

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.08.2009

+ **W.P.(C) 6533/2007**

**BHATNAGAR'S COOP.HOUSE
BUILDING SOCIETY LTD**

..... Petitioner

- Versus -

SHRI TARUN BHATNAGAR & ORS

..... Respondents

Advocates who appeared in this case:-

For the Petitioner	: Mr Raman Kapur
For the Respondent No. 1	: Mr Rohit K. Modi
For the Respondent No. 2	: Ms Sujata Kashyap

AND

+ **W.P.(C) 9103/2007**

TARUN BHATNAGAR

..... Petitioner

- Versus -

**BHATNAGAR COOP. HOUSE
BUILDING SOCIETY LTD & ORS**

..... Respondents

Advocates who appeared in this case:-

For the Petitioner	: Mr Rohit K. Modi
For the Respondent No. 1	: Mr Raman Kapur
For the Respondent No.3	: Mr V. K. Tandon

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. By an order dated 12.05.2009, the parties had been referred to the Delhi High Court Mediation and Conciliation Centre for settlement. The report of the mediators, dated 18.08.2009, indicates that no compromise could be arrived at and hence the matter was sent back to this Court.

2. Both the writ petitions are taken up for hearing together. In WP(C) 6533/2007, filed on behalf of Bhatnagar's Cooperative House Building Society Limited, the grievance is against the order dated 18.12.2006, passed by the Delhi Cooperative Tribunal. We may point out that the order dated 18.12.2006, passed by the Tribunal, was the subject matter of two review petitions, being review petition Nos. 17 and 18/2007, which were also dismissed by an order dated 09.07.2007, passed by the said Tribunal, on the ground that the Tribunal did not have the power to review. The order dated 18.12.2006, passed by the Tribunal, was itself passed in an appeal under Section 76 of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as 'the said Act'), against the order dated 01.04.2004, passed by the Registrar of Cooperative Societies.

3. The other writ petition, being WP(C) 9103/2007, has been filed by Mr Tarun Bhatnagar, seeking the quashing of the impugned order

dated 18.12.2006 as well as the order dated 09.07.2007, passed by the Tribunal. Mr Bhatnagar also seeks a mandamus directing the respondent No. 1 society to charge only a sum of Rs 210 per sq. yd. from him, without any interest or equalization charges, in respect of the plot of 360 sq. yds allotted to him in the year 2001 and to refund the excess amount deposited by him along with interest. Mr Bhatnagar also prayed for suitable compensation for delay in allotment of a plot to him for more than 20 years, which was allegedly on account of no fault on his part.

4. A dispute had been raised and the matter had been referred to arbitration, being Arbitration Case No. 97/H/86-87, which culminated in the Award dated 20.05.1990, made by the Arbitrator. In the said arbitration proceedings, the dispute was with regard to the legality of the enrolment of 29 additional members by Bhatnagar's Cooperative Group Housing Society (hereinafter referred to as 'the Society'). Mr Tarun Bhatnagar, who is respondent No. 1 in WP(C) 6533/2007 and the petitioner in WP(C) 9103/2007, was admittedly one of the said 29 additional members. By virtue of the said Award dated 20.05.1990, the enrolment of all the said 29 members was declared null and void. The Award also directed the society to evolve a proper criteria, preferably approved by the Registrar, for enrolment of "fresh members", whose number should not exceed the number of plots

available, after giving due consideration to the waiting list and approved list.

5. It appears that another dispute had also been raised wherein Mr Tarun Bhatnagar was the claimant. The said dispute pertained to Mr Tarun Bhatnagar's entitlement to a plot in the said society. The same was also referred to arbitration, being Arbitration Case No. 30/H/88-89 and was before the very same Arbitrator, who made the Award on 20.05.1990. By a separate Award dated 23.05.1990, it was indicated that the Award dated 20.05.1990 had already declared the membership of the said 29 members to be null and void and had directed the society to evolve a proper criteria, preferably approved by the Registrar, for enrolment of fresh members, whose number should not exceed the number of plots available, after giving due consideration to the waiting list and approved list. The Award dated 23.05.1990, specifically held:-

“In view of the abovementioned award, the cause of action does not survive as the list of 29 members has been declared null and void and a fresh list is to be prepared. The award is made accordingly.”

