

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.09.2009

+ **W.P.(C) 11641/2009**

SULTAN MOHD. SIDDIQUE Petitioner

- versus -

**GHALIB MEMORIAL COOP GROUP
HOUSE BUILDING SOCIETY & ANR.** Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Raman Gandhi, Advocate.
For the Respondent : Ms. Sangeeta Chandra, Advocate for
respondent no. 2-DDA.

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. In this petition, the prayer sought is that a Mandamus be issued directing the respondent no. 2-Delhi Development Authority to allot an MIG-I category flat to the petitioner. The petitioner had earlier filed a claim petition under section 60 of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as 'the said Act'). The said claim petition was admitted by the Registrar of Cooperative Societies by an order dated 14.08.1997 and a dispute was referred for

adjudication under section 61 of the said Act. The claim made by the petitioner was as under:-

- “1) Direct the society to allot either MIG.I or MIG.II flat to the claimant setting the amount deposited by him to the society
- 2) Issued directions to the respondent/society to compensate monetary loss of interest on the capital amount paid to this society for the construction of the flats and for the delay incurred in handing over the possession of the flat to the claimant;
- 3) Lastly to direct the society to refund the amount deposited by him alongwith the 18% interest from the date of deposit till the final determination of the arbitration proceedings. Pass order to the cost of the proceedings in favour of the claimant.”

2. From the above, it is apparent that the petitioner claimed that either an MIG-I or an MIG-II flat be allotted to him. He also prayed for compensation of monetary loss of interest on the capital amount paid to the society for the construction of the flats and for the delay in the handing over of possession of the flat. A claim was also made that the society be directed to refund the amount deposited by him along with interest @ 18% from the date of deposit till the final determination of the arbitration proceedings.

3. As would be apparent from the award dated 24.02.2000 passed by the Arbitrator, the respondent society in its written statement stated that no flat was available with the society and, therefore, the reference could not be made. It also took the plea that the dispute was barred by limitation. On behalf of the petitioner, it had been argued that there

were financial irregularities as a result of which flats were illegally allotted to some of the members and to some non-members also. It is on the basis of this that the petitioner sought allotment of the flat. However, in the alternative, the petitioner also took the plea that in case no flat is available, the money deposited by him should be refunded along with interest @ 18% in addition to the amount of compensation as the claimant had been deprived of his rights by the office bearers of the society. After considering the arguments advanced by the parties, the learned Arbitrator noted that as per the list submitted by the society in the office of the Registrar of Cooperative Societies, the name of the petitioner had been shown as being amongst the defaulting members and, therefore, his name had not been considered for allotment of flat. The Arbitrator also observed that the petitioner sought allotment of either an MIG-I or an MIG-II category flat which, according to the learned Arbitrator, went to show that the claimant was not even aware of the category of the flat which had been opted by him.

4. However, in view of the fact that no flat was available with the society for the reasons indicated in the award itself, the Arbitrator granted the alternative prayer of the petitioner by directing refund of the entire amount deposited by him with the respondent society along with interest @ 18% p.a. The Arbitrator also directed that the petitioner would not be responsible for refund of the loan amount

raised by the society on his behalf and that it would entirely be the responsibility of the society to return the loan amount to the Delhi Cooperative Housing Society Limited. By virtue of the award, it was also indicated that the petitioner would not be charged any administrative expenses by the society having regard to the facts and circumstances of the case.

5. The petitioner accepted the award and went in for execution. However, there was some error in the Recovery Certificate whereby the petitioner preferred an appeal before the Delhi Cooperative Tribunal. The said Tribunal, after noting that the appeal was prima facie time barred inasmuch as the award had been made in the year 2000 and the appeal had been preferred in the year 2004, however, directed that the petitioner should approach the Registrar of Cooperative Societies for correction of the error in the Recovery Certificate because the Registrar of Cooperative Societies, being the issuing authority, was also competent to make any corrections at any stage of the proceedings. The appeal was, however, rejected. Thereafter, the petitioner did not bother to get the Recovery Certificate corrected from the Registrar of Cooperative Societies but started a new line of correspondence with the respondent no. 2-DDA seeking allotment of a flat.

6. In view of the aforesaid facts and circumstances, we do not see as to how the petitioner could have filed this writ petition at this

belated stage. First of all, he accepted the award which directed refund of the amount deposited by him along with 18% interest. He then went for execution of the said award but since there was a discrepancy in the amount sought to be recovered as per the Recovery Certificate, he preferred an appeal and that, too, belatedly. The petitioner, even after having received directions from the Tribunal that he should approach the Registrar of Cooperative Societies for having the Recovery Certificate corrected, did not do so.

7. We may also note that the draw-of-lots had been conducted by the respondent society way back in 16.07.1988 and that the petitioner had preferred his claim, much later, some time in 1995 and the dispute was referred in 1997.

8. It is clear that the petitioner had made an alternative prayer before the Arbitrator that if there was no flat available, the amount be refunded to him. The Arbitrator passed an order in accordance with this request and granted his alternative prayer. There was a mistake in the figures mentioned in the Recovery Certificate which the petitioner sought rectification of by filing an appeal before the Tribunal. The Tribunal rejected the appeal directing the petitioner to approach the Registrar of Cooperative Societies to have the same corrected as it was within the powers of the latter to do so. The petitioner did not approach the Registrar of Cooperative Societies for having the Recovery Certificate corrected. In these circumstances, there is no

question of the petitioner seeking any allotment of the flat in the said society after having accepted the fact that there was no flat available and having accepted the alternative relief of refund along with 18% interest.

9. It is pertinent to note that the petitioner had also approached the DDA through a query under the Right to Information Act and the DDA responded by saying that the dispute was entirely between the petitioner and the society and the DDA would not be in a position to make any commitment with regard to allotment of a flat.

10. We would also like to observe that in the body of the petition, the petitioner has not directly stated that he had sought refund of the amount deposited as an alternative prayer. He has referred to the award passed by the Arbitrator, in paragraph 6, in a manner as if the petitioner had prayed for a flat but the Arbitrator had granted him only a refund of the deposit along with interest. The petitioner did not mention that he had, in fact, alternatively prayed that in case there was no flat available, the amount be refunded to him along with interest @ 18%. The petitioner also did not disclose in the petition that he was not considered for allotment of a flat because his name appeared in the list of defaulting members. These facts can only be gleaned after examining the award and other documents in detail. Consequently, we also feel that the petitioner has not been forthright in the manner he has approached this court for a discretionary relief.

11. For all these reasons, this writ petition has no merit. This petition is also highly belated. It is dismissed with costs which we quantify at Rs.20,000/-.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

SEPTEMBER 14, 2009
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