

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

% Date of decision: 21.04.2011

+ WP(C) No. 1645/2011

JAI BHAWANI COOPERATIVE GROUP HOUSING SOCIETY LTD.
...PETITIONER

Through: Mr.Rakesh Munjal, Sr.Adv. with
Mr.Rakesh Kumar Garg, Advocate

Versus

REGISTRAR, COOPERATIVE SOCIETIES & ORS.
...RESPONDENTS

Through: Ms.Rachna Saxena, Advocate for
Mr.Rajiv Nanda, Addl.Standing
Counsel for Govt. of NCT of Delhi
for R-1 and R-2.

Ms.Shobana Takiar, Advocate for
R-3/DDA.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

- | | | |
|----|--|----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | NO |
| 2. | To be referred to Reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

SANJAY KISHAN KAUL, J. (ORAL)

1. Rule DB.
2. Learned counsel for the respondents accept notice.
3. At request of learned counsel for the parties, the matter is taken up for final disposal.
4. The petitioner is a one more Society which has been constrained to approach this Court on account of the unreasonable stand of R-1/RCS. The RCS has been sitting over the list of members even after the same has been verified and is not forwarding them to R-3/DDA for holding a draw of lots, causing harassment to the members of the Society.
5. The facts are that the petitioner/Society was offered allotment of land by DDA on 03.06.1998 and vide letter dated 05.04.2000, Plot No.5B, Sector 22, Dwarka Phase-I, was allotted by the DDA to the petitioner/Society for a total premium of Rs.1,41,32,000/-. This amount was deposited by the petitioner/Society on 28.08.2000 and subsequently a perpetual lease deed was executed in favour of the petitioner/Society on 14.04.2001, which was duly registered with the Sub Registrar on 21.05.2001. The Society got the plans approved and on completion of almost 90 per cent of the construction, sent a letter dated 28.02.2005 along with the requisite documents to the RCS proposing allotment of flats to its 69 members. The Society took out information to general public on 04.04.2005 for clearance of membership for draw of lot in

pursuance to the directives of the RCS dated 09.11.2004. No objection is stated to have been received in pursuance to the public notices. The Society informed the RCS vide letter dated 29.08.2005 that all the facilities including electricity, water & sewer, lifts, fire fighting, mandatory greenery and landscaping etc.were in place and records once again sought for by RCS were also again produced. Despite this, the names were not forwarded by the RCS to the DDA and the same are hanging fire for more than 5 years since December, 2005.

6. A subsequent development took place in February, 2006 when a Division Bench of this Court in Yogi Raj Krishna Cooperative Group Housing Society Ltd. v. DDA & Anr.; (2008) 9 AD Delhi 502, passed certain general directions arising from the complaints regarding entitlement of societies to land and various aspects connected with the same including enrolment of members. The petitioner/Society was also one such Society. On completion of investigation, charge sheets were filed against three persons qua the petitioner/Society, out of which one is a member of the Society i.e. Mr.Ravinder Kumar Jain while one other is a Dealing Assistant in the Office of the RCS. It may be added that in the subsequent proceedings in the said case, it was noticed that there were 58 societies where construction was complete and flats could be allotted after due procedure.

7. The petitioner/Society deposited charges with Registrar General of this Court and also got published public notices in newspapers complying with directions of this Court so that verification of its members could be carried out regarding the membership. This was to verify whether there were *inter alia* any claims of any resigned members. The petitioner/Society continued to communicate with RCS and even completion-cum-occupancy certified was issued on 11.11.2009, which was duly sent to the RCS on 12.11.2009.
8. It is only in pursuance to certain directions which were passed by this Court in some other proceedings on 18.01.2010 that the website of the RCS is stated to have been updated and thereafter the Society was called by the RCS vide letter dated 12.02.2010 for removing deficiencies in the proposal submitted by the Society. The Society claims to have made repeated visits to RCS thereafter and exchanged communications including informing the RCS about election of managing committee and audit of accounts of the Society carried out under the supervision of RCS itself. As per the latest update on the website of RCS as on 08.03.2011, the petitioner/Society is stated to have removed all deficiencies and yet the draw of lots has not been held. It is this inaction of respondents which has compelled the Society to now

approach this Court by filing the present writ petition under Articles 226 and 227 of the Constitution of India.

