

HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) OF 4262/2007

Reserved on : 20th May, 2008

Date of Decision :- May 29th, 2008

Mr. Jarnail Singh
(since deceased through LRs.) Petitioner
! Through LR of Petitioner in person.

versus

\$ The Registrar of Cooperative Societies
& Ors. Respondents
Through Ms. Sujata Kashyap, Adv. for R-1.
Mr. Rajiv Bansal, Adv. for R-2.
Mr. Sanjeev Rajpal, Adv. for R-3.
Ms. Sumita Kapil, Standing
Counsel for R-4.

CORAM:

*** HON'BLE MR. JUSTICE MANMOHAN SARIN**

*** HON'BLE MR. JUSTICE MANMOHAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the digest? Yes.

J U D G M E N T

MANMOHAN, J :

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of an appropriate writ, order or direction to Respondent to provide the Petitioner an HIG flat (3 bedrooms with drawing and dinning) instead of MIG (II) flat which

has been illegally constructed on the stilts. The Petitioner has also prayed for a direction to the Respondents to identify, determine and demolish the illegal construction in the Respondent Society.

2. During the pendency of the present petition the original Petitioner unfortunately met with a road accident and passed away on 3rd January, 2008. Thereafter an application being CM No. 1061 of 2008 under Order 22 Rule 3 CPC was filed seeking substitution of the deceased Petitioner by his two legal heirs namely his wife and daughter. We see no difficulty in allowing this application and consequently the deceased's two legal heirs are substituted as Petitioners in the present writ petition.

3. On merits, the Petitioners' base their claim on a certified copy of the approved list of members sent by the Registrar of Cooperative Societies to DDA for allotment of flats. Since the original of the said list was not available and the certified copy produced by the Petitioner was quite illegible and it contained overwriting, we directed the Petitioner vide our order dated 13th March, 2008 to file an affidavit giving particulars of payments made for HIG flat. In pursuance to the said order, Petitioner had filed an affidavit dated 17th May, 2008 giving the details of payments made of an amount of Rs. 1,58,733/- approximately. Though no receipt of payment for an HIG flat has been annexed, two letters of the deceased Petitioner

dated 21st February, 1988 and 30th May, 1988 addressed to Respondent Cooperative Society have been filed. By way of these letters the deceased Petitioner had enclosed his medical record and sought allotment of a flat on the ground floor on account of his disability. In one of the letters the deceased Petitioner had requested for allotment “under HIG block or otherwise”.

4. The Respondent Cooperative Society has placed before us a Proceedings Register of the year 1988-89. In this Register the minutes of the Minutes of General Body Meeting dated 16th July, 1988 have been recorded. A perusal of these Minutes reveals that the draw of lots and allotment of flats had taken place at a General Body Meeting in which the Lieutenant Governor of Delhi along with other senior officials were present. The Minutes reveals that Flat No. 199 in MIG (II) category was allotted to the deceased Petitioner in the said draw of lots. The said proceedings were duly signed on 16th May, 1988 by the deceased Petitioner amongst other members of the Respondent Society.

5. We may mention that on a similar complaint filed by the deceased Petitioner, the Registrar of Cooperative Societies had appointed an Enquiry Officer vide his order dated 15th September, 2006. The relevant portions of the said enquiry report submitted by

Mr. K. Ramesh, Enquiry Officer are reproduced hereinbelow for ready reference :-

“The undersigned, Joint Director (Trg.), Directorate of Training (UTCS), Govt. of NCT of Delhi has been appointed as Inquiry Officer by the Joint Registrar (Co-op. societies) Office of the RCS, Delhi vide this order no. F.47 (163)/Coop/GH/NW/1506 dated 15.9.2006 to conduct an inquiry on the complaint received from Sh. Jarnail Singh R/o 199, Ghalib Apartment, Parwana Marg, Pitam Pura, New Delhi-34 against The Ghalib Memorial Coop. Group Housing Society, Pitampura, Delhi-34 for wrong allotment of MIG-II Flat instead of HIG and irregularities committed by the society in construction and allotment of flats.....

The Complainant was asked to clarify whether (a) he made the payment for an HIG or MIG-II Flat, (b) If he had made the payment for an HIG type what were the reasons for accepting the MIG-II Flat? and (c) as to when the first complaint in this regard was submitted by him. To this the complainant later filed photocopy of his first complaint dated 7.11.90 and photocopies of eight receipts of the payments made by him towards the cost of the flats. An overwriting has been noticed in the copy of receipt Sl. No. 071 dated 8.12.81 for Rs. 1,700/- towards payment of construction charges provided by the complainant where it appears that words MIG were changed to HIG. In no other documents filed by the complainant, any reference to the category of the flat, for which the payment has been made, has been found.....

IV Defence of Society:

On the other hand Sh. I.A. Farooqui, President of the society, during the course of the proceedings, appeared and filed the following documents:

- 1. Architect's Report dated 21.9.05*
- 2. Inspection Reports of Sh. C.R. Kashap, Asstt. Registrar (E)*
- 3. DDA's allotment list for category MIG-II type flats....*

During the course of the proceedings, the President of the Society filed some important relevant records like Proceedings Register showing proceedings of the allotments made on 16.7.88 when the inauguration was done by Hon'ble L.G. of Delhi and other VIPs were also present, the inspection report of Sh. C.P. Kashyap, Assistant Registrar (E) and the architect's report on the allegations made by the Complainant regarding irregularities committed in construction of flats. As per the architect's report and the inspection report, the construction was done as per the plan approved by DDA, Delhi Urban Arts Commission and MCD and it was never proposed/approved and constructed in the stilts. The ventilation/cross ventilation was designed and approved by the concerned sanctioning authorities. On the other hand, the flat No. 199 has been poorly maintained and also due to certain illegal encroachments by the flat owner the design of the flat has been affected adversely.....

