

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

Reserved on : 28.09 2010

% Date of decision : 05.10.2010

+ **WP (C) No. 7891 / 2009**

M/S. VARUN CO-OP. GROUP HOUSING SOCIETY LTD.

... .. PETITIONER

Through : Mr. Ashok Bhasin, Sr. Adv.
with Mr. Sunklan and
Ms. Shuchismita,
Advocates.

- V E R S U S -

DELHI DEVELOPMENT AUTHORITY & ORS.

... .. RESPONDENTS

Through : Ms. Sangeeta Chandra,
Advocate for R – 1 / DDA.
Ms. Aruna Tikku with
Ms. Ruby Nahar,
Advocate for R-2 & 3.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

SANJAY KISHAN KAUL, J.

1. The petitioner, a registered co-operative society, applied to Delhi Development Authority (DDA) / respondent No. 1 for allotment of land to construct flats for its members.

Provisional offer letters were issued to the petitioner society and other co-operative societies on the basis of the seniority vide letter dated 18.11.1993 demanding certain amounts to be deposited within 45 days. The petitioner society had a grievance about the rates charged and challenged the same by filing writ proceedings, which were subsequently withdrawn. The petitioner society thereafter deposited some amount, wanted to withdraw the request for allotment, changed its mind and all this resulted in various communications with DDA. DDA wanted to refund the amount to the petitioner society and even sent the amount back. The petitioner society finally made an application to the Lieutenant Governor / respondent No. 2 on 19.09.1997 for restoration of allotment and on account of failure of any action filed Civil Writ Petition No. 2813/1998. This writ petition was allowed on 05.08.2003 with certain directions. The said Order noticed the default on the part of the petitioner society in deposit of amount within time and extended time though subsequently the complete amount was deposited. The plea of the petitioner society based on hostile discrimination in view of the fact that extensions were granted to other societies and some of these societies had not deposited any amount whatsoever while the petitioner society had deposited some amount was noticed. A direction was

issued for the Lieutenant Governor to take a decision on the matter considering the parameters laid in the judgment. The following direction was issued :-

“A writ of mandamus is thus issued directing respondent No. 2 Lt. Governor to consider the application of the petitioner dated 19.09.1997 on its own merits specially taking into consideration the relaxation granted to various societies as mentioned above. Respondent No. 2 shall take into consideration the fact that extensions have been granted to other societies without payment of any amount while the petitioner had deposited a substantial part of the initial amount and even balance amount was deposited, though belatedly. Needless to say that a speaking order shall be passed by respondent No. 2 in this behalf. The petitioner shall be given an opportunity of hearing and shall have the option to produce any other material relevant on the date of hearing fixed for the said purpose. The necessary decision be taken within a maximum period of four months from today. In case the petitioner is still aggrieved, it is always open to the petitioner to impugn the same in accordance with law.”

2. In pursuance to the aforesaid directions, a decision was taken, which was communicated to the petitioner society vide letter dated 03.06.2004 rejecting the request of the petitioner society by the then Lieutenant Governor. The petitioner society was, thus, constrained to file Writ Petition (Civil) No. 12848/2006. The letter dated 3.6.2004 was quashed vide Order dated 07.03.2007 on a concession being made by learned counsel for DDA that the said decision as communicated was not in conformity with the Mandamus issued by this Court on 05.08.2003. The petitioner society was granted liberty to place before the Lieutenant Governor any additional material that it

wished to rely upon and a date was fixed for further consideration of the writ petition.

3. It is thereafter that a fresh decision has been taken by the Lieutenant Governor on 02.08.2007 once again rejecting the request of the petitioner society and simultaneously directing DDA to refund deposit amount to the petitioner society within 15 days with interest as applicable. It is this decision, which is now sought to be challenged in the present writ petition under Article 226 of the Constitution of India, this being now the third round of litigation.
4. A perusal of the order dated 02.08.2007 shows that after recording the facts of the case, the manner in which the representation was rejected by the earlier Lieutenant Governor vide order dated 03.06.2004 has been recorded again. There were two points :
 - (i) The petitioner society could not pay 35% of the premium even after getting extended period of 19 months and eventually paid the amount after a gap of over two years. The twenty four societies referred to in the order have got their offer letters renewed as per the then Lieutenant Governor's order if they have deposited 35% premium before 30.09.1996 and the maximum time taken did not exceed 13 months; and

- (ii) The petitioner society had requested for refund of the deposit amount on the ground that it was no more interested in the allotment of land.

