* **HIGH COURT OF DELHI**

% Reserved on : . 02.05.2008
Date of Decision: May 14th, 2008

\+ WP (C) 3385 OF 2008

Mr. J.L. Kapur ..... Petitioner
Through Mr. K.K. Rohtagi, Advocate.

Versus

Burmah Shell Co-operative Housing Society & Ors. ..... Respondents
Through None for Respondent No. 1.
Mr. Mohd. Sajid, Advocate for Respondent No. 2.
Ms. Madhu, Advocate for Respondent No. 3.

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 226/227 of the Constitution of India for issuance of a writ, order or direction for setting aside the order dated 10th January, 2008 of the Delhi

Cooperative Tribunal as well as the ex-parte arbitration award dated 2nd March, 2007 and for a direction to the Respondent No. 1 to offer a legally valid sale deed of flat No. 401 for registration in favour of the Petitioner.

2. Though there are multifarious litigations between the parties, the facts relevant to the present case are that on 12th October, 2006 the Respondent No. 1 Society raised a claim against the Petitioner and filed an arbitration petition under Section 70 of the Delhi Cooperative Societies Act 2007 praying for an award of Rs. 65,178/- (Rupees sixty five thousand one hundred seventy eight only) along with 18% interest on account of :-

(i) Sweeping
(ii) Cleaning of area
(iii) Maintenance of roads including zonal roads.
(iv) Maintenance of sewage lines.
(v) Maintenance of lawns and parks etc.

The Society had also prayed for a direction to the Petitioner to submit requisite stamp papers for execution of a sale deed.

3. On 5th January, 2007 the Deputy Registrar referred the disputes for arbitration. However, the Petitioner challenged the

reference order by way of an appeal before the Delhi Cooperative Tribunal on the ground that the reference order was passed without application of mind and without deciding whether NDMC ought to be a party and whether disputes sought to be raised by the Society could be referred for arbitration under the Delhi Cooperative Societies Act.

4. The Tribunal did not grant stay of the arbitration proceedings but the Petitioner did not appear before the Arbitrator and consequently the award was passed ex-parte against the Petitioner. Thereafter, the Petitioner filed a statutory appeal against the ex-parte award dated 2nd March, 2007. The Delhi Cooperative Tribunal disposed of both the appeals filed by the Petitioner by way of the impugned order dated 10th January, 2008. The Tribunal held that as NDMC had refused to take over the municipal services of the Cooperative Society, the Managing Committee of the Society was left with no alternative but to provide the external services at its own expense and to recover the same from its members, including the Petitioner.

5. Learned Counsel for the Petitioner states that there has been failure on the part of the Cooperative Society to hand over the external services to NDMC. He further submits that the actions of the Respondent Society are motivated in as much as its intention was to circumvent Section 94 of the Delhi Cooperative Societies Act 2003 so as to avoid the Respondent Society being wound up.

6. The Petitioner's second grievance is with regard to the sale deed offered to him for execution as according to him some of the terms incorporated therein were discriminatory as they were different from the terms which were offered to other similarly situated members of the Cooperative Society.

7. On a perusal of the impugned order, we find that the Respondent Society has been developed on private land which the NDMC claims is not within its territorial limits. Despite requests by the Cooperative Society, NDMC has refused to provide external municipal services to the Society and the Managing Committee has been left with no other alternative but to provide such services and to recover its costs from its members. It is pertinent to mention that

resolutions to this effect have been passed by the General Body of the Respondent Cooperative Society for providing at members cost external services such as sweeping, cleaning, maintenance of roads, sewerages, lawns, park etc. It is also not understood as to how the Petitioner could ask for NDMC to be made a party to an arbitration proceedings under Delhi Cooperative Societies Act 2003 when NDMC was not a party to any arbitration agreement. We further find that neither the grievance regarding Section 94 of the Delhi Cooperative Societies Act 2003 not being implemented, nor the issue of discriminatory terms of the sale deed were raised either in the arbitration proceedings or before the Delhi Cooperative Tribunal. In any event the grievance with regard to section 94 is misconceived on facts, in as much as we have already concluded that non-transfer of basic civic services to a local civic body not on account of failing of the Respondent Society. Further since the issue of discriminatory terms in the sale deed was not raised before the Arbitrator, the same cannot be permitted to be raised in these proceedings. However, keeping in view the well reasoned order passed by the Delhi Cooperative Tribunal and the finding of the Tribunal that in the past also the Petitioner had not paid the service

dues of the Respondent Society, we do not think that it is a fit case for interference in writ jurisdiction. Consequently, the present petition being devoid of merit is dismissed but with no order as to costs.

[MANMOHAN]
Judge.

[MANMOHAN SARIN]
Judge.

May 14th, 2008
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