

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

+ **W.P.(C) No. 11483/2009**

% Reserved on: 22nd November, 2010

Pronounced on: 25th November, 2010

SHRI MADHURKAR GUPTA

..... Petitioner

Through: Mr. Rakesh Tikku, Advocate
with Mr. Sanjay Poddar,
Advocate.

VERSUS

REGISTRAR OF COOPERATIVE SOCIETIES & ANR. Respondents

Through: Ms. Zubeda Begum,
Advocate with Ms. Sana
Ansari, Advocate for the
respondent No.1/RCS.
Mr. Sanjoy Ghose,
Advocate with Ms.
Pragnya, Advocate for
the respondent No.2.

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. The challenge by means of the present petition under Article 226 of the Constitution of India by the petitioner/member of the respondent

no.2 Cooperative Society is to the impugned order dated 19.9.2007 of the Delhi Cooperative Tribunal (DCT). By the impugned order dated 19.9.2007, the DCT accepted the appeal filed by the respondent no.2 herein challenging the original Award passed by the Arbitrator dated 12.3.2004. The petitioner herein was the claimant in the arbitration proceedings and the petitioner claimed a category-I flat from the respondent no.2 society on payment of the demands of the society.

2. Though the disputes between the parties have a chequered history, the most important aspect, which would be crucial to the disposal of the present petition is that the disputes as to expulsion of the petitioner from the respondent no.2 society has achieved finality by the order dated 11.9.2007 passed by the Registrar of Cooperative Society. By the order dated 11.9.2007, the plea of the society for approval of the expulsion of the petitioner for non-payment of dues was rejected. The effect of this order, and which has become final as the same has not been challenged by the society, is that the petitioner is a valid member of the respondent no.2 society.

3. Once the petitioner is a valid member of the respondent no.2 society, he is bound to get a flat in the respondent no.2 society, subject to his complying the eligibility requirements.

4. The counsel for the respondent no.2 society sought to urge that equities were against the petitioner who was a defaulter and this court should not exercise his jurisdiction under Article 226 of the Constitution

of India in favour of the petitioner for setting aside the impugned order of the DCT. We are afraid, we cannot agree to the submissions as made by the counsel for the society inasmuch as there does not arise any issue of equities against the law. Equities can only have a play if two persons are similarly situated legally. Once the petitioner is held to be a valid member and his expulsion has been rejected by the Registrar by its order dated 11.9.2007, it cannot be argued that the petitioner will not be entitled to a flat in the respondent no.2 society on the ground of alleged equity. In fact, the prayer of the respondent no.2 if acceded to would present a very quaint position because petitioner would be a member of the co-operative society and yet he would not get benefits of the membership in terms of a flat. We, therefore, reject the contention urged on behalf of the respondent no.2 society that the petitioner is not entitled to relief in equity. In fact, in our opinion, even the issue of equity does not arise inasmuch as the order of the Registrar Cooperative Societies (RCS) dated 11.9.2007 is a detailed order which after considering all the facts and circumstances, rejected the case of expulsion of the petitioner from the respondent no.2 society on the ground of alleged default.

5. The issue is that what now follows. A clear picture has not emerged before us as to whether there is any category-I flat available for allotment to the petitioner. The counsel for the respondent No.2 vainly tried to argue that the petitioner had agreed to take a category-II flat by his letter dated 11.12.1997 and therefore now cannot claim a

category-I flat. We do not agree inasmuch as the petitioner had written a letter dated 11.12.1997 accepting a category-II flat in reply to the letter dated 21.10.1997 of the respondent No.2 society and whereby respondent No.2 society said that the vacancy was only available in a type-II category flat. The letter of the petitioner dated 11.12.1997 shows that the petitioner insisted on a category-I flat and accepted the category-II flat only because apparently category-I flat was not available. We, therefore, find that the petitioner is entitled to a category-I flat if available, and failing which at least a category-II flat which is admittedly there in respondent No.2 society available for allotment and which has been reserved by the order dated 7.9.2009 of this Court.

6. Neither the petitioner nor the society has been able to give the clear picture to us as to the availability of a category-I flat. We have also not been assisted in this regard by the counsel appearing for the RCS who ought to have had the details of the valid allotment of flats made in respondent No.2 society. In this view of the matter, we direct that out of the total constructed flats as available with the respondent No.2 society in category-I, if there is any flat still available in category-I which is not allotted to anyone by the RCS and the Delhi Development Authority by a proper draw of lots, then, such a flat would be allotted to the petitioner, subject to his complying the eligibility requirements. We

are specifically stating the issue of eligibility requirements inasmuch as it appears from the record that the petitioner is a resident of Jaipur and not a resident of Delhi, however, the counsel for the petitioner contends that the requirement of a member to continue to be a resident of Delhi till allotment has now been given up by the RCS and such circulars have been issued. We do not say one way or the other in this regard as no circulars are placed before us, however, as we have already stated above, the allotment of a category-I flat to the petitioner will be subject to his complying with the eligibility requirements. In case, there is no category-I flat available, then, the petitioner will be entitled to the category-II flat.

7. In view of the above, we allow the writ petition and direct that in case there is a category-I flat available, then, the petitioner be entitled to a category-I flat and failing which the category-II flat subject to the petitioner being otherwise eligible and completing the necessary formalities. Respondent No.2 society shall raise the demand upon the petitioner for payment of the dues including the equalisation charges payable in accordance with law. RCS is directed to inform the petitioner as also the respondent No.2 society as to whether any category-I flat at all is available for allotment to the petitioner within a period of two weeks from today.

8. The writ petition is therefore disposed of as allowed in terms above, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

NOVEMBER 25, 2010
ib/Ne

SANJAY KISHAN KAUL, J.