The order dated 02.08.2007 only states that the case of the petitioner society is not at par with the twenty four societies where offers were renewed as explained in the earlier order communicated on 03.06.2004 and, thus, the request merits rejection. Thus, practically speaking, the Lieutenant Governor has only relied upon the order dated 03.06.2004, which was conceded by the concerned respondent / DDA as being not in conformity with the Mandamus issued by this Court on 05.08.2003 as recorded in the proceedings dated 07.03.2007 in Writ Petition (Civil) No. 12848/2006.

5. We have noted the aforesaid with some degree of concern as this is the third round and repeatedly the same mistake is being committed. The order dated 02.08.2007 also notes that the Registrar, Co-operative Societies was asked about the genuineness of the petitioner society and it was informed that the society is defunct and liquidation proceedings are underway. The proceedings under Section 96 of the Delhi Co-operative Societies Act, 2003 (hereinafter to be referred to as, 'the said Act') had been initiated against the petitioner society as it was lying defunct for the last many years.

Thereafter, the Lieutenant Governor records that since the society is under liquidation, the request for restoration is rejected.

6. Learned senior counsel for the petitioner society made a grievance that the order dated 02.08.2007 was firstly without any application of mind as it merely dittoed the order communicated vide letter dated 03.06.2004, which was conceded to be not in accordance with law. Secondly, without considering the issue of the petitioner society being a defunct society, a finding has been recorded on the basis of the information sought from the Registrar, Co-operative Societies. It was submitted that there was, in fact, no final conclusion of the proceedings before the Registrar, Co-operative Societies. It was further submitted that at no stage of time, the Mandamus issued vide the Order dated 05.08.2003 has been appreciated nor has the same been complied with while examining the case of the petitioner society. Since the issue of liquidation proceedings were pending before the Registrar, Co-operative Societies, till the same were concluded, no final decision could have been taken merely on an alleged notice issued under Section 96 of the said Act. The mala fide of DDA was stated to be apparent on account of the fact that even the direction contained in the impugned order of the Lieutenant Governor to refund the entire amount deposited of

Rs.29,32,099/- as on 27.12.1995 with appropriate interest within 15 days had not been complied with and the amount of only Rs.20,00,000/- was sought to be refunded.

7. The writ petition has been contested by the respondents. A preliminary objection of delay and laches has been raised as the present writ petition was filed on 23.03.2009. However, the issue of challenge to the order dated 2.8.2007 of the Lieutenant Governor was sought to be raised in Writ Petition (Civil) No. 12848/2006, which was still pending for directions, but that writ was withdrawn vide Order dated 12.02.2008 to file a separate petition. However, the present writ petition has been filed more than a year after that date.
8. The case of the petitioner society is stated not to have been included in the list of twenty four societies for whom extended time was made available to deposit the premium because they were offered allotment of land on 24.08.1995 and 18.12.1995 while the petitioner society was issued the allotment letter on 18.11.1993. The maximum extension period granted to the other societies is stated to be up to 31.07.1995 while the petitioner society made the complete payment of 35% of the premium only on 27.12.1995.
9. A separate affidavit has also been filed by the Registrar, Co-operative Societies. This is necessary as the learned

counsel for DDA emphasised that all allotments to societies are being made after verification from the Registrar, Co-operative Societies. In the affidavit, it has been stated that there were irregularities found in the functioning of the petitioner society including in respect of resignation of members. The Registrar has referred to certain earlier show-cause notices issued under the Delhi Co-operative Societies Act, 1972, which were, however, quashed. The reliance is really placed on a notice dated 19.01.2006 under Section 96 of the said Act giving 30 days' time to reply with certain documents to which no reply is stated to have been received. Another notice dated 24.04.2007 was sent under Section 96(2) of the said Act, but once again no reply was received. We may notice at this stage that the petitioner society claims to have submitted a reply dated 21.05.2007 though the Registrar denies receipt of the same.