V. Decision:

On the basis of records produced and submissions made by both the sides cumulatively and collectively it is abundantly clear that it was very much in the knowledge of the complainant that he was allotted an MIG-II flat in presence of officers of Govt. Department and he continued to make payments for an MIG-II Flat and the possession of MIG-II flat was handed over to him on 01.10.89 which the complainant accepted it and has since been physically occupying this flat. The question of any wrong allotment of MIG-II Flat instead of HIG Flat does not arise and any such claim in this regard is baseless and self created on the basis of records produced. As the plans and designs of construction of flat No. 199 was already approved by DDA, the Delhi Urban Arts Commission and the MCD and later on the basis of reports submitted by Sh. C.R. Kashyap, Astd. Registrar (E) and the society Architects M/s. Cambow Associates, I have firm reasons to believe that the poor living conditions as described by the complainant have arisen due to ill maintenance and illegal encroachments by the occupant of the house over a period of time. In

fact such encroachments are not only by the complaint, but also by other flat owners. It is not for me, but for the authorities to take note of the same and initiate appropriate action in this regard.”

6. In view of the Proceedings Register as well as the fact that there is no contemporaneous record showing that the deceased Petitioner had either paid or had been allotted the HIG flat, we have no other option but to concur with the report furnished by the Enquiry Officer, Mr. K. Ramesh. We were also informed at the Bar by Counsel for the Society that today there is no HIG flat available with the Respondent Society for allotment. Consequently, this prayer of the Petitioners is declined.

7. We may mention that vide our order dated 13th March, 2008 we had directed an inspection of the Petitioners' flat to be carried out by MCD and asked for a report as to whether the said flat was in accordance with the sanctioned plan or the municipal bylaws and also whether the said flat was fit for human habitation. In the status report we had asked the MCD to state the extent of unauthorized construction in the alleged 16 flats and in any other flat. A status report was filed by the MCD vide their affidavit dated 25th April, 2008. In the said affidavit it was inter alia stated as under:-

“3) That in this respect it is submitted that admittedly 16 flats were constructed without any permission and sanction. However, as per the direction in CWP No.

1398 of 1992 dated 1.10.1997 DDA was asked to raise the demand for regularization of the sixteen flats and the same is still pending with the DDA/Respondent No. 2.

In so far as status of the petitioner's flat i.e., No. 199, Galib Apartment, Pitampura is concerned, it is submitted that it cannot be verified whether the said flat is in accordance with sanctioned building plan or as per municipal bye laws as the answering respondent/MCD has not received the sanctioned building plan of the Society in question either from the concerned Society or the DDA despite the fact that letters were issued to the DDA as well as the concerned Society. Therefore, in the absence of sanctioned building plan it is not possible to state the status of the flat. The photocopy of the letter sent to the Respondent No. 2 & 3 and reply received are annexed herewith as Annexure-A & B.

4) That the flat of the petitioner i.e., flat No. 199 was inspected by the area officials and during inspection it has been noticed that the flat is not fit for human habitation as there was overflow of sewer within the flat. The structure stability cannot be checked out at this stage by the department.....”

8. On 29th April, 2008, we directed the DDA's counsel to hand over the file pertaining to the Respondent Cooperative Society to the Executive Engineer of MCD. The said Engineer then stated that he would carry out fresh inspection and file a comprehensive report with regard to condition of the flats. On 20th May, 2008 the second status report was handed over to us wherein it was stated that, *“It is further submitted that the dampness was noticed on walls and ceiling of the flat and sewer was found over flowing due to blockage of the sewer line. The photographs are attached herewith as Annexure-“B” colly.*

Therefore, from the foregoing inspection report it is amply clear that as per the building bye laws the said flat i.e., 199, Galib Apartment neither considered to be at ground floor nor as a stilt. The general condition of the flat is such that it is not habitable in nature....”

9. During the hearing we had put a specific query to the Executive Engineer as to whether it was a blocked sewer line that was responsible for the flat being not habitable. The Executive Engineer was of the prima facie opinion that it was the chocked sewer line that was primarily responsible for the mess that the flat was in. At this stage the learned Counsel for Respondent Society offered not only to repair the sewer line but also carry out repairs in the flat and remove all deficiencies at the cost of Society, but the deceased Petitioner's daughter was not willing for the same and she insisted that she was legally entitled to an HIG flat. The Respondent Society further offered that in case deceased Petitioner's daughter was not willing to reside in the MIG(II) flat and was desirous to dispose the same, they could help her in identifying a customer and get the market value realised. But the deceased Petitioner's daughter was not willing for the same.

10. Since we have already reached the conclusion that the deceased Petitioner's daughter is not entitled to an HIG flat, we hold the Respondent Society is bound by its offer that they would carry

out repairs and remove all deficiencies in the flat so that the same is certified to be habitable by the MCD. The Respondent Society would be held bound by their statement provided the Petitioners within a period of two months from the date of this order exercise this option and avails of the offer. The Respondent statutory authority would also take action in accordance with law if they find that there is any illegal or unauthorized construction in the Respondent Society. The writ petition is disposed of with the above directions and observations; the prayer of Petitioner for allotment of an HIG category flat is declined. Parties to bear their own costs.

[MANMOHAN]
Judge.

[MANMOHAN SARIN]
Judge.

May 29th, 2008
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