

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

+ **W.P.(C) No.1702/2010**

Date of Decision: 11th March, 2010

PAVITRA GROUP HOUSING SOCIETY LTD. Petitioner

Through: Mr. L.B. Rai & Mr. Rajeev
Kumar Rai, Advocates

versus

NEELAM DEEWAN

Through: None Respondent

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment? : No
2. To be referred to Reporter or not? : No
3. Whether the judgment should be reported
in the Digest? : No

% **JUDGMENT (Oral)**

GITA MITTAL, J.

1. The present writ petition has been filed assailing the award dated 25th January, 2002 made by the arbitrator appointed under section 61 of the Delhi Cooperative Societies Act in Arbitration Case No.AR/ARB/6314/2001 against the petitioner society and in favour of the respondent herein holding that she is a valid member of the petitioner society and that the society had failed to raise demands

upon her in respect of the flat against her membership. The petitioner also assails the order dated 17.02.2009 passed by the Delhi Cooperative Tribunal dismissing the appeal of the petitioner against the said award.

2. It is contended by the petitioner that the Registrar of Cooperative Societies had constituted the Deewan Chand Committee to examine the affairs of the society. This committee had submitted a report dated 28th December, 1986. The petitioner before this court places heavy reliance on this report pointing out that the petitioner's enrolment was not recommended by this report. The submission therefore is that no other committee could have reopened the matter or gone into the issue of the validity of the petitioner's claim.

3. The petitioner is a Cooperative Group Housing Society. Respondent had claimed to be a member of the petitioner society as enrolled in the year 1987 having effected payment of an amount of Rs.10/- towards entrance fee, share money of Rs.100/- and also having deposited an amount to the extent of Rs.46,000/- to the society as initial payment. She relied on a share certificate bearing no.607 which had been issued to her under the seal and signatures of two office bearers, i.e. President and Secretary of the society.

4. The respondent relied upon this certificate in support of her plea that she was a valid member enrolled on fulfillment of essential requirements. She also urged that she had made all required payments to the society. It was further contended by the respondent that on account of mismanagement, misappropriation of funds etc., the affairs of the society were enquired into under the orders of Registrar of Cooperative Societies.

5. In this background, the Registrar of Cooperative Societies had directed an enquiry into the affairs of the petitioner society. An order dated 28.02.1989 was passed appointing Sh. Deewan Chand as an enquiry officer for the determination of several issues relating to the society and preparation of a valid list of members of the society. This enquiry officer took certain steps including calling upon persons to file claims and other documents so as to finalise valid list of the members of the society. However, several difficulties were experienced by this Deewan Chand Committee which have been pointed out in paragraph 30 of its report. The report dated 28th December 1986 has been placed on record, the relevant portion whereof is to the following effect:

“As has been stated in the pre-paras, first letter requesting the individual to submit the requisite documents was sent on 10th March, 1989. Since the response was very poor, another letter by registered post was sent on 11th May 1989. In spite of this, all the claimants did not turn up and

many of them did not cooperate at the time of enquiry, with the result that those persons who have not appeared or have not furnished the requisite documents/details, their membership status has not been decided conclusively in the absence of any relevant record/proof.

Another important factor concerning membership issue is that in the absence of complete records, as has been stated in the enquiry U/s.55, total number of persons who at the one or the other time made some deposits in the society, cannot be determined and different lists have been prepared on the basis of information already available or that came into notice during the course of enquiry."

The above would show that the Deewan Chand Committee was unable to complete its mandate and was handicapped on account of non availability of the records of the society and failure of the various claimants to produce the requisite record. No finality was attached to the report which unequivocally states that the same is premised on incomplete disclosure and insufficient record.

6. In this background, the Registrar of Cooperative Society vide order No.F/47/519/Co4H/C/1131-1133 dated 21st July 1997 had constituted a three member committee headed by Sh. J.P. Aggarwal, a Joint Registrar in its office. The proceedings of this committee have also been placed before us. The relevant portion of the report of the committee dated 03.09.1998 deserves to be noted at this stage for

appreciation of the matter. The Aggarwal Committee has noted that a list of 140 members was finalized by Sh. Deewan Chand vide his report submitted on 25.04.1990. The report notices that from the proceedings of the earlier committee, a number of applications/letters/claims were found pending for disposal regarding refund and membership of the society in the available records.

7. The Aggarwal Committee had found that several persons who had laid claims of membership before the Deewan Chand Committee have not been able to substantiate the same. It is noteworthy that apart from the list tentatively finalized by Sh. Deewan Chand Committee, an additional list was submitted by Sh. Hans Raj, the Deputy Registrar by report made on 01.11.1990. Anomalies in the proceedings have been noted and it has also been observed that the record was in complete disarray. The society had either not produced the necessary and relevant record or the records which were produced were not available or authentic.

8. For these reasons, this committee decided to call for fresh claims by giving a public notice in English and Hindi in the leading newspapers. Pursuant to this, the Aggarwal Committee caused public notices to be published in the Hindustan Times in English and the Punjab Kesari in Hindi on 02.05.1998 inviting claims of membership

with supporting documents from the following categories of claimant/members within 15 days of publication of the notice:

- “1. Persons/Members who had filed their claims in respect of membership before the earlier two Committees but their claims could not be finalized either because the claimants did not submit sufficient documentary evidence in support of their claims or did not appear before the Committee at the stipulated date & time.
2. Persons/Members who had filed their claims with this office after the submissions of the report of previous Committee but which have not been settled yet.
3. Persons/Members who had not filed any claim till date.”

9. Pursuant to the said public notice, the committee received 54 claims. It was noticed that 67 claims were pending for decision with the Registrar of Cooperative Societies which were received between 24.07.1990 till 01.05.1998 including 14 claims received beyond the fixed date by the committee headed by Sh. Hans Raj, the then member of the committee.