10. A letter dated 24.02.2009, however, is stated to have been received in response to the notice dated 24.04.2007. We may note at this stage that the petitioner has placed a photocopy of the letter dated 21.05.2007 on record and produced office copy in the Court which records a receipt (in original) in the dak of the respondent on 22.05.2007.
11. We may notice that in view of the stand taken by the respondents, we had called upon the petitioner society

to file along with the rejoinder supporting documents in respect of the membership and continued functioning of the petitioner society by an Order dated 12.07.2010. Rejoinder has been filed seeking to enclose copies of balance-sheets and income & expenditure accounts of the petitioner society for the period 2006-2007 to 2009-2010. It is stated that the balance-sheets are also accompanied with the list of members as well as the land money contribution. We posed a specific query to learned counsel for the petitioner society as to whether these balance-sheets were filed with the Registrar of Co-operative Societies and with the income-tax returns. We are informed that no income-tax returns were filed and no proof has been shown to us of filing of these documents with the Registrar of Co-operative Societies. We would, however, not like to convert ourselves into a court of first instance to go into the material of the petitioner especially taking into consideration the nature of the same when the proceedings are pending before the Registrar.

12. It is in view of the aforesaid factual background that we have to examine the grievance of the petitioner society against the impugned order of the Lieutenant Governor dated 02.08.2007.
13. In our considered view, the grievance made against the order is justified that the Lieutenant Governor has

merely dittoed the order communicated vide letter dated 03.06.2004 passed by his predecessor while the fact remains that this order formed subject matter of challenge in Writ Petition (Civil) No. 12848/2006. In the proceedings of 07.03.2007, it was conceded by DDA that the said order communicated vide letter dated 03.06.2004 was not in accordance with the Mandamus of the Court issued on 05.08.2003. The order, thus, communicated vide letter dated 03.06.2004 could hardly have been relied upon by the Lieutenant Governor and clearly a fresh application of mind was required, which has not happened in the present case.

14. There is also merit in the second grievance that the representation of the petitioner society has been rejected on the ground that the proceedings under Section 96 of the said Act have been initiated against the petitioner society, which is lying defunct for the last many years. The fact remains that this aspect had never been put to the petitioner at any stage. Not only that, it is conceded by learned counsel for respondent No. 3, Registrar, Co-operative Societies that the proceedings have not been finalised. This is stated to be on account of the fact that other legal proceedings were pending but actually it cannot be disputed that there was no stay of proceedings before the Registrar. The Registrar was

expected to come to a conclusion finally whether the petitioner society was or was not a defunct society.

15. We have, thus, no option but to once again set aside the order dated 02.08.2007 of the Lieutenant Governor as it is without any independent application of mind and based on the material supplied by respondent No. 3, which was never put to the petitioner and in respect of which no final finding can be reached. The following directions are passed :-

- (i) Respondent No. 3 should conclude the proceedings about whether the petitioner society is a defunct society or not and is liable to be wound up. Such decision should be taken after giving one last opportunity to the petitioner society to place all material on record in support of its consistent continued functioning since the representation was made on 19.9.1997 for extension of time for balance payment. The material be filed by the petitioner society within four weeks from today. The Registrar, Co-operative Societies will conclude the proceedings within three months from today.
- (ii) The Lieutenant Governor would again examine the representation of the petitioner society dated 19.09.1997 as per the Mandamus issued by the Order dated 05.08.2003 and uninfluenced by the order passed by the earlier Lieutenant Governor

communicated vide letter dated 03.06.2004 as also the impugned order dated 02.08.2007.

- (iii) Before passing the order, the Lieutenant Governor will await the decision of the Registrar, Co-operative Societies as the same would have material bearing on whether the petitioner society is a defunct society or a functioning society. The Lieutenant Governor would take the decision within a maximum period of two months of the order of the Registrar being made available and needless to say that the order shall be a speaking order and after giving an opportunity of hearing to the petitioner.

16. The writ petition is allowed in the aforesaid terms with costs of Rs.5,000/- against respondents No. 1 and 2.

SANJAY KISHAN KAUL, J.

October 05, 2010
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VALMIKI J. MEHTA, J.