

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

% Date of decision: 16.09.2011

+ WP(C) No. 6732/2011

SH.GYAN PRAKASH VISHNOI ...PETITIONER

Through: Mr.Sanjay Kumar, Advocate.

Versus

THE SECRETARY,
MAHARAJA SAINI COOPERATIVE GROUP HOUSING SOCIETY
LTD. & ORS.

...RESPONDENTS

Through: Mr.Rahul Bhandari, Advocate for
Mr.Rajiv Bansal, counsel for R-3/
DDA.

CORAM:

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

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| 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)

CM No.13601/2011

Allowed subject to just exceptions.

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1. The petitioner claims to have become a member of the R-1/Society on 31.12.1996 and deposited amounts from time to time with R-1/Society totaling to Rs.2,50,000/- up to the year 2000. The R-1/Society was allotted a plot no.25, Sector 12, Dwarka (Pappankala) admeasuring 4,500 square yards and this information was furnished to the members including the petitioner vide letter dated 16.04.2000 recording that Rs.1,50,000/- had been paid by the petitioner and thus the balance amount was Rs. 1,00,000/-, which is stated to have been paid on 29.05.2000. The petitioner claims that he shifted to another country but informed the Managing Committee of R-1/Society about his fresh contact address which was his permanent address being E-100, Saket, New Delhi ('the Saket address' for short) as was given in the original application form of

membership of R-1/Society ('the application form' for short). The writ petition does not thereafter referred to any written communication by the petitioner or to him for a period of 11 years as the petitioner claims that he returned from abroad 10 years later in 2011 when he contacted R-1/Society to enquire about status of his flat. The petitioner was informed that he had been expelled from membership of R-1/Society and the membership had been cancelled. The request of the petitioner for withdrawal of cancellation of the membership did not receive positive response and thus a communication was addressed in this behalf.

2. The R-1/Society informed the petitioner vide letter dated 10.03.2011 that a demand letter had been sent to the petitioner on 08.06.2003 which was returned undelivered. The same was the fate of another letter dated 05.09.2003 whereafter R-1/Society initiated expulsion proceedings for all defaulting members. Notice in this behalf was sent to the petitioner on 21.09.2003, 08.10.2003 and finally on 28.10.2003, but all were returned back unserved.

3. A public notice was also published in The Indian Express & Jansatta on 08.11.2003 for the petitioner to attend a meeting of the Managing Committee to be held on 16.11.2003, but to no avail and thus the expulsion of 19 persistent defaulters including the petitioner was approved by the Managing Committee on 16.11.2003. The R-1/Society thereafter approached the R-2/RCS for approval of the expulsion on 20.11.2003 and the R-2/RCS heard the case on 09.12.2003, 23.12.2003 and 22.01.2004. The order was finally passed on 10.02.2004. Before the final hearing in the court of R-2/RCS, the R-1/Society had published another public notice on 02.02.2004 as per the instructions of the R-2/RCS. The R-2/RCS thus finally passed an order on 17.02.2004 for outstanding payments to be made to R-1/Society within one month by all the persistent defaulters failing which the expulsion as proposed by R-1/Society would automatically stand approved.
4. The R-1/Society sent a demand letter to the petitioner on 19.02.2004 for clearing the outstanding as on that

date amounting to Rs.3,74,682/-, but these dues were not cleared. The R-1/Society thus sent the refund cheque for Rs.2,50,000/- on 10.06.2004, but even this cheque was returned back unserved. R-1/Society thus informed the petitioner to collect the amount after submitting the original share certificate and receipts issued in the name of the petitioner. The petitioner claims to have again left for abroad and appointed one Mr.Nitin Gupta as his attorney, who got the legal notice served on the respondents through counsel dated 21.03.2011. This legal notice was responded to by the R-1/Society on 15.04.2011 denying that the petitioner had ever informed R-1/Society that he was leaving for abroad nor any fresh address of the petitioner was furnished to R-1Society at any point of time.

5. The principal grievance of the petitioner is that he had never received any notice from either R-1/Society or R-2/RCS about any demand or the expulsion proceedings. Thus, the petitioner cannot be visited with adverse consequences. A copy of the application form filed along with the petition shows that the residential

address given by the petitioner was not the Saket address. The Saket address is on a printed format which bears no date or any proof of delivery to R-1/Society. The R-1/Society kept on sending intimations to the petitioner and the same was the position in respect of the notices issued by R-2/RCS at the residential address given in the application form. Publication in newspapers was also carried out.

6. We thus find that the petitioner has been unable to substantiate that he had informed R-1/Society about change in his address and both R-1/Society and R-2/RCS took all the necessary steps to inform the petitioner about further demands and expulsion proceedings but the envelopes sent were returned back undelivered as they were sent at the address given in the application form.
7. The most important fact in the present case is that the petitioner was fully aware of the allotment of land vide the letter of the Society dated 16.04.2000 and paid the contribution demanded towards the land cost. There has been a silence on the part of the petitioner after

that. The petitioner could have hardly expected for the construction of flats to be carried out without funding from the members. The very purpose of a cooperative society is that all the members contribute towards the cost and thus if some of the members are defaulters, it can have negative ramifications for other members. The silence on the part of the petitioner is for more than a decade as he went abroad. If the petitioner chooses to go abroad for so long as more than a decade and does not communicate with R-1/Society, the petitioner cannot be permitted to now come and claim a flat. It is a matter of public knowledge that there has been considerable escalation in real estate prices in Delhi and the petitioner now seems to be attempting to take advantage of his original membership to claim a flat though he has contributed not a penny towards construction cost.

8. We thus find no merit in the writ petition which is dismissed leaving the parties to bear their own costs.
9. We may note in the end that the petitioner has filed some original documents along with the petition

including the share certificate, receipts of payments and letters. He may require the same to submit them to R-1/Society for seeking refund of his initial deposit and thus these documents can be released to the petitioner on his obtaining certified copies of these documents and filing the same on record.

SANJAY KISHAN KAUL, J.

SEPTEMBER 16, 2011
dm

RAJIV SHAKDHER, J.