

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

+ **W.P(C) No.8124/2008 & 8125/2008**

23rd April, 2010

1. W.P.(C) No. 8124/2008

RAKESH BAJAJ

..... Petitioner

Through: Mr. Ashok Aggarwal and Mr. Salar
M. Khan, Advocates.

VERSUS

THE REGISTRAR COOPERATIVE SOCIETIES

....Respondents

Through: Ms. Sujata Kashyap, Advocate for
Respondent No.1.
Mr. Qayam-Ud-din, Advocate for
Respondent No.2.

2. W.P.(C) No. 8125/2008

BIPIN BAJAJ

..... Petitioner

Through: Mr. Ashok Aggarwal and Mr. Salar
M. Khan, Advocates, Advocates.

VERSUS

THE REGISTRAR COOPERATIVE SOCIETIES

....Respondents

Through: Ms. Sujata Kashyap, Advocate for
Respondent No.1.
Mr. Qayam-Ud-din, Advocate for
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?

%

VALMIKI J. MEHTA, J (Oral)

1. The facts of both these petitions are more or less similar and therefore, it will be sufficient to refer to the facts of W.P.(C) No. 8125/2008. The challenge by means of the petition under Article 226 of the Constitution of India is to the order dated 16.9.2008 of the Financial Commissioner whereby the Financial Commissioner dismissed the appeal of the appellant/petitioner against the order dated 14.2.2003 passed by the Registrar. The Registrar vide order dated 14.2.2003, confirmed the expulsion of the petitioner from the respondent No.2 society for non-payment of dues.

2. The facts of the case are that the petitioner became a member of the respondent No.2 society in 1993. The petitioner had opted for a 'A' category flat in the form submitted to the respondent No.2 society in 1995. The respondent No.2 society however issued a demand notice to the petitioner on 1.12.1997 for a 'C' category flat and the last date for payment was given as 16.12.1997.

3. The petitioner disputes the allotment of the 'C' category flat and claims 'A' category flat. The fact of the matter however is that at no point of time any dispute was raised for reference and decision by Arbitration under Sections 60/61 of the Delhi Cooperative Societies Act, 1972. It was only when and if a dispute had been raised before the appropriate authority, and within prescribed time, i.e immediately after 1.12.1997 that the issue with regard to entitlement of allotment of the petitioner to 'A' category flat could have been decided.

4. The petitioner failed to deposit the dues as claimed for the 'C' category flat and consequently, expulsion orders were passed by the respondent No.2 society against the petitioner. Post the expulsion of the petitioner from the society for non-payment of dues, the issue came to be raised before the Registrar who decided the issue vide his order dated 14.2.2003. The proceedings before the order dated 14.2.2003 was passed, has a certain chequered history, of a first decision by the Registrar and then remand for a fresh decision, details of which are not necessary for the disposal of the present petition. Suffice to say that the Registrar before passing the order dated 14.2.2003 gave a last opportunity to the petitioner to deposit the amount due to the society for a 'A' category flat (in spite of the fact that the petitioner was not entitled to the same) within a period of 60 days, and even this opportunity the petitioner failed to avail of because he raised various disputes with regard to the interest charged by the society. It can be said that the

Registrar in fact went out of the way to accommodate the petitioner by giving a 'A' category flat to the petitioner because the issue with regard to the entitlement of 'A' category flat was not sub-judice before the Registrar and the only issue which required its decision was expulsion of the petitioner for non-payment of dues with respect to the 'C' category flat allotted. Since the petitioner even failed to pay the charges for the 'A' category flat within a period of 60 days, the Registrar ultimately confirmed the expulsion of the petitioner and in fact observed that the issue with regard to change of category was a matter which ought to have been considered and decided only in proceedings under Sections 60/61 of the Delhi Cooperative Societies Act 1972.

The Financial Commissioner has upheld the order of the Registrar by his impugned order and the relevant portions of it reads as under:-

“5. I find from the papers submitted by the society that the demand for Rs.19,81,436/- was raised against Sh. Rakesh Bajaj for “A” Membership and his name is at Sl. No.346. It is also noted that both Shri Bipin Bajaj, membership no.345 Type A and Sh. Rakesh Bajaj, membership no.346, Type “A” had till date paid only an amount of Rs.1 lakh in two installments of Rs.60,000/- & Rs.40,000/- in 1993 and have been disputing the payments on various grounds before the Registrar, Cooperative Societies. The society has informed in August, 2007 that out of 80 Type-A flats, only 68 had been allotted vide draw of lots held on 07.09.2003. The society has also given detailed statement of the dues for “A” category flat alongwith the date of demand, payment, schedule and days of delay in payment, the interest chargeable, thereby supplying and showing the demand to the petitioner as Rs.25,46,774/-. On receipt of this demand, the petitioners instead of paying the amount have again objected to the rate of interest charged without bringing on record any evidence that either the rate of interest charged is not as per society rules or is more than that being charged to other members. He has, however, produced a letter of the Registrar dt. 26.5.05 which talks of revised rates of interest to be charged by the societies, which would not at this time be relevant to the present petition.

