

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 17.08.2009

+ **W.P.(C) 4256/2008**

MANJEET KAUR

..... Petitioner

- Versus -

REGISTRAR COOPERATIVE SOCIETY & ANR Respondents

Advocates who appeared in this case:-

For the Petitioners	: Mr Jayant Bhushan, Sr Advocate with Ms B. S. Mainee and Ms Meenu Mainee
For the Respondent No. 1	: Mr V. K. Tandon
For the Respondent No. 2	: Mr Sandeep Kumar

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

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

BADAR DURREZ AHMED, J (ORAL)

1. This is the fourth round of litigation. The first round was the writ petition being CWP 2170/1992, challenging the participation of 102 members of Jagriti Nagar Cooperative House Building Society in the election of the said society. The said 102 members, including the petitioner, were those members to whom allotment of plots had not been made at that point of time. They had been enrolled during the period 1984-85 and the last election of the society after their enrollment had been held in 1989 in which the said 102 members had participated.

A dispute had been raised under Section 60 of the Delhi Cooperative Societies Act, 1972, and the Joint Registrar, acting as an arbitrator, made an Award dated 01.08.1991, whereby he concluded that the said 102 persons were members of the society. An appeal against the said Award had also been preferred before the Delhi Cooperative Tribunal and the same came to be dismissed on 15.10.1991. The writ petition being CWP 2170/1992, came to be filed when a subsequent election was to be conducted and, once again, the competency of the 102 members to participate in the election was raised as an issue. By an order dated 07.05.1993, a Division Bench of this Court held that the Tribunal had already dismissed the appeal for exclusion of the 102 members from participating in the election and the order had not been challenged in accordance with the bye-laws of the society. Consequently, the said Division Bench dismissed the writ petition.

2. The second round of litigation was again in the shape of a writ petition being CWP 1808/1997, when the said 102 members came to this Court with the grievance that though they were members, their names were not forwarded to the Registrar of Cooperative Societies for allotment of plots. The learned Single Judge, before whom this matter came up, noted the history of the dispute between the parties culminating in the dismissal of the earlier writ petition, being CWP 2170/1992. The learned Single Judge, by an order dated 11.10.2000,

noted that once the High Court had dismissed the writ petition of the persons who were aggrieved by the order passed by the Arbitrator and the Tribunal, there was no reason for the Registrar not to send the names of the 102 members to the DDA for allotment of plots and to take necessary action including the issuance of a direction to the society to hold the draw of lots and to allot the respective plots in favour of the respective members. The learned Single Judge observed that the order passed by the High Court had become final vis-a-vis membership of the said 102 members. Consequently, he directed the Registrar of Cooperative Societies, DDA as well as the Cooperative Society to take appropriate steps to allot the plots in favour of the said 102 members.

3. Subsequently, demand notices were issued to the petitioner with regard to the payment of certain dues on 25.11.2002 and 12.03.2003. The said dues had been paid by the petitioner.

4. Since plots had been allotted to only 48 members out of the said 102 members and were not being allotted to the remaining, a contempt petition was filed before this Court by the aggrieved persons. This was the third round of litigation. The contempt petition being Contempt Case (C) No. 378/2005, came to be disposed of by the order dated 01.05.2006 passed by a learned Single Judge of this Court. He directed that Justice P. K. Bahri, a former judge of this Court, be appointed as a Court Nominee to scrutinize the claims of the persons who had not got

allotments out of the said list of 102 members. It was stated specifically in paragraph 12 of the said order dated 01.05.2006, that the list of members cleared by Justice P. K. Bahri would be accepted without demur by the Registrar of Cooperative Societies and the DDA would also act in pursuance of the said list cleared by Justice P. K. Bahri.

5. Thereafter, Justice P. K. Bahri submitted his report dated 26.10.2006. Insofar as the present petitioner is concerned, her case was considered at number 11 and it appears at internal pages 12, 13 and 14 of the said report. It appears that the petitioner was expelled from the membership of the society on the ground that her husband owned property in Delhi. The specific case was that her husband owned two properties, namely, K-28D, Saket, New Delhi and flat No. 103, Amit Cooperative Group Housing Society, Sector-13, Rohini, Delhi.

6. The case of the petitioner, however, is that, first of all, she has been living separately from her husband since a year after her marriage in 1980. Her husband's name is Sh. Sukhinder Pal Singh. Her brother shares the same initials but his name is Sh. Surinder Pal Singh. Secondly, the said flat No. 103 at Amit Cooperative Group Housing Society is not owned by her husband Sh. S. P. Singh but by her brother Sh. Virender Pal Singh. It has been incorrectly stated in Justice P. K. Bahri's report that the said flat No. 103 in Amit Cooperative Group

Housing Society stands in the name of her husband Sh. S. P. Singh. The said flat, in fact, stands in the name of the petitioner's brother Sh. Virender Pal Singh. This is clear from the certificate issued by Amit Cooperative Group Housing Society Ltd, dated 13.06.2003, a copy of which is placed at page 78 of the paper book. The certificate clearly indicates that Sh. Virender Pal Singh, son of Shri Sujan Singh, is the owner of flat No. 103, Amit Apartments Sector-13, Plot No. 32, Rohini, Delhi-85 and that he has been residing in the flat for a long time. There is also a copy of a letter placed at page 79 of the paper book, issued by Sh. Virender Pal Singh in favour of the Administrator of Jagriti Cooperative House Building Society Ltd, indicating that he has been residing in the said flat No. 103, and that he is the owner of the flat. He has, however, stated that his sister Smt. Manjeet Kaur (the petitioner herein) is also residing with him in the said flat.

7. The learned counsel for the petitioner also pointed out that although the petitioner's brother Sh. Surinder Pal Singh does not own flat No. 103 in Amit Cooperative Group Housing Society Ltd, he did own another flat in the said society.

8. Insofar as the property No. K-28D, Saket is concerned, the learned counsel for the petitioner submitted that this property belongs to another brother of the petitioner, whose name is Sh. Prit Pal Singh. In any event, it does not belong to her husband Sh. Sukhinder Pal

Singh. According to the learned counsel for the petitioner her husband does not own any other property in Delhi and, in any event, did not own the aforesaid properties at any point of time.

9. In these circumstances, after hearing the counsel for the parties, we are of the view that the report insofar as the petitioner's entitlement is concerned, contains errors which are contrary to the record. It is apparent that neither the petitioner nor the petitioner's husband owned any property in Delhi and particularly the said flat No. 103 at Amit Cooperative Group Housing Society and the flat No. K-28D at Saket. That being the case, the petitioner's expulsion from the membership of Jagriti Cooperative House Building Society cannot be sustained and she has to be reinstated as a member of the said society. The effect of this would be that she would be entitled to an allotment of a plot in the said society. This would, however, be subject to her filing an affidavit indicating that:-

- (i) she got married in the year 1980 and that, a year later, she and her husband separated and they have been living separately since then; and
- (ii) that neither she nor her husband owned any property in Delhi and particularly flat No. 103 at Amit Cooperative Group Housing Society and/or flat No. K-28D, Saket, New Delhi.

The said affidavit would be filed with the Administrator of Jagriti Cooperative House Building Society within one week and thereafter, the said society shall send her name to the Registrar of Cooperative Societies for completing other formalities. Thereafter, the same shall be forwarded to the DDA for draw of lots and allotment of plot.

With these directions, the writ petition stands disposed of.

No order as to costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

AUGUST 17, 2009
SR