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IN THE HIGH COURT OF DELHI AT NEW DELHI

75

WRIT PETITION (C) 11049 OF 2009 & C.M. NO. 10327 OF 2009

Roshan Lal Jain

....Petitioner

Versus

Registrar of Cooperative Societies & Ors.

....Respondents

Mr. Hem Kumar, Advocate for Mr. Sanjeev Sabharwal,
Advocate for R-MCD
Ms. Jyoti Singh, Advocate with Mr. Ankur Chibbar, Adv.
for petitioners.
Ms. Sana Ansari and Mr. Sumeet Batra, Advocates for
Ms. Zubeda Begum, Advocate for R-RCS.
Mr. Sandeep Kumar, Advocate for Administrator.
Ms. Savita Prabhar, Advocate for Mr. K.L. Arora, B.B.
Arora and Ms. Seema Arora (Respondents) and Mr.
Roshan Lal Jain (Petitioner).
Mr. Rajesh (UDC) with record.

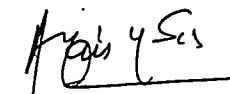
CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers 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?

A.K. SIKRI, J.(ORAL)

For orders, see W.P. (C) No.2338-53/2005.


(A.K. SIKRI)
JUDGE


(MANMOHAN SINGH)
JUDGE

REVIEW PETITION NO. 14764 OF 2008

REVIEW PETITION NO. 15 OF 2009

REVIEW PETITION NO. 17 OF 2009

C.M. NO. 16504 OF 2008

C.M. NO. 557 OF 2009

C.M. NO. 558 OF 2009

C.M. NO. 598 OF 2009

C.M. NO. 599 OF 2009

C.M. NO. 600 OF 2009

C.M. NO. 2770 OF 2009

C.M. NO. 4141 OF 2009

C.M. NO. 12584 OF 2009

C.M. NO. 12585 OF 2009

in

WRIT PETITION (C) NO. 2338-53 OF 2005

&

WRIT PETITION (C) 11049 OF 2009 & C.M. NO. 10327 OF 2009.

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Decided on: 28th July, 2010

(1) REVIEW PETITION NO. 14764 OF 2008

Mrs. Neelam & Ors.

....Petitioners/applicants

Versus

The Financial Commissioner & Ors.

....Respondents.

(2) REVIEW PETITION NO.15 OF 2009

Smt. G. Alavadi

....Petitioner

Versus

The Financial Commissioner & Ors.

....Respondents.

(3) REVIEW PETITION NO. 17 OF 2009

Bishan Swaroop Vats & Ors.

....Petitioner

Versus

The Financial Commissioner & Ors.

....Respondents.

(4) C.M. NO. 16504 OF 2008

RP Nos.14764/2008, 15, 17/2009 & CM Nos.16504/2008,

557, 558, 598, 599, 600, 2770, 4141, 12584, 12585/2009

in WP (C) No.2338-53/2005WP(C) No.11049/2009 & CM No.10327/200

Neelam & Ors.

....Petitioners

Versus

The Financial Commissioner & Ors.

....Respondents.

(5) C.M. NO. 557 OF 2008

Smt. Neelam

....Petitioner

Versus

The Financial Commissioner & Ors.

....Respondents.

(6) C.M. NO. 558 OF 2008

Smt. Neelam

....Petitioner

Versus

The Financial Commissioner & Ors.

....Respondents.

(7) C.M. NO. 598 OF 2009

Bishan Swaroop Vats & Ors.

....Petitioners

Versus

The Financial Commissioner & Ors.

....Respondents.

(8) C.M. NO. 558 OF 2008

Neelam & Ors.

....Petitioners

Versus

The Financial Commissioner & Ors.

....Respondents.

(9) C.M. NO. 600 OF 2009

Neelam & Ors.

....Petitioners

Versus

The Financial Commissioner & Ors.

....Respondents.

(10) C.M. NO. 2770 OF 2009

Neelam & Ors.

....Petitioners

Versus

The Financial Commissioner & Ors.

....Respondents.

