

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

+ **W.P.(C) No. 9179/2009**

% Reserved on : 21st September, 2010

Pronounced on:24th September, 2010

SH. PARVEEN KUMAR

..... Petitioner

Through: Ms. Sonali Malhotra, Advocate.

VERSUS

REGISTRAR OF COOPERATIVE SOCIETIES AND ANR.

....Respondents

Through: Mr. Sushil Dutt Salwan,
Advocate for the respondent
No.1/Registrar, Cooperative
Society.
Mr. Vijay Panjwani, Advocate
for respondent No.2 with Mr.
Ramesh Ratlani, President of
Respondent No.2 Society in
person.
Ms. Sangeeta Chandra,
Advocate for the respondent
No.3/DDA.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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 the Digest?

JUDGMENT

VALMIKI J. MEHTA, J

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the impugned orders dated 12.12.2008 and 13.11.1992 of the Financial Commissioner and the Joint Registrar respectively, acting under the Delhi Cooperative Societies Act, 1972. The limited relief which is pressed for by the petitioner in the present case is that extension of time be given to the petitioner to deposit the minor balance amount of Rs.11,342/- which the petitioner could not deposit within the prescribed period of one month as granted by the Joint Registrar vide his order dated 13.11.1992.
2. The facts of the case are that the petitioner being a defaulter in the payment of dues, the respondent no.2 society initiated proceedings for expulsion and which culminated in the proceedings before the Joint Registrar for confirmation of the expulsion proceedings against the petitioner. The Registrar passed the following order in this case.

“4. Sh. Parveen Kumar is in default of Rs. 80,342/-. He tendered cheques of Rs. 77,000/- and promised to pay the rest of the amount within a week. Sh. Parveen Kumar shall pay the rest of the amount by 31.12.92, however, in case he fails to pay or the cheques tendered by him are dishonoured, he shall be deemed to be expelled.”
3. The petitioner, however, suffered from a paralytic attack during this period and although the cheques of Rs. 69,000/- out of Rs. 77,000/- were cleared in terms of the order passed by the Joint Registrar, one

cheque of Rs.8000/- bounced and the petitioner also failed to pay the remaining balance amount of Rs.3,342/-. The order of the Joint Registrar was passed on 13.11.1992 and the petitioner was to pay the amount of Rs.3,342/- by 31st December, 1992. On account of the ill health of the petitioner which has resulted in a paralytic stroke, the petitioner did not deposit the amount by 31st December 1992 but prepared a bank draft for Rs.11,342/- on 11.3.1993 for payment, i.e. roughly after about two and a half months. Accordingly, counsel for the petitioner has contended that on account of the personal difficulty of the petitioner inasmuch as he had suffered a paralytic attack, condonation of delay and/or extension of time be granted for deposit of the minor balance amount of Rs.11,342/-. It is contended that if delay is not condoned grave and irreparable injury will be caused to the petitioner, who has otherwise paid the entire amount and would be deprived of the flat. The counsel for the petitioner has also referred to the averments in the petition that the wife of the petitioner also had fallen from the roof and broken both her legs and consequently, a major surgery had to perform on the wife of the petitioner, though of course in a later period.

4. Learned counsel appearing for the respondent no.2 society has very vehemently canvassed that the petitioner being a defaulter, was not entitled to a flat in the society. It was urged that no further indulgence be granted to the petitioner who has failed to deposit the balance as per the order dated 13.11.1992 of the Joint Registrar,

though of course he admits that Rs.69,000/- out of Rs.77,000/- was paid and only an additional amount of Rs.3,342/- was payable in addition to Rs.8,000/-. It is further canvassed that no flat is now available for allotment to the petitioner as three flats which were available in the society have thereafter been converted by the society into a community hall, office of the society and a religious place. It was, therefore, contended that no flat is available for the petitioner and that the claim of the petitioner is barred by delay and laches.

5. In the peculiar facts of this case, we are persuaded to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India inasmuch as not only the balance which was payable by the petitioner was a minor sum of Rs.11,342/-. The petitioner had suffered a paralytic stroke in the relevant period for which he had to be hospitalized. Further, though subsequently, the wife of the petitioner also fell down from the roof and suffered fractures in both her legs. Keeping in mind that the major amount has already been paid by the petitioner to the respondent no.2 society and the balance is indeed a minor amount of Rs.11,342/-, we feel that the interest of justice requires that the delay of about two and a half months for deposit of the balance amount of Rs.11,342/- be condoned by this court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. We do not think that there is any delay in the facts and circumstances of the present case because the original order of the Joint Registrar was challenged by the petitioner before the

Financial Commissioner and we do not find from a reading of the order of the Financial Commissioner that any such case with respect to the petition being time barred or being barred by delay and laches was taken up by the respondent no.2 society. The challenge by the petitioner in this petition is to the aforesaid two orders of the Joint Registrar dated 13.11.1992 and the order of the Financial Commissioner dated 12.12.2008. The petition was filed before this court in March, 2009. We, therefore, do not think that the petition therefore suffers from such delay and laches so as to deny the relief of a flat i.e. roof over the head to the petitioner.