10. The Aggarwal Committee issued individual notice by registered post to the claimants and thereafter proceeded to examine the claims to consider the validity of their membership on the claims in

accordance with the provisions of Delhi Cooperative Societies Act, 1972.

11. So far as the consideration was concerned, the report dated 3rd September 1998 shows that the following procedure was adopted by the committee:

“Records being so hotch-potch Committee decided to act upon the claims after hearing the persons individually on the following guidelines to determine the genuineness:-

1. By examining proofs of domiciles of persons in the Territory of Delhi or proof of being exempted from condition as provided in the law;
2. By examining proofs of being nature at the time of enrolment;
3. By examining authentication/oath by a person to the effect that he/she is not a member of any other Cooperative Housing Society;
4. By examining authentication/oath by a person to the effect that neither his/her dependants own any plot or house in Delhi nor he/she or his/nor dependants deal in purchase or sale of houses or plots; and
5. By examining documentary evidence of a person to the affect that he/she has deposited the share money and admission fee etc. and has not resigned. “

12. The committee appears to have examined the above records and also granted personal hearing of all persons concerned. After a careful consideration of the 121 claims considered by it, the committee found that membership of only 31 claims could withstand the above noted tests. The committee has found these 31 members had fulfilled the eligibility criteria of membership and that they had actually discharged their first duty of depositing admission fee and share money in the society which is supported by receipt of Rs.110/- available with them. The committee also examined the question of seniority of these members based on the date of deposit of admission fee and share money for the reason that neither the records of membership application were available nor the authentic minutes books/proceeding register, membership register, receipt books and cash books were found reliable. Based on this consideration, a list of 181 members was prepared and was approved by the committee.

13. So far as the respondent is concerned, the report of the Aggarwal Committee records that pursuant to the notices from the Committee, the respondent appeared and submitted her documents as per the letter dated 28th of May 1998 of the Registrar of Cooperative Societies. The committee upheld the respondents' claim in its report dated 3rd of September, 1998 and her name features at serial no.29 of the list finalized by the committee.

14. It is an admitted position that the petitioner society accepted the report of this committee and acted upon the same. The society started writing letters to the respondent in the year 1996 based on the report. By letter dated 26.12.1998, the petitioner society informed the respondent that the committee had cleared her membership and called upon her to produce the documents before the society. Another letter dated 25.01.1999 was circulated to all members including the respondent informing her that society had decided to demand more amounts from the members. The respondent was required to contact the society for further action in the matter by letter dated 05.02.1999. These letters stand replied by the respondent and correspondence continued up till June 1999. It is noteworthy that in its order, the tribunal has extensively relied on these communications and correspondence.

15. On account of silence from the society thereafter and refusal to communicate with the respondent, the respondent approached other authorities including the Registrar of Cooperative Societies etc. As all such actions were of no avail, the respondent filed her claim under Section 60 of the Act, which were referred to a Sole Arbitrator. These proceedings culminated in the award dated 25th of January, 2002. Aggrieved by the said award of the arbitrator, the petitioner society filed an appeal under section 76 of the Delhi Cooperative Societies Act,

1972 which has been rejected by the Delhi Cooperative Tribunal by the order dated 17.02.2009, which has been impugned before us.

16. The only ground of challenge to the award dated 25th January 2002 and order dated 17.08.2009 which is pressed before us is to the effect that the Deewan Chand Committee report 25.04.1990 had attained finality and for this reason, the Aggarwal Committee could not have gone into the aspect of the respondents membership. It has also been urged that the share certificate produced by the respondent was fake and had not been issued by the society. The reasons for constitution of the Aggarwal Committee have been mentioned in its report which have also been noticed herein above. No challenge is laid to the same. In any case, the same cannot be faulted on any legally tenable ground.

17. We also find that the petitioner did not make any objection at all to the constitution of the Aggarwal Committee despite full knowledge of the same. No protest was made even when this Committee issued public notices inviting claims. It is clearly evident from the conduct of the petitioner that it accepted the fact that no finality was attached to the Deewan Chand Committee proceedings as well as the appointment of the Aggarwal Committee.

18. The record placed before us, which is the basis of the award as well as the impugned order dated 17.02.2009, shows that the society also did not object to the report dated 03.09.1998 of the Aggarwal Committee. On the contrary, the society accepted the same and had acted upon it. It has actively corresponded with the petitioner based on the findings in the report.

19. A period of almost 12 years has been permitted to lapse without any challenge to the report. It is only when the respondent sought redressal of her grievance, raised a claim and filed the arbitration case, that in response thereto after 2001 the petitioner has attempted to state that the certificate relied upon by the respondent was fake. Interestingly, no grievance has been made with regard to the several other persons whose claims stand examined and recommended by this Committee.

20. The arbitrator as well as the tribunal has found against the petitioner on all questions of fact raised before them. The petitioner having accepted and acted upon the report dated 03.09.1998 of the Aggarwal Committee in any case is estopped from raising the challenge to the report on the grounds which have been asserted in the present proceedings. In that view of the matter, we find that the present writ petition is completely misdirected and misconceived. The same is, in fact, an abuse of process of law. Valuable judicial time has

been unnecessarily wasted on consideration of this completely misplaced challenge.

21. We accordingly dismiss the writ petition with costs which are quantified at Rs.25,000/-. For the reason that notice has not been issued to the other side, we direct that the costs shall be deposited with the Delhi Legal Services Authority within a period of four weeks. A copy of this order shall be furnished to the Secretary, Delhi Legal Services Authority to ensure compliance.

GITA MITTAL, J

VIPIN SANGHI, J

MARCH 11, 2010

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