(11) C.M. NO. 4141 OF 2009

Smt. G. Alavadi & Ors.

....Petitioners

Versus

The Financial Commissioner & Ors.

....Respondents.

(12) C.M. NO. 12584 OF 2009

Neelam

....Petitioner

Versus

The Financial Commissioner & Ors.

....Respondents.

(13) C.M. NO. 12585 OF 2009

Neelam

....Petitioner

Versus

The Financial Commissioner & Ors.

....Respondents.

in

WRIT PETITION (C) NO. 2338-53 OF 2005

AND

(14) WRIT PETITION (C) 11049 OF 2009 & C.M. NO. 10327 OF 2009.

Roshan Lal Jain

....Petitioner

Versus

Registrar of Cooperative Societies & Ors.

....Respondents.

Mr. Hem Kumar, Advocate for Mr. Sanjeev Sabharwal,
Advocate for R-MCD

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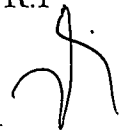
Mr. Sandeep Kumar, Advocate for Administrator.

Ms. Neelam Jain with Mr. AND. Rao, Advocate for the
Review Petitioner in R.P. 15/2009

Ms. Savita Prabhar, Advocate for Mr. K.L. Arora, B.B. Arora and Ms. Seema Arora (Respondents) and Mr. Roshan Lal Jain (Petitioner).

Mr. Sachin Puri, Advocate with Ms. Kadambari, Advocate and Mr. K. Siddiqui, Adv. for the petitioner in R.P. 17/2009.

Mr. Rajesh (UDC) with record.



CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
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A.K. SIKRI, J.(ORAL)

1. Vide judgment dated November 3, 2008, a batch of writ petitions was disposed of. Writ Petition (C) 2338/55/2008 was treated as the lead matter. Three review petitions and various applications are filed in this writ petition. Before we advert to the averments on the basis of which review is sought, it would be apposite to take brief note of the controversy which was decided vide aforesaid judgment.

2. The parties in these writ petitions/review petitions claimed to be members of the Shivaji Corporate Housing Society. Twenty two (22) members were expelled by the then Management of the Society. (for the sake of convenience, hereinafter referred to as 'the respondents'). Twenty three other members were inducted as members in their place. The expelled members challenged their expulsion by filing appropriate proceedings before the Financial Commission, which is revival authority. Expulsion was set

RP Nos.14764/2008, 15, 17/2009 & CM Nos.16504/2008,
557, 558, 598, 599, 600, 2770, 4141, 12584, 12585/2009
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aside and they were directed to be reinstated/treated as valid members of the society. On the other hand, qua the persons who were inducted in their place, it was held that they were not validly admitted as members of the society. Various proceedings came to be filed at various stages and it is not necessary to refer to those in detail. Suffice it to say that all these were the subject matter of the aforesaid writ petitions. In the judgment dated November 3, 2008 this Court gave following findings:-

- (1) Removal/expulsion of respondents from Members was illegal more particularly when it was set aside by the Financial Commissioner.
- (2) Twenty three members enrolled in their place were improperly inducted as members, inasmuch as, not only there were no vacancies, even the procedure for admitting them as members was not followed as no prior approval of the Registrar was taken. Rather such an approval was applied but specifically refused by the Registrar.
- (3) Notwithstanding the fact these persons were wrongly inducted as members, they were allotted the flats and on the other hand, the respondents herein were not included in the draw of plots. This allotment in favour of newly inducted members was held to be illegal.

3. In these circumstances, the writ petition was disposed of with the following directions:-

“(a) The petitioners in WP(C) No.2338-53/2005 and others, namely, 22 persons who were purportedly inducted on 11.4.1999, shall handover the possession of the flats to the Administrator within four months from today.

(b) These flats shall be allotted to those 22 members who were expelled, subject to the condition that they have paid entire consideration and no further amount is due from them. For this purpose, draw of lots in respect of these 22 flats for the said 22 members shall be held by the Administrator. Thereafter, possession shall be handed over to these members.

