of "Builders" having taken over Cooperative Societies. It was observed in order dated 22.11.2004, that societies were being sold and bought by builders in Delhi. Court expressed its deep concern over the matter and called for Vice Chairman, DDA and Registrar of Cooperative Societies to be present in person in court. Pursuant to said order Mr. M Gupta, Vice Chairman, DDA and Mr. S Gopal Sharma, Registrar Cooperative Societies, appeared in person in court and they informed that authorities were aware that after allotment of land to Cooperative Housing Societies in certain cases, the society as a whole is purchased by Builders and thereafter members are changed on the basis of en masse resignations, expulsions and new members inducted by charging premium at market rates, taking advantage of loopholes in the Rules and Regulations. The

court observed the need for formulation of a comprehensive policy with regard to allotment of land to Cooperative Societies taking into account the above factors. Union of India was also issued notice and has filed its affidavit. Learned Additional Solicitor General pointed out that an earnest attempt was being made to see that land allotted to societies was not hijacked by the builder mafia in Delhi and certain suggestions were placed on record.

4. On 05.04.2005, DDA was directed to file an affidavit pertaining to the categorization of societies i.e. list of those societies which underwent liquidation and now were seeking revival and allotment of land and the list of genuine societies which had approved list of members till 31.10.2003, from the office of Registrar Cooperative Societies, with their membership duly verified.

5. Considering that enormous amount of money that had been pumped in and invested by the influential Builder mafia and other vested interests, collusion and complicity of the staff and officers of RCS and others to hijack the societies, Director CBI was directed to constitute a special investigation team headed by an officer not below the rank of DIG with adequate staff to investigate the whole matter. On 31.8.2005, counsel appearing for CBI informed about outcome of preliminary investigation. CBI was directed to file a detailed affidavit in this regard. On 3.10.2005 CBI filed status report wherein it pointed out that out of 135 societies, 19 societies appeared to be genuine, the names of said societies had been given in Annexure A to the report. On the same date the names of those societies were ordered to be deleted from the list of 135 societies which were directed to be scanned by the CBI. Registrar Cooperative Societies was directed to verify the list of members in accordance with law.

6. During the pendency of proceedings, this court further noted that many societies had been allotted land after the year 2000. It was noted that as the price of the land started soaring in Delhi after the year 2000, this spurt in land prices led to unholy nexus between builders and powerful persons in various authorities. Societies which were hitherto defunct or had lost interest in allotment for one reason or another were sought to be revived by the office of the Registrar of Cooperative Societies and thereafter land was demanded from DDA on the basis of such recommendation. The court ordered DDA and Registrar of Cooperative Societies to give details of all the societies which were allotted land after the year 2000 and also directed them to produce the relevant files in court along with recommendations of allotment to DDA. CBI was directed to look into those allotments and also with regard to the members who had been allotted land. Mr. K C Mittal, Advocate, was appointed Amicus Curiae to assist the Court.

7. On 08.09.2006, this court noted that in all CBI was referred 252 societies for investigation. The aforesaid 252 societies were divided into two categories, 152 societies were those where land was yet to be allotted by DDA and the other 100 societies where land had already been allotted and construction was either complete or continuing. The CBI was directed to give priority in investigation to

the societies where construction was complete or was continuing. During the course of hearing of the matter, CBI had been submitting its report of investigation about the societies which were involved in the scam and in some of the cases they have already filed charge-sheet and in some cases they are awaiting sanction from the Competent Authority. In few cases it is reported that there is no criminal act attributed to the societies, some of the societies were found to have committed irregularities in procedures. The report submitted by CBI has been gone into by all concerned including the Amicus Curiae, who had been appointed to study and report if any Society had been wrongly given a clean chit.

In all, it has been found that there are 58 societies where construction is complete and the flats can be allotted after following the due procedure. The list of the Societies is as per Annexure I to this order.

8. We are of the view that members and newly inducted members having invested their hard earned money and have been waiting for long for allotment, it was necessary that the current impasse is ended at the earliest to prevent attrition of the flats by disuse.