6. An important issue now therefore is whether the petitioner can be allotted a flat. The stand of the respondent no.2 is that there are no longer any flats available because three flats for the covered area available have been converted into an office of the society, community hall and a religious place. These averments are made in the counter-affidavit. Some of the relevant averments in this behalf are in para 5 of the counter-affidavit which reads as under:-

“5. It is, respectfully stated that there are three structures inside the group housing society compound which full-fill the social and religious needs of the member allottees and their families. These structures are not dwelling units. One structure is used for “Kirtan”. There are idols and pictures of Hindu Gods and Goddesses. Shelves and drawers have been provided for keeping the things necessary for rituals and the things (pooja samagri) of the Shiva Temple adjacent to this structure. Mostly women congregate in this structure from 2.45pm afternoon onwards. There is a second structure to fulfil the social needs used as Community

Hall for misc. uses such as engagement and marriage, birth and death, ceremonies/anniversaries, etc. The third structure is used as the society office. A huge society having 273 flats requires a full time office with employees to administer the maintenance of water supply, electricity supply, garbage removal, upkeep of roads, cleanliness in the common area of each of the 7 blocks, security services, diesel generator set maintenance for use and emergency. Spread over 4.55 acres given by DDA to the society for consideration of rupees, 20,26,970/- by letter dated 17.7.1986 for construction of 273 dwelling units. All the dwelling units are presently in the possession of members eligible for allotment. xxxxxxxx”

7. At this stage, it is also relevant to refer to the additional affidavit filed on behalf of the respondent no.2 society on 11.8.2010 and which has been subsequently substituted by the affidavit dated 14.9.2010. The relevant portion of this affidavit reads as under:-

“7. The said three structures are all on the ground floor in stilt area. The project had 273 dwelling units and there could be 272 (sic 273) flats or 276 flats. In view of this position 273 flats were constructed and the vacant space in the stilt area was enclosed for office, store, and religious purposes. This position was never hidden from DDA/MCD/Registrar of Societies. The DDA sanctioned plan shows these stilt structures; therefore all other permissions were given.”

8. The aforesaid shows that the respondent no.2 society very much had a covered area as per sanctioned plans for three flats but it has chosen to use the covered area of three flats by using the stilt parking on the ground floor as a community hall, office of the society and a religious place. No doubt these are laudable objects but that cannot mean that a person who is otherwise entitled to a flat and there was a

covered area for construction of flats, can be used by the society as an argument for depriving of a flat to an otherwise eligible member.

We are of the opinion that either of the three portions being a community hall, religious place or office of the society, can be converted into a flat, of course in terms of the sanctioned plans, for being allotted to the petitioner.

We, therefore, direct that since there was a sanctioned plan for 276 flats and only 273 flats were made and the remaining covered area for three flats was used towards making of the office, community hall and religious place, either one of these three places should now be converted into a flat as per law. We feel that in such circumstances, the area covered for use as an office can surely be spared for converting the same into a flat. The same can also be with respect to the community hall. We, however leave it to the society to decide which covered portion which is used for making three structures of community hall, religious place or office of the society should be converted into a flat.

9. We have been informed on behalf of the DDA, all the three structures which are made in the stilt parking portions are in fact illegal. If that be so, one of the three structures especially either the community hall or the office of the society can well be dismantled and an additional flat can be constructed in any of the permissible covered area as per the sanctioned plan by the respondent no.2 society. An office of the society can surely function also from prefabricated

movable structures/huts these days which are easily available and thus we do not feel that it is permissible on the part of the society to deny a flat to the petitioner in such circumstances.

10. In view of the above, we accept the petition extend the time for payment and condone the delay of about two and half months which was caused for depositing of the balance amount of Rs.11,342/- by the petitioner. The counsel for the petitioner has agreed to pay such interest as the court thinks fit on the balance amount. Accordingly, the petitioner should pay to the respondent no. 2 society the aforesaid amount of Rs.11,342/- along with interest at the rate of 18% simple interest per annum within a period of 4 weeks from today. We are informed that the rate of interest which is charged under the Delhi Cooperative Society Act, 1972 or 2003 is lesser than this figure of 18% which we are awarding. In case, the petitioner deposits the balance amount along with interest within a period of 4 weeks from today, the society shall within a period of six months from today convert as per law and a sanctioned plan one of the illegal covered space into a residential flat for the petitioner. Either the same area if permissible can be converted into a flat or an alternative area as per the sanctioned plan can be used for making of the flat. We make it clear that if a fresh sanctioned plan has to be obtained by the society for constructing a flat either in the existing construction or by way of a new construction, the society shall obtain the necessary sanction in law from the local authorities. In case, however, the petitioner fails to

deposit the balance amount alongwith the interest as stated above, within a period of four weeks from today, then, the membership of the petitioner in the respondent no.2 shall stand terminated after the period of four weeks from today.

11. The petition stands disposed of.

VALMIKI J. MEHTA, J.

SEPTEMBER 24, 2010
ib/Ne

SANJAY KISHAN KAUL, J.