(c) In order to accommodate the petitioners and other similarly situated persons (22 in number), the newly inducted members, we issue the following directions:-

(ci) Due to the increase in the FAR there is an increase in the membership from 120 to 138. Therefore, 18 persons can be accommodated by enrollment thereof as new members out of 22 persons. By draw of lots 18 out of these 22 persons shall be selected and the said list shall be forwarded by the Society to the Registrar, who shall approve their membership. Remaining four persons shall be given refund of the amount paid by them. We are not granting any interest on this amount as during all this period they enjoyed use and occupation of the flats.

(cii) The Administrator shall submit plans for construction of additional flats to MCD/DDA within two weeks from today. These shall be approved within six weeks of their submission, subject to fulfillment of other formalities. Thereafter, the Society shall start construction of the new flats and on completion of those flats, possession thereof shall be handed over to the newly recruited members.

(ciii) These 18 persons who were inducted as members on 11.4.1999 had paid the entire consideration in respect of these flats by the end of year 2000 when the draw of lots was held on 31.12.2000. Therefore, they would only pay the additional cost incurred on the construction of these flats meaning thereby from the total construction cost of the new flats, the amount already paid by them shall be adjusted and the balance amount shall be shared by these 18 persons in equal proportion

or in the alternative

In case these 18 persons are not agreeable to new constructions at their cost in the manner provided above, it would be open to them to seek refund of the amount paid by them. These persons shall exercise their option in this behalf within two weeks from today to enable the Administrator to proceed further in the matter accordingly."

4. The review petitions are filed by those members who were inducted after the expulsion of the respondents and are allotted the flats. They are sixteen in number. It would be relevant to mention at this stage that though twenty three (23) persons were inducted as members and their membership was not sanctioned by the Registrar of the Society, all of them did not challenge the decision of the lower authorities instead Writ Petition No. 2338-53/2008 was filed only by 16 persons. Remaining seven did not come to the Court at all. Out of those seven, three have now approached and have filed review petitions (i.e. RP 15/2009 & RP 17/2009). Thus even as on today, we have only nineteen (19) persons who were inducted after the expulsion of the respondents. Other four persons, obviously, accepted the decision of the lower authorities that their enrollment was illegal.

5. We also would like to point out at this stage that out of twenty two expelled members *namely* the respondents herein, seven were already allotted the flats. Thus those who are not allotted flats, out of those twenty two (22), are only fifteen (15) in number.

6. Originally, one hundred and twenty (120) members were enrolled as there was provision of construction of one hundred and twenty flats. Out of this 120 members, 22 members were expelled as aforesaid and other persons taken their place. The society had allotted, initially, flats to 94 persons which list was approved by the Registrar of Cooperative Societies as well. Certain members who had paid the amount but were still not allotted.

They were also not in the list of those who were expelled. In these proceedings we are concerned with two such persons namely Mr. Roshan Lal Jain (Membership no. 67) and Mr. Pawan Kumar Arora (Membership No. 391).

7. Review Petition no. 14764/2008 is filed by those sixteen petitioners who were in 2338-53 of 2005. Review Petition no. 15/2009 is filed by Smt. G. Alavadi, who had not approached the Court earlier. Review Petition no. 17/2009 is preferred by two persons namely Bishan Swaroop Vats and S. Sethi who had also not approached the Court earlier. Writ Petition (C) 11049/2009 is filed by one Shri Roshal Lal Jain.

8. Though there is hardly any challenge to the findings given in the judgment dated November 3, 2008 holding that removal/ expulsion of respondents from their membership was illegal and the enrollment of twenty three persons in their place was improper or illegal, the grievance of these review petitioner relate to the directions which are given in the said judgment. Primarily, it is stated that there should not be carte-blanche directions to the review petitioners to hand over the possession of flats to the Administrator should be reviewed. In its place, review petitioners have tried to convince this Court that there can be other more equitable formula for accommodating all the concerned persons. In this behalf, they have submitted that keeping in view the facts of the case of each such member falling in either category, prioritization should be done i.e. the manner in which all these persons should be accommodated fixing the priority/merit.

