

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

+ **W.P.(C) No.140/2009 & W,P(C) No.144/2009**

% 2nd December, 2010

1. W.P.(C) No.140/2009

SANDEEP KUMAR

..... Petitioner

Through: Mr. R.S.Tomar and Mr.Sumit
Tomar, Advocates.

VERSUS

REGISTRAR, COOPERATIVE SOCIETIES & ANR Respondents

Through: Mr. S.Q.Kazim, Mr. Alim Miraz &
Mr. H. Usmani, Advocates for
R-1.
Mr. Abhimanyu Devraj, Adv. for
R-2.

2. W.P.(C) No.144/2009

MS. MAYA YADAV

..... Petitioner

Through: Mr. R.S.Tomar and Mr.Sumit
Tomar, Advocates.

VERSUS

REGISTRAR, COOPERATIVE SOCIETIES & ANR Respondents

Through: Mr. S.Q.Kazim, Mr. Alim Miraz &
Mr. H. Usmani, Advocates for
R-1.
Mr. Abhimanyu Devraj, Adv. for
R-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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VALMIKI J. MEHTA, J.(ORAL)

CM No. /2010 (to be registered) in W.P.(C) No. 140/09

CM No. /2010 (to be registered) in W.P.(C) No.144/09

The applications have been filed for condonation of delay in filing the counter-affidavits.

The delay in filing the counter affidavits is condoned and the applications are allowed.

W.P.(C) No.140/2009 & CM No. 301/2009
W.P.(C) No. 144/2009 & CM No. 305/2009

1. The counter-affidavits filed by respondent No.2 were lying under objections which were called for from the Registry.
2. The present two petitions are being disposed of by this common order because the facts are more or less similar and issues are identical. The impugned order in both the writ petitions is also common. Reference is made to the facts in the Writ Petition (Civil) No. 140/2009 for the sake of convenience.
3. The challenge by means of these petitions is to the impugned order 7.10.2008 of the Delhi Cooperative Tribunal (DCT) (hereinafter the impugned order) and by which order the

DCT has dismissed the appeals which had been filed by the present petitioners before the DCT challenging the order dated 11.9.2007 of the Joint Registrar, Cooperative Societies confirming the expulsion of the petitioners for non payment of the dues of the society.

4. At this stage, it is necessary to reproduce the certain portions of the impugned orders of the Joint Registrar and of the Tribunal. The relevant portion of the order of the Joint Registrar reads as under:-

“During the hearing on 30.5.06, Shri M.C.Gupta present on behalf of Sh. Sandeep Kumar and Smt. Maya Devi. None is present on behalf of the society. During the final arguments Shri J.N.Gupta, Advocate appeared on behalf of the society and Shri Rahul Kadyan, Advocate appeared on behalf of the defendant.

I have gone through the proposal of the society, submission of the society and the submissions of the defendants Sh. Sandeep Kumar and Ms. Maya Yadav. I have also heard the arguments at length from both sides. I find that the society has not been able to produce the original records pertaining to expulsion of the defendants Sh. Sandeep Kumar and Ms. Maya Yadav before me although it is noted in the proceedings that Sh. J.S.Dabas, president of the society was present along with original records in respect of Sh. Sandeep Kumar and Ms. Maya Yadav and same were found in accordance with Rule 36 of the DCS Rules, 1973 by the then RCS. The reasons for non production of the records has been stated by the society that the election of the society was held on 20.11.2005 and the new managing committee has taken over but the records of the society has not been handed over to it by the previous managing committee. Further I believe that the society produced records of expulsion during the hearing dated 26.3.04. I have also found that the defendant members Sh. Sandeep Kumar and Ms. Maya Yadav did not present during the hearings dated 13.4.04, 17.8.04, 11.11.04, 18.1.2005, 10.3.05, 28.4.05,

2.8.05, 13.9.05, 4.10.05 and 9.5.06. The notices issued for hearing by the Registrar dated 20.4.2004, 29.3.2004 have been returned back with the remarks that the flat is lying vacant, which creates a suspicion and I am inclined to agree with the contention of the society that they were perhaps not very much interested in contesting the case during the initial stage. It is also seen from the submission made by both the parties that the defendant members Sh. Sandeep Kumar and Ms. Maya Yadav have paid an amount of about Rs.2.25 lacs each as claimed by them which is much less than what have been paid by other members till now.

The records enclosed along with the proposal of the society makes it clear that sufficient opportunity as provided under order 36 has been given to both the parties and demands has been raised on them from time to time. It is also evident from the copies of the demand notices that the address which has been mentioned in the ration cards of the defendant members have been mentioned in the demand notices. If the defendants were really interested and irrespective of the fact that they had some kind of relationship with the contractor or builder or the then President of the society, they must be very well aware that demands raised by the society have to be paid as the construction of the dwelling units could not be completed without the contribution of the members of the society. The society has also published the demand notice in English and Hindi newspaper dated 12.1.2002 and the matters were requested to represent dated 12.1.2002 and the matters were requested to represent their case in the general body meeting to be held on 27.1.2002 and it appears that the defendant members did not present their case before the general body held on the above said date.

In view of the above facts and circumstances of the case the proposal of the society for expulsion of Shri Sandeep Kumar and Ms. Maya Yadav is approved and the society is directed to fill the vacancies as per provisions of the Rule 24 (2).

Accordingly the case is disposed of."