9. In the counter affidavit, filed by RCS, as a preliminary submission, it has been stated that a list of 73 members stands approved as on 15.10.1997. Four members were decreased by the competent authority and the freeze strength of the Society is 69 members. Flats available are also 69. There is only one claim granted by the Tribunal in favour of a member and there is no other complaint or claim pending consideration. It is also admitted that there is only one charge-sheeted person.

10. RCS has once again laid emphasis on the general findings of the CBI, which is a practice being followed by RCS in almost all cases which come up before this Court where members of the Society have been making a grievance about non-allotment of flats. This is despite the fact that often there are few charge-sheeted members and even their eligibility is not in doubt whatever the ramification of the criminal prosecution.

11. We have repeatedly emphasized to RCS through various court orders about the almost anarchic situation which is sought to be created by conduct of RCS. This Court has been faced with repeated examples of self-draws being held by members, frustrated with the approach of RCS. This Court has interceded in these matters to ensure that the law of land is followed and the

self-draws are not encouraged because verification of membership by RCS and thereafter holding of draw of lots by the DDA is a mandatory requirement. At the same time, this Court is conscious of sense of frustration which arises in members who are awaiting their flats, may be living in rented accommodation and may have even taken loans. We may notice that insofar as the issue of Rule 90 of the Delhi Cooperative Societies Rules, 2007 is concerned, in WP(C) No.1877/2010 decided on 26.05.2010, it has been decided as under:

“....The purpose of scrutinizing the records was to verify the entitlement of the petitioner-Society to the land and various aspects connected with the same including enrolment of members. There is no infirmity in the present case. No purpose is thus to be served by once again referring the matter to the Committee under Rule 90 of the said Rules. We are also informed that Justice Chopra Committee before whom such a recommendation was to be placed after scrutiny under Rule 90 of the said Rules is not functioning now.

We see no reason why members of the petitioner-Society should continue to await their due entitlement of flats, four years having already gone by.

We thus direct R-1 to forward the case in respect of 74 members of the petitioner-Society to R-2/DDA for holding a draw of lots for allotment of flats. Necessary action be taken by R-1 within fifteen days from today. R-2/DDA is expected to complete the process within a month of receipt of papers from R-1.

The petition accordingly stands disposed of leaving the parties to bear their own costs.”

12. The Special Leave to Appeal (Civil) No.24728/2010 filed against the said order stands dismissed on 24.9.2010.

13. In WP (C) No.5164/2010 decided on 9.9.2010 we had considered the effect of the judgement in The Yogi Raj Krishna Co-operative Group Housing Society Ltd. Vs. DDA & Anr. 2008 9 AD Delhi 502 and observed as under:

“The intervening factor which came into being was the examination of the Division Bench of this Court of the disputes pertaining to various societies in The Yogi Raj Krishna Co-operative Group Housing Society Ltd. Vs. DDA & Anr. 2008 9 AD Delhi 502. General directions were passed in that matter setting out the broad modalities and procedure to be followed. The purpose of scrutinizing the record was to verify the entitlement of the Societies to the land and various aspects connected with the same including enrollment of members. The petitioner Society was also one such Society.

Insofar as the issue of allotment of land is concerned no infirmity is found in the case of the Society. This aspect is verified from the website of the Registrar, Co-operative Societies where it is stated so. The land stands in the name of the Society. The CBI has also verified the relevant records. Despite this an endeavour was, once again, made to refer the matter to the Committee under Rule 90 of the Delhi Co-operative Societies Rules, 2007 (hereinafter referred to as the said Rules) and thus we restrained such a reference in terms of our order dated 3.8.2010. We have analyzed the similar situation in WP (C) No.1877/2010 titled Apni Co-operative Group Housing Society Ltd. Vs. The Registrar of Co-operative Societies & Anr. decided 26.5.2010 and have found that there is no purpose to be served by reference of these cases once again to the Committee under Rule 90 of the said Rules. Not only that Justice Chopra Committee before whom such recommendations were to be placed after scrutiny under Rule 90 of the said Rules has not been functioning now.”