9. The counsel for various parties were heard from time to time on this aspect and during the discussions, consensus emerged for allotment of existing flats, construction of new flats and allotment of new flats to those members who would be left out. All these proceedings, viz., review petitions, writ petitions and miscellaneous applications are thus disposed of with the following consent order. We may note that most of the parties were present in the Court at the time when these discussions took place and they have given their consent to the following terms:

(1) We shall first take up the case of Roshan Lal Jain and Pawan Kumar Arora. In respect of Roshan Lal Jain, it is stated that he was not allotted the flat since he was in default. Roshan Lal Jain had committed default in making the payments. That was the reason he was not initially allotted the flat. His plea was, however, that he was not sent demand notice for making payment and because of this reason he could not make the payment for which he was not to be blamed. Against non allotment, he approached the Registrar of Cooperative Societies. Dispute was referred to the Arbitrator who passed the award directing Roshan Lal Jain to make the payment of the outstanding amount alongwith interest. That amount has since been paid. It is, therefore, agreed that there is no impediment for allotment of flat to him.

(2) In so far as Pawan Kumar Arora is concerned, it is conceded even by the review petitioner that he has already made payment of Rs. 7,68,000/-. It is also stated by the review petitioner that his name for allotment was approved by the Registrar way back in 9.7.2003. Therefore, he is also entitled to the allotment of flat as well as immediate possession.

(3) Twenty three members who were inducted after the expulsion of the respondents are occupying the flats. In the judgment dated November 3, 2008, this fact has been taken note of. Due to the increase in the FAR, Membership is increased from 120 to 138 and, therefore, 18 more persons can be accommodated. Directions to the Administrator was given to take step for construction of the flats so that 18 more persons out of these 23 persons are accommodated. As pointed out above, four out of these 23 persons never approached. Further, three persons have approached for the first time in the proceedings in the High Court by way of review petitions only. Therefore, it is agreed sixteen persons who have been agitating their matter would be accommodated first and the three review petitioner would be accommodated only thereafter.

(4) It is thus agreed that 17 respondents would be accommodated in the first instance, thereafter sixteen persons who were the petitioners in writ petition 2338-53/05 and at the end, the three persons who have approached by way of review petition 17/2009 and 15/2009.

(5) Since it is agreed that 17 members i.e. the respondents will be given allotment by the society immediately, the following flats from the following members will be immediately got vacated and will be allotted to the aforesaid 17 persons:-

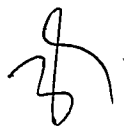
Sl. No.	Name	Rev. Pet. No.	Flat No.	Status
1.	Jaidev Dahiya	10	B-1/7	Shri Dinesh Rana was found to be in possession as per the report of the local commissioners.
2.	Abheshek Kumar	Review petitioner, but did not file the writ petition	B-1/8	Locked since allotted.
3.	Harish Kumar Sethi	Review petitioner, but did not file the writ petition	B-2/1	Has inducted tenant vide agreement to sell dated 01.05.2006
4.	Ms. Shakuntala Bhagat	8	B-3/2	Ms. Ritu was found to be in possession since 2008
5.	Prakshwati Rathi	12	B-3/7	Ms. Alka was found, but she could not give

				convincing answer about her relationship with the petitioner.
6.	Vishnu Sarup Vats	Review petitioner, but did not file the writ petition	B-4/2	Dr. N.K. Kaul was found to be in possession.
7.	Mrs. G. Ahlawadhi	Review petitioner, but did not file the writ petition	B-6/2	B.B. Jain was found to be a tenant since 2005-06
8.	Ms. Divya Syal	Review petitioner, but did not file writ petition Radhey Syal is the then Secretary of the society	B-6/5	Locked

(6) Besides this, 2 flats will be vacated from the two non-members, who did not even challenge the order of the RCS or of the Financial Commissioner. One flat will be got vacated from Smt. Santosh Bagri, whose name has not been cleared and her name has not been approved by the RCS till date and she has not challenged or initiated any proceedings in this behalf. One flat is lying vacant with the society and is being used as its office. Thus, in all, 12 flats will be available for allotment and handing over of possession immediately to the said 17 members.