(Emphasis added)

5. The relevant portion of the Delhi Cooperative Tribunal reads as under:-

“On careful consideration of the parties submissions and examination of the records of the lower court it appears to us that there is a lot of substance in the arguments of the society. So far as the question of issuance of notice at the correct address of the appellants is concerned it appears that the notice for both the members in the year 2001, 2002 and 2003 were issued mainly a the address of Flat No.88, Amba Apartments, which is presently being shown as the address of Ms. Maya Yadav. Some notices from this flat had also been received back unserved with the remarks that the flat was vacant. Some notices were issued to both of them at the address C-8/34, Sector 8, Rohini which appears to be the then address of Sh. Sandeep Kumar but no response was received even from this address. As regards Sh. Sandeep Kumar a number of addresses are available on record which includes flat No.88, Amba Apartments, as well as C8/34, Sector 8, Rohini. However, the copy of the ration card now produced by Sh. Sandeep Kumar shows the address as E-16/181, Sector 8, Rohini, whereas his present address is shown as E 17/21 Sector 8, Rohini. Interestingly, neither of the appellants has mentioned as to what address he/she had given to the society at the time of their enrollment. They have also not produced any evidence to show that any letter was written by them to the society intimating any change of address in their record. This fact gives credence to the society’s allegation that they were enrolled by the then President/Contractor as benami members and they were very well aware of the progress of construction and society’s demand but they had deliberately chosen not to make the payment to the society. Most probably the notices were also collected by somebody personally and that is why some of the notices have shown only the names and no addresses. With the change in the managing committee there was a change in behavior of all concerned. This is proved from the fact that between 1998 and 2005 the appellants never wrote a letter to

society. It is also important to note that the society had as a last resort issued public notice in the newspapers and it is obvious that the society could not have done anything more in the matter. Taking an over all view of the case, we feel that there is no substance in the appeals of the appellants as they have failed to prove that the society has wrongly expelled them from its membership. We are therefore of the opinion that the Joint Registrar's order dated 11.09.2007 which is a self-speaking/detailed order deserves to be confirmed. We order accordingly.

In conclusion, the appeals are rejected and the Joint Registrar's order dated 11.9.2007 is hereby confirmed." (Emphasis added)

6. There is, therefore, a clear cut finding of fact in the impugned orders that the petitioners were issued notices on account of their defaults and on failure to comply with the same, the society after publishing the notices in the newspaper thereafter expelled the petitioners by a resolution passed in the General Body Meeting.

7. Before us, the learned counsel for the petitioners, firstly tried to strenuously canvass that the notices were not received by the petitioners and that they were not sent at the correct address. The counsel for the petitioners stated that the correct addresses are those as reflected in the memo of parties in the present petition. In fact, a reference to the memo of parties itself shows that the petitioners states the present address to be a new address. Not only that, the impugned orders note that different

addresses were given by the petitioners at different points of time. The crux of the matter however came to the fore when we asked the counsel for the petitioners to show us from the record as to what was the address given by the petitioners to the society for sending of their notices at the time of their enrolment, but, it could not be pointed to us what that address was as given to the society by the petitioners and thus the petitioners therefore cannot contend that the notices which were sent to a wrong address. In any case, we would not like to go into the finding of facts given by the impugned order which holds that notices were duly served upon the petitioners by the society before their expulsion and which finding of facts upholds the same finding by the Joint Registrar.

8. Learned counsel for the petitioners thereafter tried to take us to the notices issued by the society making the demands to contend that the same were defective. In our opinion, it is not open to the petitioners to take up mutually destructive stands of having not received the notices and also of the notices being allegedly defective. In any case, the defects which are sought to be pointed out are with respect to the amounts which are claimed to be due. We do not find that the present is a stage where this issue with regard to what is due from the petitioners should be gone into more so because the petitioners have admittedly and

barely paid a sum of about Rs.2 lacs to the society and which was basically the cost towards the cost of land and not towards construction cost. It is noted that if the petitioners would have been genuine members interested in the flats, they would not have slept for a long time of over 7 years from 1998 to 2005 if they were really interested in making payments and taking flats. The petitioners deliberately kept quiet till the construction was more or less complete and never contributed to the cost of construction. A Cooperative Society cannot succeed when defaulters seek to ride on the payments which are made by the sincere members of the society. We, at this stage, would like to refer to the certain apposite observations of a Division Bench of this court in the case of **Satish Chandra & Anr. Vs. Registrar Cooperative, 1993 (II) AD (Delhi) 81** which reads as under:-

7. The provisions of Delhi Cooperative Societies Act and Rules framed thereunder regarding expulsion of members particularly in relation to those who have defaulted in paying the call money by the society, have played havoc to the working of the societies in Delhi. Any member even if his contribution is bare minimum can thwart the process of expulsion on account of various procedural delays in the office of the Registrar, Co-operative Societies and on account of the provision of appeal in the Co-operative Societies Act. We feel that defaulter members should not put the society at ransom and the defaulter member to show his bona fide and equity must deposit the call money with the society under protest and only there the legitimacy of his claim could be examined by the

Registrar. It should not be a device to keep one's foot in the society and wait for the completion of the flats at the cost of others who have been regularly paying. After construction starts or is near completion the price of the flats escalates, then such defaulter members claim their right to own a flat. This will be giving premium to such kind of members for their default."

9. In view of the above, we do not find that the present is a fit case for exercising our jurisdiction under Article 226 of the Constitution of India in the light of the concurrent findings of both the authorities below. Further, we also feel that there is a shroud of mystery as to the genuineness of the petitioners as members of the society because there are sufficient facts on record to indicate that the petitioners may be benami members for the builder/contractor as a specific account number and the bank has been given in the order of the Joint Registrar from which account the payment of Rs. 2 lacs was made to the society with respect to the case of Sh. Sandeep Kumar. Other facts as narrated in the orders of both the authorities also support this position.

The writ petitions and applications are therefore dismissed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

DECEMBER 02, 2010
ib

SANJAY KISHAN KAUL, J.