9. We had vide our order of 5.3.2008 with the same objective in mind, constituted a Committee comprising Justice J.P. Singh (retired), Chairman, Mr. A.K. Malhotra, DIG, CBI, Mr. U.K. Worah, Registrar of Cooperative Societies, Mr. S.S. Gill, Director, Land (residential), DDA, to scrutinize the cases of each of these Societies to determine the members, who are eligible for allotment after verification of the membership considering the question of forged and forced resignations, expulsions etc. The Committee held in all about 22 sittings and submitted two interim reports and two status reports but the task of verification has not proceeded further.

10. We have perused the first and the second interim report as also the proceedings of the Committee that have taken place and its deliberations. The Committee has reported that the task before it is a gigantic one concerned with the verification and genuineness of eligibility of nearly 10,000 fake, bogus or genuine members comprising members of the societies under question. The Committee has also noticed that a good number of members have also transferred their allotments/flats. There was also difference of opinion surfacing within members of the Committee as regards the manner of verification to be done. Resultantly, the Chairman of the Committee Mr. Justice J.P. Singh (retired) desired to be relieved of the responsibility. We have also considered the comments of the Registrar of Cooperative Societies filed along with the Committee's report and also heard a cross section of counsel appearing before us namely, Mr. K.C. Mittal, Amicus Curiae, Mr. K.K. Rai, Sr. Advocate with Mr. Sanjay Pathak, Mr. R.N. Bhardwaj, Ms. Rekha Palli, Mr. Sobhit Mahant, Mr. J.M. Sabharwal, Sr. Advocate with Ms. Sujata Kashyap, Mr. Sanjeev Ralli, Mr. Fanish K. Jain, Mr. Harish Gulati for CBI and Mr. V.K. Tandon for Registrar of Cooperative Societies, Registrar Mr. U.K. Worah as also Mr. A.K. Malhotra, DIG, CBI and Mr.

Rakesh Munjal, Sr. Advocate on the most appropriate manner for verification of the eligible members for allotment of the flats in the societies where land has been allotted and construction is complete or nearing completion. We have also reviewed the progress so far made.

11. Having heard learned Counsel representing different view-points and considered the matter and the progress made so far, we are of the view that this gigantic task of verification needs to be performed by those, who are conversant with the requirements and Rules and can expeditiously deliver. We are conscious of the fact that it was on account of complicity of former staff and officers of Registrar of Cooperative Societies that the defunct and bogus societies were revived and passed on into the hands of builder mafia. Nevertheless, the same cannot be a ground not to utilize the available talent and expertise with the office of Registrar of Cooperative Societies and its staff for the verification especially when the same is also part of their statutory responsibilities. We are of the view that the apprehensions and misgivings, if any, on this account, can be redressed by creation of a mechanism where the verification carried out by the Registrar of Cooperative Societies and the Rule Committee is reviewed and approved by an independent Committee. We are, therefore, of the view that rather than entrusting the task of verification itself to the Committee constituted by us, it would be appropriate if the task is performed by the office of the Registrar, Cooperative Societies and the Rule 90 Committee and is reviewed by the Committee constituted by us. However, in view of the developments noted earlier, the Committee also requires to be re-constituted.

12. We accordingly re-constitute the Committee as under:

1. Justice R.C. Chopra (retired) - Chairman 2. Mr. A.K. Malhotra, DIG, CBI - Member 3. Mr. G.S. Meena, Addl. Secretary, Land and Building Deptt. - Member

The Committee is hereinafter referred to as Justice Chopra's Committee.

13. The verification of membership of the 58 Societies excluding Ashadeep CGHS, i.e. 57 Societies, listed in Annexure I, shall be carried out by the office of the Registrar of Cooperative Societies and approved by the Rule 90 Committee within time frame as agreed to during the hearing. The broad modalities and procedure to be followed is outlined as under:

(i) All the concerned Cooperative Societies shall furnish all the information/documents along with the lists of members in compliance of Schedule VII under the DCS Rules, 2007 to the office of Registrar within 15 days.

(ii) The concerned Cooperative Societies shall publish a public notice in two leading daily newspapers of NCT of Delhi, one each in English and Hindi inviting objections on the proposal regarding clearance of membership for allotment of flats/plots by draw of lots as approved by Registrar of Cooperative Societies.