6. In the course of the arbitration proceedings, wherein Mr Tarun Bhatnagar was the claimant, the issue of plot No. 103 in the said Society, which had been allotted to Mr Tarun Bhatnagar's father, Mr M. L. Bhatnagar, came in question. This was on the basis of an

application filed by the Society, on 05.05.1990. The issue was concerning what would happen to the said plot No. 103, because, after the said plot had been allotted to Mr M.L. Bhatnagar, he had passed away. The society had raised the plea that since Mr Tarun Bhatnagar would succeed to his father's interest in plot No. 103, he would be barred from being considered for a plot in the future. This plea was rejected by the Arbitrator on the ground that, first of all, the cause of action arose when his father was alive. Secondly, Mr Tarun Bhatnagar's father had left a will leaving all his movable and immovable property to his widow and as such, Mr Tarun Bhatnagar would not immediately inherit the plot. Thirdly, Mr Tarun Bhatnagar could always renounce his claim, if any, in plot No. 103, thereby he would be entitled to allotment of a plot afresh. The Arbitrator also observed that Mr Tarun Bhatnagar did not own any other residential house or plot to attract the disability under Rule 25(1)(c)(i) of the Delhi Cooperative Societies Rules, 1973. It is in this context that the Arbitrator held that:-

“As such his right to membership and allotment of a plot remains valid. The award is made accordingly.”

This did not mean that the membership which was annulled by the Award dated 20.05.1990, was revived, but only meant that the petitioner was not disqualified from being considered for the grant of a fresh membership and allotment of a plot in the future. The exact

words used by the Arbitrator in the Award dated 23.05.1990, are as under:-

“The defendant society submitted a petition on 05.05.1990 stating that the claimant’s father Sh. M. L. Bhatnagar has died. He had been allotted plot No. 103 in the society. As the claimant will succeed to his father’s plot, he is barred from being considered for a plot. The claimant has submitted the argument in that on the date the cause of action arose his father was alive. Secondly, his father has left a will leaving all his movable and immovable wealth to his mother, as such he does not inherit the plot. Thirdly, he can always renounce his claim, if any. The court observes that as of date, he does not own a residential house or a plot to attract the disability under Rule 25(1)(c)(i) of the Delhi Co-op. Societies Rules 1973. As such his right to membership and allotment of a plot remains valid. The award is made accordingly.”

Subsequent to the said Award, some of the persons aggrieved by the Award dated 20.05.1990, preferred an appeal before the Delhi Cooperative Tribunal, being case No. 82/90-CA and case No. 101/90-CA. The appeals were dismissed by the Tribunal by a common order dated 28.10.1991. It is pertinent to note that no appeal was preferred against the Award dated 23.05.1990. This means that both the awards became final.

7. Thereafter, a seniority list, on the basis of the original date of application for membership, of 11 new members of the society was prepared and approved by the Registrar of Cooperative Societies on 30.10.2001. The name of Mr Tarun Bhatnagar figured at serial No. 4. The remaining plots were then allotted to all the 11 fresh members, at

the rate of Rs 3,600/- per sq. yd. None of the 11 allottees raised any dispute with regard to the price charged by the society in the said allotments. However, Mr Tarun Bhatnagar, after having paid the amount to the society in its entirety, claimed a refund on the ground that the amount charged should have been at the rate of Rs 210 per sq. yd. without any interest or development charges inasmuch as that was the rate applicable in 1985.

