

**THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 28.10.2009

+ **W.P.(C) 6409/2008**

**DELHI DAYALBAGH COOP. HOUSE  
BUILDING SOCIETY**

..... Petitioner

- versus-

**DEPUTY REGISTRAR, REGISTRAR OF  
COOPERATIVE SOCIETIES & ORS**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Rameshwar Kumar Gupta with Mr S.P. Juneja,  
Advocates

For the Respondent : Mr Amiet Andlay, Advocate for respondent no. 1  
Mr J.N. Gupta, Advocate for respondent no. 2

**CORAM:-**

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the 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 writ petition has been filed against the order dated 26.02.2008 passed by the Delhi Cooperative Tribunal in Rev. P. No. 78/2008 as well as in the Appeal No. 226/2005-DCT which were

heard together as common issues were involved.

2. The respondent Society was given a piece of land by the then Delhi Administration by acquiring it under the provisions of the Land Acquisition Act, 1894 by way of an agreement under section 41 of the said Act. The land was acquired for the Society for construction of houses for its members and the agreement incorporated certain conditions to that effect. Thereafter, plots were carved out for its members and the same were allotted by the Society to its members by way of individual sale deeds executed between the Society and its members. The plot in question is plot no. A-2 in the said Society which was allotted to Lt Col. (Retd) Gurbans Singh and the sale deed was executed by the Society in favour of the said Lt Col. Gurbans Singh. Thereafter, a house was built on the plot by the family of Sh Gurbans Singh. Upon his death, the property was inherited by six persons. We may note at this juncture that five of them had withdrawn their names from the appeal as also from the revision petition. It is only one of the heirs, namely, Sh Paramjit Singh, who has contested this matter throughout.

2. The successors-in-interest of late Sh Gurbans Singh, decided to sell the property to one Ms Kirti Satsangi for which they executed a General Power of Attorney and Agreement to Sell and other usual documents. According to the respondent no. 2 (Sh Paramjit Singh), the successors-in-interest of late Sh Gurbans Singh, had sent

intimation to the Society about the intended transfer of property to Ms Kirti Satsangi, once, in the year 2003 and, again, in 2004. Since no objection was received from the Society, the transaction was completed. On the other hand, it is contended on behalf of the Society that no such intimation was received by the Society and, therefore, there was no question of there being any objection on record. According to the petitioner-Society, the transfer in favour of Ms Kirti Satsangi was in clear violation of the terms and conditions of the sale deed executed between the Society and the original member, namely, late Sh Gurbans Singh as also of Bye Law No. 51 of the Society.

3. According to the petitioner-Society, a dispute had arisen within the ambit of the provisions of the Delhi Cooperative Societies Act, 1972, therefore, a petition was filed under section 60 of the said Act wherein the following disputes were raised:-

“a) Whether the defendants can enter into an “Agreement to Sell” in violation of the conditions contemplated under the Government Grant Act as well as Sale Deed?

b) Whether under the facts and circumstances of the case the defendants are competent to sell the plot in question to any person, other than the claimant society or through the society to its members?

c) Whether the defendants have acted in conformity with the terms and conditions of the Sale Deed 03.02.1968?”

4. The petitioner-Society also prayed that it should be held that the said plot could not be sold to anyone except to the petitioner-Society

or through the Society to its eligible members.

5. The disputes were referred to arbitration by the Registrar of Cooperative Societies and the Arbitrator made his award on 17.10.2005. The operative portion of the award reads as under:-

“In view of the above, it is held that the defendants have no right to sell the property at Plot No.A-2, Soami Nagar, New Delhi without prior permission of the Society and it is further held that defendants have violated the Society’s bye-laws and the agreement executed by the Society with the Government on 13.05.1955. Any sale done by the defendants on the basis of Agreement to Sell is void and in violation of the laws as stated herein above.” (emphasis supplied)

6. It is against this award that the appeal was filed before the Tribunal. The revision petition was filed against the reference order passed by the Registrar of Cooperative Societies. Both the revision petition and the appeal were taken up together as they raised common issues with regard to the jurisdiction of the Arbitrator to go into the question of validity of the sale. It is apparent from the operative portion of the award extracted above that the Arbitrator has clearly taken the view that any sale on the basis of the Agreement to Sell was void and in violation of the laws. In other words, the Arbitrator has adjudicated upon the validity of the sale which was clearly outside his jurisdiction. It is in this context that the Appellate Tribunal, while setting aside the award, observed as under:-

“..... What is being asked in this appeal by the society is the cancellation of the validity and legally executed documents like GPA and agreement to sell and this is not a subject which is covered under the provisions

of the DCS Act and Rules. Such documents have to be challenged in a civil court having jurisdiction and competence and under provisions of the DCS Act, 2008. Similarly, if there is any violation of the society's agreement under the Land Acquisition Act with the Govt. society to seek remedy has to seek remedy under that Act and not under the Coop. law.

We are, therefore, of the opinion that the Dy. Registrar's order dated 7.2.2005 alongwith his corrigendum dated 18.4.2005 admitting the dispute filed by the society is legally infirm and it deserves to be set aside. We order accordingly. Once this order admitting the dispute is set aside, the award of the arbitrator given by him on 17.10.2005 automatically gets set aside. It may be added that the arbitrator also does not have the jurisdiction to give the kind of civil relief which he has awarded in his award. For these reasons his award dated 17.10.2005 is without jurisdiction and we, therefore, set it aside.

In conclusion the revision petition as well as the appeal and the Dy. Registrar's order dated 02.02.2005 (along with its corrigendum dated 08.04.2005) and the arbitrator's award dated 17.10.2005 are hereby set aside.”  
(emphasis supplied)

7. In this context, we see no infirmity in the order passed by the Tribunal and, particularly, in the finding that the validity of the documents could only be challenged in a civil court having jurisdiction and not under the provisions of the said Act.

8. We would also like to point out another difficulty with this case. Throughout the proceedings, the purchaser, i.e., Ms Kirti Satsangi has not been made a party to the proceedings. If there is a finding such as the one given by the Arbitrator that the sale is invalid, it definitely affects the purchaser's rights. The purchaser would be a necessary party in such proceedings where the transaction is sought to

be set aside. The fact that the purchaser has not been made a party to any of the proceedings - below as well as in this writ petition is also a circumstance which goes against the petitioner.

9. We are clearly of the view that the Arbitrator had exceeded his jurisdiction in adjudicating upon the validity of the sale. This has been rightly recognized by the Tribunal and it is for this reason that we see no ground to interfere with the impugned order.

10. The writ petition is dismissed. We, however, make it clear that it would be open to the petitioner-Society to take recourse of the legal remedies available to it in accordance with law by filing appropriate proceedings before a Civil Court.

**BADAR DURREZ AHMED, J**

**VEENA BIRBAL, J**

**OCTOBER 28, 2009**  
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