(iii) Cooperative societies thereafter shall submit the revised proposal, if any, within 30 days of publication of public notice along with objections received and

comments thereon to the Registrar's office. The Registrar shall dispose the objections after hearing the parties/objectors, as necessary, within 30 days.

(iv) The scrutiny of the documents furnished shall thereafter be done by the Office of the Registrar of Cooperative Societies and deficiency memo, if any, will be issued to the society for removal of deficiencies within a period of 15 days.

(v) After receipt of complete documents from the societies, the documents will be scrutinized by the Office of the Registrar within 15 days.

(vi) At the time of verification, a duly authorized person of the concerned society shall be present along with requisite documents in original as per Clause 23 of Schedule VII.

(vii) After examining the office records of the proposal submitted by the Cooperative Society and documents, the matter shall be referred by the Office of Registrar to the committee constituted under Rule 90 of DCS Rules along with its recommendations also taking into account inputs by CBI for approval.

(viii) On receipt of recommendations, the Rule 90 Committee shall examine and review recommendations made by Registrar of Cooperative Societies and take a decision thereon preferably within 15 days of receipt.

(ix) Report of the Registrar of Cooperative Societies together with the Rule 90 Committee's approval, shall be placed before the Justice Chopra's Committee constituted by the Court comprising Justice R.C. Chopra (retired), Mr.A.K. Malhotra, DIG, CBI and Mr. G.S. Meena, Addl. Secretary, Land and Building Deptt. for consideration, review and approval. Justice Chopra's Committee shall consider the reports and recommendations made and in its discretion, may approve, modify, reject or remit the reports or any part thereof or any recommendation as made. It would also be open for the Justice Chopra's Committee to hear in its discretion any of the objectors or aggrieved persons and seek any further information/document or clarification that it may require and take a decision thereon with regard to the grievance of such a person, his entitlement, eligibility or otherwise.

14. Justice Chopra's Committee shall submit its report regarding the approval, rejection, modification, remission, rejection of the report of the Registrar and the Rules Committee within two months of having received the report and recommendations from the Registrar and Rules Committee. The Court upon receipt of the report of the Justice Chopra's Committee together with the recommendations from the Registrar of Cooperative Societies and the report of Rule 90 Committee shall pass suitable orders and direct the Registrar of Cooperative Societies to forward the list, as approved, to DDA for draw of lots.

15. We further direct that all the 57 Societies except the Naval Tech. Officers' Cooperative Group Housing Society, shall deposit a sum of Rs. 15,000/- each with the Registrar General of this Court within a week from today towards meeting the expenses of the Committee and carrying out the exercise of

verification including the fee of the Chairman and honorarium for the members of the Committee. The fee of Justice R.C. Chopra (retired) in the first instance, is fixed at Rs. 1.75 lacs and an honorarium of Rs. 40,000/- each for the other two members of the Committee.

Pursuant to the orders passed in WP(C) No. 21912/2005-Naval Technical Officer Group Housing Society v. Registrar of Cooperative Societies and Anr., the petitioner-Naval Technical Officer Group Housing Society had deposited Rs. 75,000/- with the Registrar General of this Court. Out of that amount, a sum of Rs. 60,000/- be returned to the Society retaining Rs. 15,000/-, which is the required deposit from each Society for the time being. The fee of the Chairman of the Committee and the honorarium to members be paid by the Registrar General out of the amounts received from the Societies.

The case of Asha Deep Cooperative Group Housing Society (registration No. 1290) would not be covered as the same has been the subject matter of a Writ and SLP decided by the Supreme Court.

16. We record our appreciation for the assistance rendered by the counsel, Amicus Curiae and Mr. U.K. Worah, Registrar of Cooperative Societies who adopted a constructive attitude in arriving at a consensus in respect of the modalities and procedures to be followed in paras 13 and 14 on this complex matter with varying interests to enable us to arrive at the appropriate procedure to be followed. The aforesaid order shall apply to the Societies listed in Annexure I. The Registry would list the writ petitions, if any, filed by the Societies, covered in Annexure or by any of the Members concerning the said Societies so that specific orders can be passed in those writ petitions in conformity with the order passed today.

Writ petition to be listed upon receipt of the report from Justice Chopra's Committee and earlier, if any directions or clarifications are required.