8. Thereafter, proceedings were initiated at the instance of the said Mr Tarun Bhatnagar, under Section 61 of the said Act. The same were disposed of by the order dated 01.04.2004, passed by the Registrar of Cooperative Societies. In the order it was, *inter alia*, observed as under:-

“2. That the list of 29 members was challenged by way of an Arbitration u/s 60 of the DCS Act, 1972, filed by Sh. Daya Kishan and Others. The claimant also filed the Arbitration case and both the cases were referred to the Arbitration who passed an award dated 23.05.1990 thereby declaring the list of 29 members null and void with the direction to the Society to prepare a fresh list and hold the right of the claimant to a membership and allotment of a plot as valid. The Registrar superseded the Managing Committee of the Society and appointed an Administrator. The Administrator finalized the list of 11 members for allotment of plot which was approved by the Registrar. In the said list the name of claimant appeared at S.No.4.

3. However, the entitlement of plot to the claimant was decided by the Ld. Arbitrator vide order dated 23.05.1990, which remains unchallenged till date and the claimant is a valid and bonafide member of the Society since September, 1981, when he first applied for

membership and on that date he was eligible in all respect for enrolment as member of the Society.”

On the basis of the aforesaid observations, the Registrar of Cooperative Societies directed the Society to charge the cost of land at the rate of Rs 210/- per sq. yd. with interest @ 10% per annum from 1992 upto 2001, when the demand was raised, which came to Rs 399/- per sq. yd. and accordingly the total cost of the plot measuring 360 sq. yds. would come to Rs 1,43,640/-. An appeal was preferred by the Society under Section 76 of the said Act, which came to be disposed of by the impugned order dated 18.12.2006. We are informed that Mr Tarun Bhatnagar also filed an appeal but the same was dismissed in *limine* by the Tribunal on 27.04.2004. By virtue of the impugned order dated 18.12.2006, the Tribunal has partly allowed the appeal and the Registrar's order dated 01.04.2004, was modified to the extent that the Society could demand the cost of land at the rate of Rs 210/- plus 15% interest compounded yearly for the period 1985 to 2001. We have already indicated that the review petitions filed in respect of the order dated 18.12.2006, were dismissed on the ground that the Tribunal did not have the power to review.

9. We have heard the counsel for the parties and have examined all the orders and we are of the view that the Registrar has misdirected himself while considering the two awards dated 20.05.1990 and

23.05.1990. The Registrar was under the impression that the right of Mr Tarun Bhatnagar with regard to membership was kept intact by the Award dated 23.05.1990. This is apparent from the two observations which we have already quoted above. However, we have already indicated that the observations of the Arbitrator in the Award dated 23.05.1990, were in the context of the Mr Tarun Bhatnagar's father's plot i.e. Plot No. 103. The question considered therein was whether his father's death would result in him being barred from being considered for membership and allotment in the future. That fear had been put at rest by the Arbitrator on the three grounds, which we have already indicated above. That, however, did not mean that the Arbitrator had kept the membership of Mr Tarun Bhatnagar alive. The question of membership had been clearly decided by the Award dated 20.05.1990 and reiterated by the Award dated 23.05.1990, inasmuch as the membership of the 29 persons was declared null and void. The said 29 persons included Mr Tarun Bhatnagar. This error in interpreting the two awards led to the conclusion of the Registrar, which has also been affirmed by the Tribunal.

10. As a result, we feel that the impugned order is liable to be set aside on this aspect. It is ordered accordingly. However, we make it clear that it is only set aside insofar as the question of cost of the land is concerned. Insofar as the other issues that were decided by the said

authorities with regard to the refund of security deposit are concerned, the same remain undisturbed. The order of the Registrar dated 01.04.2004, having merged into the order passed by the Tribunal also goes to this extent. This clearly means that Mr Tarun Bhatnagar was liable to pay at the rate of Rs 3,600/- per sq. yd. for the plot allotted to him in the year 2001 as the same was charged from all the other 10 members also. The amount has already been paid by Mr Tarun Bhatnagar. There is no question of refund of any amount on this account.

The writ petitions stand disposed of accordingly.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

**AUGUST 19, 2009
SR**