

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 26.08.2009

+ W.P.(C) 5622/2007

REHABILITATION MINISTRY EMPLOYEES
COOPERATIVE HOUSE BUILDING SOCIETY LTD. Petitioner

versus

REGISTRAR COOPERATIVE SOCIETIES & ANR Respondent

Advocates who appeared in this case:-

For the Petitioner	: Mr. Rakesh Munjal, Sr. Advocate with Ms. Aprajita Mukherjee, Advocate.
For the Respondent	: Ms. Deepa Tiwari on behalf of Ms. Sujata Kashyap, Advocate for respondent no. 1-RCS. Mr. Satyavir Singh, Inspector, O/o RCS. Ms. Shawana for Ms. Monika Garg, Advocate for respondent no. 2-UOI.

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 the Digest?

BADAR DURREZ AHMED, J (oral)

1. This writ petition is directed against the order dated 13.07.2009 passed by the Registrar of Co-operative Societies, whereby the draw-of-lots held on 28.04.2007 by the petitioner society in respect of four plots was declared to be null and void. The writ petition is also directed against the show-cause notice dated 13.07.2007 issued by the Registrar of Co-operative Societies to the petitioner society in respect of the said draw-of-lots held on 28.04.2007. The Managing Committee of the petitioner society has been

asked to show cause as to why it should not be superseded for having allegedly contravening the provisions of Section 77 of the Delhi Co-operative Societies Act, 2003. The controversy in this writ petition centers around the question as to who is to carry out the draw-of-lots? Whether it is the society or the lessor?

2. As per the allotment letter dated 07/09.06.1982, it has been indicated that after completion of development of the land to the satisfaction of the Chief Settlement Commissioner, a perpetual lease would be granted to the society in respect of the residential plots carved out of the land. It is also stipulated that the society shall thereafter be required to make individual allotment to its members, subject to the verification of the membership of each member by the Registrar of Co-operative Societies. Thereafter, a perpetual sub-lease would be issued to the individual member on receipt of the allotment proposal accompanied by the verification report from the Registrar of Co-operative Societies.

3. Subsequent to the said allotment letter, a perpetual lease was executed by the President of India in favour of the petitioner society on 28.08.1989. The lease was in respect of a piece of land measuring 216 Bighas and 8 Biswas or thereabouts, situated at Villages Sarai Sahji, Begumpur and Patti Hameed Sarai, adjacent to Malviya Nagar Colony, New Delhi.

4. Clause II(5)(a) of the said perpetual lease indicated that the lessee, that is, the petitioner had to sub-lease one residential plot to each of its members as existing on 01.09.1980 and in accordance with the prevailing bye-laws of the society and on such terms and conditions as the lessor, in his absolute discretion, may direct. The membership of the persons in favour of

whom the sub-lease was to be executed would be approved by the Registrar of Co-operative Societies and/or by the Chief Settlement Commissioner.

5. It appears that on 17.02.1984, the Registrar of Co-operative Societies granted clearance of membership in respect of 146 members. At serial no. 144, the name of Mr. R.S. Mittal appears. He is one of the persons in respect of whom the draw-of-lots was carried out on 28.04.2007. Thereafter, the Registrar of Co-operative Societies granted clearance to a further 45 members by his letter dated 29.03.1984. At serial no. 45, the name of Mr. Daryao Singh appears. On 01.12.1984, clearance was given to a further 48 members by the Registrar of Co-operative Societies. The name of Smt. K.K. Sharma appears at serial no. 48. On 08.04.1994, transfer and clearance in respect of the membership which was hitherto held by Mr. Puran Chand, membership no. 469, in favour of his widow, Smt. Karuna Wati, was approved by the Registrar of Co-operative Societies. Thus, in this manner the Registrar of Co-operative Societies granted clearance to the membership of Mr. R.S. Mittal, Mr. Daryao Singh, Smt. K.K. Sharma and Smt. Karuna Wati. It appears that Smt. Karuna Wati and Mr. Daryao Singh have since passed away. Their legal heirs will have to make representations before the respondent no. 1, who would process the same in accordance with law. Thus, insofar as the present writ petition is concerned, we are left to consider the cases of Mr. R.S. Mittal and Smt. K.K. Sharma.

6. On 08.04.2007, the general body of the petitioner society decided to conduct the draw-of-lots and allot the plots to the aforesaid four members. On 17.04.2007, information with regard to the conduct of the draw-of-lots to be held on 28.04.2007 was sent to the Registrar of Co-operative Societies

with the request to appoint an Observer for the same. The Registrar of Co-operative Societies, however, did not respond to the same nor was any Observer appointed. Consequently, the draw-of-lots was conducted by the petitioner society on 28.04.2007 in the absence of the Observer. On 07.06.2007, the Registrar of Co-operative Societies, on receiving information from the petitioner society with regard to the conduct of the draw-of-lots, sent a show-cause notice to the petitioner society indicating that the draw-of-lots was illegal inasmuch as it contravened the provisions of Section 77 of the Delhi Co-operative Societies Act, 2003 wherein the draw-of-lots was to be conducted by the lessor of the land. The petitioner society furnished a reply dated 14.06.2007 to the said show-cause notice. However, the Registrar of Co-operative Societies was not impressed by the reply and passed an order dated 13.07.2007 declaring that the draw-of-lots was null and void.