14. We consequently allowed the writ petition in view of the aforesaid observations in the following terms:

“We, thus, direct respondent No.1 to forward the case of all 86 members to the DDA/respondent No.2 for holding draw of lots for allotment of flats. In case any documents are required from 5 members as stated by learned counsel for

respondent No.1 the same be obtained. Respondent No.1 will take necessary action to send the final list to the DDA within fifteen (15) days from today and respondent No.2/DDA is expected to complete the process of draw of lots within a month of receipt of papers from respondent No.1.

The petition is accordingly allowed leaving the parties to bear their own costs."

15. In yet another case in WP (C) No.5619/2010 decided on 18.8.2010 we expressed our anguish at the manner in which the allotment of flats to members have been delayed which is resulting in people taking law into their own hands by illegally occupying the flats which cannot be recognized.

We, thus, passed the following orders:

"This is one more case where constructed flats are lying vacant because draw of lots is not being held. The draw of lots has not been possible because the matter is still pending with the R-1/RCS who has not forwarded the names to the R-3/DDA for holding draw of lots.

In our considered view, there are various ramifications which arise from laxity in processing these cases. The RCS appears to be taking advantage of the fact that there is no statutory period prescribed under the Delhi Cooperative Societies Act, 2003 to carry out the task. The members of the petitioner/ society have invested their funds pursuant whereto construction of flats has been made which are now vacant for years together. This implies that such members may be staying in rented accommodation and simultaneously may be paying EMIs for the loans which they may have availed of. An important capital asset like a flat in the mean time remain unutilized.

We are thus compelled to issue directions to R-1/RCS to process the case of the petitioner-Society and forward the names to R-3/DDA after due verification within a maximum period of one month from today.

We make it clear that even if there is some doubt in respect of some members, it should not prevent the holding of draw of lots for the remaining members.

The R-3/DDA will hold the draw of lots within 15 days of the receipt of the names from R-1/RCS.

The writ petition is disposed of with the aforesaid directions.”

16. Our observations made in these orders, however, fell on deaf ears as noticed by us in WP(C) No.7096/2010 decided on 10.11.2010. We had to once again issue directions to the RCS to forward the list to the DDA for holding a draw of lots. In WP(C) No.1963/2011 decided on 10.03.2011, we have once again discussed the various orders passed by us and the history of the problems faced by members. We took note of the order dated 25.02.2011 passed on two applications filed in Yogi Raj Krishna Cooperative Group Housing Society Ltd. v. DDA & Anr.’s case (supra) where a coordinate Bench of this Court had directed the RCS to forward the list of members to the DDA to conduct a draw of lots despite a fact that the members in issue had enrolled later in point of time i.e. on resignation of promotee-members. The Division Bench had devised a methodology that all the members should file an affidavit of indemnity within two weeks giving an undertaking to the RCS to the effect that if a promotee/member(s) comes forward and stakes claim for allotment of a flat and obtains favourable order from the court of law, the member shall abide by the said order.
17. The aforesaid eventuality does not arise in the present case because the membership in the case of

petitioner/Society stands verified as confirmed by learned counsel for RCS. The reason behind not forwarding the list of members to DDA is stated to be only the pendency of charge-sheet, on which we have commented on numerous occasions. We are pained to note that other than calling upon us to repeatedly pass the same kind of orders and causing wastage of judicial time, the RCS appears to be doing nothing. Once the principles are set out by this Court and accepted, there is no reason why every Society must keep on approaching this Court for holding a draw of lots and for seeking allotment. The legal position having been settled, the RCS should have volunteered to forward the names to the DDA.

18. We are thus of the view that RCS must be penalized for such conduct and we have put to learned counsel for RCS to notice that the costs which we seek to impose now would continue to escalate for every such repeated stand taken by the RCS contrary to our directions, which is really contumacious in character and would be to the personal account of RCS.

19. We thus direct the RCS to forward the names to the DDA for holding a draw of lots within 10 days from today and the DDA is directed to hold a draw of lots within 15 days thereafter, whereafter the possession of flats will be handed over to the members of the Society.

20. The writ petition is accordingly allowed with costs quantified at Rs.10,000/-, which shall be paid to the petitioner within 15 days.

CM No.3499/2011

No further directions are called for on this application.

The application stands disposed of.

Dasti.

SANJAY KISHAN KAUL, J.

APRIL 21, 2011
dm

RAJIV SHAKDHER, J.