6. I find that the Registrar has in his order dealt in detail with all the objections raised by the petitioners from time to time and also given 60 days time to deposit the amount due. In spite of this the petitioners have not deposited any money and have instead again moved to the court on various grounds making it obvious that the petitioners are not interested in continuing their membership and have been persistent defaulters and till date have paid only an amount of Rs.1 lakh each towards the society, whereas a draw of flats was held in 2003.

7. In view of the above, the orders dt. 14th Feb., 2003 of the Registrar, Cooperative Societies, in case of both the petitioners which is a detailed order covering all contentions of the petitioners; is fair and I, therefore, uphold the orders of Registrar, Cooperative Societies and dismiss both the petitions.”

5. Before us, the counsel for the petitioner made a futile attempt to question his expulsion on the ground that the petitioner was in fact entitled to ‘A’ category flat and therefore, it was contended that the demand raised and expulsion thereafter on account of claiming charges for a ‘C’ category flat was illegal. We do not agree. The issue with regard to the entitlement /dis-entitlement of the petitioner to the ‘A’ category flat received a quietus in 1997 when on 1.12.1997, a demand was raised by the respondent no.2 society upon the petitioner for a ‘C’ category flat. If the petitioner was in any manner aggrieved, and if there was a dispute with the society, with respect to the entitlement of a higher category of flat, which the petitioner felt, he was entitled to, the petitioner was bound to have raised disputes with the society and seek its determination by Arbitration in terms of the provisions of Sections 60/61 of the Delhi Cooperative Societies Act, 1972. Admittedly, the petitioner failed to do so and therefore, the category of flat available to the petitioner i.e ‘C’ category flat, achieved finality. The counsel for the petitioner sought to contend that expulsion can only be in accordance with the rules and the rules have not been

followed by the respondent No.2 society. In fact, this argument is again predicated on the basis that the petitioner was entitled to a 'A' category flat. For the reasons already given above, this argument is without any basis as respondent No.2 society has very much followed the rules and the expulsion of the petitioner has been rightly upheld by the Registrar vide his order dated 14.2.2003 and as confirmed by the impugned order of the Financial Commissioner dated 16.9.2008.

6. A Cooperative Society can only function if the members pay dues for the ongoing projects of construction and which project is bound to flounder in case of defaults of members to pay their dues. Petitioner is one such defaulter. Today, there are no 'C' category flats which are available for being allotted to the petitioner. Even assuming, if 'A' category flats are available, the respondent No.2 society has inducted members who have paid for the construction and should not be deprived of the benefit of those flats for a defaulting member. We are in fact surprised at the attitude of the petitioner because he failed to avail the opportunity for even a 'A' category flat by seeking to raise unnecessary disputes with regard to interest with the society although, he was given an opportunity by the Registrar for availing allotment of 'A' category flat after making payment of the same within a period of 60 days, and which as already stated the petitioner failed to avail. Of course, we may hasten to add that the Registrar and the society had gone out of the

way because the issue with regard to the entitlement of the petitioner to 'A' category flat was not an issue in the those proceedings.

7. We are also informed by the learned counsel for the society that one of the petitioners i.e. petitioner in W.P.(C) No. 8125/2008 had in fact received back payment for his flat from the society by means of a cheque and which was encashed way back in the year 2003 and is thus clearly estopped from raking up the issue again.

8. The scope for hearing of a petition under Article 226 of the Constitution of India by this court is limited, more so when there are two concurrent judgments of two authorities below. This court can interfere only if there is a clear cut illegality or gross perversity and grave injustice to a petitioner. We do not find that any of these conditions exist in the facts of the present case. The present petition is in fact an abuse of the process of law by a defaulting member who is more interested in litigating with the society than paying his dues.

The present petitions are therefore dismissed with costs of Rs.10,000/- for each of the petition. The amounts deposited by the petitioner in court be refunded to them net of costs which should be paid to the society/ respondent No.2.

CM No. 15663/2008 in W.P.(C) No. 8124/2008 & CM No.15665/2008 in W.P.(C) No.8125/2008

Dismissed. Interim order dated 18.11.2008 stand vacated.

CM No. 13926/2009 (impleadment) in W.P.(C) No. 8124/2008 & CM No.13749/2009 in W.P.C No. 8125/2008

Dismissed as not pressed in view of what has been held aforesaid.

VALMIKI J. MEHTA, J

SANJAY KISHAN KAUL, J

April 23, 2010
ib