(7) Five flats will be taken out for allotment to the members by conducting a draw amongst the remaining 12 non-members. As far as these five members are concerned, they will be given a notional and constructive possession of their respective flats. They will be deemed to be the owners of the said flats w.e.f. the date of allotment. However, possession of the flats will be given to them on or before 31st October, 2011 by the respective occupants/ non-members. During this period, these non-members will be treated as licensee and they pay a sum of ₹ 10,000/- month on account of use and occupation charges to the respective allottees with effect from September, 2010. These non-members/occupants will give an undertaking to this Hon'ble Court that they will hand over the vacant and peaceful possession of their respective flats by the aforesaid date, without any objections and demur. They will also undertake to keep on paying the use/occupation charges as aforesaid on or before 7th day of every month. In case of default of two consecutive months, they will hand over the vacant possession forthwith to the allottees. They will also keep on paying the electricity, water and other charges for this period. The vacant possession of the flat will be given

irrespective of the construction and completion of new flats as aforesaid.



- (8) Out of the aforesaid flats which become available, only two flats are in HIG category. However, there are more persons among the respondents who had applied for HIG Flats. Four respondents are represented by Ms. Sunita Prabhakar and two by Mr. Poddar. Both the counsel are claiming that their clients should be given priority. In these circumstances, suggestion was mooted that two HIG flats which become available can be allotted by Draw of Lots among the six persons. This is, however, not acceptable to Ms. Prabhakar. In these circumstances, we are leaving this issue open for the parties to get the issue determined in the appropriate proceedings as to who will have prior claim for allotment of these two HIG Flats.

New flats which are to be constructed, many of those would be in HIG category and at that stage all persons who have applied in HIG category can be accommodated. Therefore, it would be open to the other respondents who are to be allotted HIG to occupy MIG Flats for time being and thereafter shift to newly construct HIG Flats.

- (9) With regard to construction of new flats, learned counsel for the Administrator pointed out that he had received one feasibility report for the proposed additional 16 flats in the Society from the Architect Organic India in which he has submitted that 12 HIG Flats alongwith 2 lifts can be constructed on the 'C' shape block (A-1 to A-6) and similarly four MIG Flats alongwith one lift can be constructed on a linear block (B-5 to B-6) and now the construction cost is reduced from ₹ 3,06,00,000/- to 2,83,00,000/-. The Architect further submitted that around one and a half year is required for completing the construction after sanction from the local authorities.
- (10) To obviate any chances of future dispute, the Administrator can seek options for HIG/MIG flats who are to be accommodated in new constructed flats and flats can be construct accordingly. The learned counsel for the society informs that approximately ₹ 1.35 crores are the funds available with the Society. ₹ 5 lacs will be kept apart for making day to day expenses and ₹ 1.30 crores would be contributed for the construction of the flats. The remaining amount shall be contributed by the review petitioners and others who are going to be accommodated in these new flats in equal proportion. The administrator can

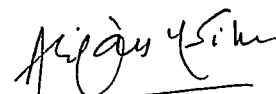
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convene a meeting of these persons in order to know their preference.

(11) The Registrar of Cooperative Societies would increase the strength of the Society from 138 to 148.

(12) It is agreed that none of the members or non-members will continue to prosecute any proceedings against each other, including the proceedings before the Financial Commissioner regarding dual membership. In any case, it is agreed that any pending proceedings or complaints or any other existing litigation between the parties will stand terminated/withdrawn. Similarly, any proceedings or complaints made with any authority either by the RCS or the new administrator against Shri Onkar Singh will not be prosecuted by such authority and will stand terminated/withdrawn and in future also no proceeding shall be initiated against him in his capacity as the administrator of the Society. This will subject to Sh. Onkar Singh handing over the entire records to the present Administrator.

10. All the proceedings stand disposed of.


(A.K. SIKRI)
JUDGE


(MANMOHAN SINGH)
JUDGE