

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 16.11.2009

+ **W.P.(C) 9224/2009**

KRISHAN KANWAR

..... Petitioner

- Versus -

**VRINDAVAN CO-OPERATIVE GROUP
HOUSING SOCIETY LTD & ANR**

..... Respondents

Advocates who appeared in this case:-

For the Petitioner	: Mr M. Tarique Siddiqui
For the Respondent No.1	: Ms Inderjeet Sidhu
For the Respondent No.2	: Mr Sunil Dutt Salwan
For the Respondent No.3	: Mr Akshay Chandra

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. The petitioner has made the following prayers in this writ petition:-

“a) Directing the respondents to regularize the draw of lots for allotment of flats held on 20.05.2007 by respondent society, and handing over of possession of “flat No. A-48” in respondent society in compliance of orders dated 20.03.2007 and 29.05.2007 of this Hon’ble Court in WP(C) 1525-26/2006.

b) Declaring the draw of lots held by DDA on 28.05.2008 (after the draw of lots held by the respondent society on 20.05.2007 in compliance of order 20.03.2007) as irregular and void; and contrary to orders dated 20.03.2007 and 29.05.2007 of this Hon'ble Court in WP(C) 1525-26/2006.

c) Pass any other order(s) as this Hon'ble Court may deem fit and proper.

The petitioner is a subsequent purchaser of the flat in question, that is, flat No. A-48, Vrindavan Cooperative Group Housing Society, Plot No. 1, Sector-VI, Dwarka. The original allottee was one Mr N. Nagarajan. The said Mr N. Nagarajan and another person by the name of Mr Mohd. Ayub had filed a writ petition being WP(C) 1525-26/2006 before this Court requesting for allotment of flats in the said society. By an order/ judgment dated 20.03.2007, a Division Bench of this Court was pleased to direct that since all the dues had been paid by the petitioners, who were the only two allottees left in respect of three available flats and since all the queries raised by the respondent No. 1 therein had been satisfactorily answered, there was no reason for not allotting two flats to the petitioners. Accordingly, the Division Bench directed the respondent society to allot the flats to the petitioners therein and all the necessary formalities with regard to the clearance of names were to be completed by the Registrar of Cooperative Societies not later than 15.05.2007. It was further directed that the society would be free to allot the concerned flats to the petitioners on 16.05.2007.

2. Subsequent to the said directions given in the said writ petition, a draw of lots for the flats was held on 20.05.2007 at 11:30 am in the premises of the said society in the presence of the said Mr N. Nagarajan and Mr Mohd. Ayub and other society members. The draw of lots was in respect of two flats out of the three which were to be allotted. Upon conclusion of the draw of lots, flat No. A-48 was allotted to Mr N. Nagarajan and flat No. A-08 was allotted to Dr Mohd. Ayub. This fact is borne out from the letter of the respondent society dated 22.05.2007, a copy of which is annexed as annexure A-6 to the writ petition. The said letter also indicated that after allotment of the two flats, one flat, namely, flat No. B-47 remained vacant.

3. Subsequently, the Registrar of Cooperative Societies had filed an application being CM 7648/2007 in the said writ petition seeking certain directions. The directions were being sought because the allotments had been directed without there being a prior clearance of membership for the draw of lots. The Division Bench hearing the matter directed that the clearance for the petitioners therein (i.e Dr Mohd. Ayub and Mr N. Nagarajan) be granted on the same basis as was done in the case of other members. However, the same would be subject to further directions which were given to the society to make available the completion certificate within a specified period. As the provisional certificate stood furnished, possession was directed to be

handed over to the petitioners therein (i.e Dr Mohd. Ayub and Mr N. Nagarajan), subject to the condition of the society providing the completion certificate within the specified time. Consequent to the said direction, the respondent society delivered the possession of flat No. A-48 to Mr N. Nagarajan vide the possession letter dated 12.07.2007, a copy whereof is annexed as Annexure P-10 to the writ petition. On the same date, that is, on 12.07.2007 the present petitioner purchased the said flat from the original allottee, Mr N. Nagarajan. The petitioner then applied for a no-objection certificate which the respondent society kept pending, awaiting the approval from the Delhi Development Authority with regard to the regularization of the draw of lots.

4. The stand of the Delhi Development Authority is apparent from the letter dated 17.08.2007 which was issued by the Delhi Development Authority to the Secretary/ President, Vrindavan CGHS Limited. The said letter was in response to the society's letter dated 06.07.2007 regarding regularization of the draw of lots for allotment of flats held by the society. By virtue of the said letter dated 17.08.2007 the Delhi Development Authority made it clear that the draw of lots for allotment of the flats to the members, held by the Managing Committee of the respondent society was in compliance of the orders of this Court in the said writ petition No. 1525-26/2006. In that connection, the Delhi Development Authority informed the respondent society that the

competent authority had been pleased to regularize the draw of lots held on 20.05.2007 by the society for allotment of flats to the members, subject to payment of regularization charges of Rs 2,000/- @ Rs 1,000/- per flat. It was also indicated that the members would, however, be allowed to occupy the flats only after obtaining the provisional occupancy certificate. Apparently, the Delhi Development Authority was not aware of the subsequent order of this Court dated 29.05.2007 whereby this Court had directed delivery of possession.

5. The only issue that remains is with regard to regularization of the allotment of flat No. A-48 in the name of Mr N. Nagarajan and subsequently in the name of the present petitioner, being the subsequent purchaser. We are informed that the amount of Rs 2,000/- stands paid to the Delhi Development Authority by way of regularization charges. There is, therefore, no impediment in directing that the allotment through the draw of lots held on 20.05.2007 stands regularized as also does the possession in respect of flat No. A-48 which is already with the petitioner.

6. Prayer (b) of the writ petition pertains to the second draw of lots which, in view of the aforesaid circumstances, becomes irrelevant and inconsequential. We may mention in passing that in the second draw of lots, Mr N. Nagarajan had been allotted flat No. B-47. Since the

second draw of lots held on 28.05.2007 is of no consequence, the allotment with regard to flat No. B-47 stands annulled and the flat is, therefore, vacant. The first draw of lots dated 20.05.2007 stands regularized and the allotment of flat No. A-48 stands confirmed in favour of the original allottee and, consequently, the petitioner.

With these directions, the writ petition stands disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

November 16, 2009
SR