7. The order dated 13.07.2007 whereby the draw-of-lots was declared to be null and void does not contain any reasons. On the same date, that is, on 13.07.2007, the Registrar of Co-operative Societies issued a show-cause notice to the petitioner society requiring it to show cause as to why the present Managing Committee should not be superceded and an administrator should not be appointed in view of the fact that it had conducted the draw-of-lots on 28.04.2007 on its own, in alleged violation of Section 77 of the DCS Act, 2003.

8. It is at this stage that the petitioner approached this court by way of this writ petition. On 03.08.2007, when this matter was taken up by this court, it granted an interim order staying further action pursuant to the said

show-cause notice dated 13.07.2007. The matter has rested there.

9. The learned counsel for the petitioner submitted that in terms of the letter of allotment and the perpetual lease, the petitioner society conducted the draw-of-lots because it was under the impression that the draw-of-lots was to be conducted by the society itself and not by the lessor. He also drew our attention to the Government of India's letter dated 27.07.2007 which is addressed to the Office of the Registrar of Co-operative Societies and pertains to the draw-of-lots in alleged violation of Section 77 of the said Act. In paragraph 2 of the said letter, the Government of India, through the Deputy Land and Development Officer has made it clear that as per the terms of allotment letter dated 09.06.1982, the society was required to make individual allotment to its members, subject to verification of the membership of each individual member by the Registrar of Co-operative Societies. It further clarified that a perpetual sub-lease was to be issued to the individual member on receipt of the allotment proposal accompanied by the verification report from the Registrar of Co-operative Societies. It specifically clarified that the terms of the allotment letter as well as the lease deed do not provide that the draw-of-lots was to be conducted by the lessor. The said letter also noted that in the past, there had been no objection from the Office of the Registrar of Co-operative Societies on draw-of-lots in the absence of the lessor. By virtue of the said letter dated 27.07.2007, the Deputy Land and Development Officer, however, submitted that since it has now been pointed out that the draw-of-lots was allegedly in violation of the provisions of the Section 77 of the said Act, the Registrar of Co-operative Societies may clarify whether the draw-of-lots is required to be conducted

by the lessor even though there is no such provision in the allotment letter or in the lease deed and all previous draws were not conducted by the lessor.

10. A short affidavit dated 04.08.2009 has been filed by the Registrar of Co-operative Societies. The short affidavit has been filed pursuant to this court's order dated 29.01.2009, wherein the learned counsel for the Registrar of Co-operative Societies had indicated that a decision would be taken with regard to the confirmation concerning the employment status of the said four members. This verification was necessary because it is only the employees of the Rehabilitation Department who could become members and be allotted plots in the petitioner society. As per the short affidavit by the respondent no. 1, it is indicated that the membership of Sh. R.S. Mittal (membership no. 603) and Smt. K.K. Sharma (membership no. 707) have been cleared by the competent authority on draw-of-lots for allotment of plots in the Rehabilitation Ministry Employees Cooperative House Building Society Limited (the petitioner society). The short affidavit also indicates that the other two members, namely, Smt. Karuna Wati and Sh. Daryao Singh have expired and their legal heirs have claimed the membership but they have not submitted the requisite documents. That process is underway.

11. In view of the foregoing circumstances, we are of the opinion that the allotment letter and the lease did not provide for any condition that the draw-of-lots was to be conducted by the lessor. However, Section 77 of the DCS Act, 2003 which came into force only on 01.04.2005 does indicate that the draw-of-lots is to be carried on by the lessor. There is, however, a question as to whether this provision would apply or be overridden by the conditions of the allotment letter when read with the lease in view of the provisions of

the Government Grants Act, 1895. We are not going into that issue inasmuch as the petitioner as well as the respondent no. 1 would be satisfied if the draw-of-lots is now conducted by the respondent no. 2 with respect to the two members who stand cleared namely, Mr. R.S. Mittal and Smt.K.K. Sharma.

12. Consequently, we dispose of this writ petition with the direction that a fresh draw-of-lots in respect of the two members named above be carried out by the respondent no. 2 within two weeks and after such draw-of-lots is conducted, the sub-lease be executed in favour of the said members within four weeks. Insofar as the show-cause notice dated 13.07.2007 is concerned, we are of the view that the action taken by the petitioner society was bona fide and probably in accordance with the specific terms and conditions of the allotment letter and the perpetual lease. This would be apparent from the fact that they had also informed the Registrar of Co-operative Societies prior to the conduct of draw-of-lots on 24.08.2007. In this respect, we do not feel it to be necessary to pursue the show-cause notice any further and to obviate any such possibility, we quash the same.

The writ petition stands disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

AUGUST 26, 2009
kks