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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7125/2015 & CM 13071/2015

RAJAN GUPTA & ORS

Through

..... Petitioner
Mr Avadh Kaushik with Ms Deepika
Raghav, Advs.

versus

VIKAS CO-OPERATIVE GROUP-HOUSING SOCIETY LTD. & ORS

Through

..... Respondent
Mr Santosh Kumar Tripathi, ASC for R2 –
GNCTD
Ms Mansi Bajaj, Adv. for R3 – DDA
Mr Priyadarshi Manish with Ms Anjali J.
Manish, Adv. for R4
Mr Ankur Arora, Adv. for R6 & 7
Mr R.K. Saini and Ms Minal Sehgal, Advs.
for R8

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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20.07.2016

Mr Rajan Gupta, Mr Pradeep Batura and Mr Harish Kumar Bhasin have filed the present writ petition seeking following reliefs:

- “(a) A writ of certiorari or any other writ, order or direction directing the respondent nos.1 and 2 to produce the entire record of the matter; pursue the same and thereafter quash and set aside the ‘seniority list’ (Annexure-P-13) prepared by the office of RCS/respondent no.2;
- (b) A writ of certiorari or any other writ, order or direction directing the respondent nos.1 and 2 to remove the name of the respondent nos. 4 to 9 from the seniority list (Annexure-P-13) who have been placed at serial no. 17 to 22 respectively or to place them junior most and in any case, after the names of the present petitioners in the said seniority list; in case their membership is found to be genuine after due investigation;
- (c) A writ of Mandamus or any other writ, order or direction thereby directing

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the respondent nos.1 and 2 to prepare fresh seniority list of the legitimate members of the Society / respondent no.1 thereby placing the petitioners herein at seniority serial No.24,20 and 21 respectively;

- (d) A writ of mandamus or any other writ, order or direction thereby directing the respondent nos.1 and 2 to forward the aforesaid freshly prepared seniority list containing the names of the petitioners at serial nos. 24, 20 and 21 to the office of the respondent no.3 and direct the respondent nos. 1 to 3 to conduct a fresh draw of lot of 24 available flats in the society/respondent no.1."

Respondent no.1 is Vikas Cooperative Group Housing Society Ltd.; respondent no.2 is Registrar, Cooperative Societies; respondent no.3 is Delhi Development Authority and respondent nos. 4 to 9 are Monica Grover, Sonia Gandhi, Vishal Arora, Surender Kumar, K.L. Talwar and Alok Suri.

Reference and reading of the prayer clause reveals that the challenge made in the writ petition is to the enrolment and seniority position given to the respondent nos. 4 to 9 at serial numbers 17 to 22, whereas the petitioners Rajan Gupta, Pradeep Batura and Harish Kumar Bhasin, have been given seniority position at serial numbers 30, 26 and 27 respectively. The petitioners' grievance is that they should be given seniority at serial nos.24, 20 and 21, and if their prayer is accepted, then they should be eligible for allotment of Middle Income Group flats.

It is also an admitted position that there were 24 vacant flats (5 HIG + 19 MIG) which have to be allotted as per the order of seniority in the seniority list.

The contention of the counsel for the petitioners is that the respondent nos. 4 to 9 were not included in the earlier seniority list published on 30.06.2003 and therefore the said respondents were per se junior to the petitioners. Further as per law, no waiting list could have been maintained by the respondent no. 2 – Cooperative Society and therefore, the seniority position given to the respondent nos. 4 to 9 on the basis that they were on the waiting list, is erroneous and contrary to law. Reliance is placed on the circular issued by the Registrar Cooperative Societies dated 22.02.1984, to the effect that cooperative societies should not maintain any waiting list.

It is correct that the names of the respondent nos. 4 to 9 were not included in the list of members published on 30.06.2003, but this was apparently on account of the fact that the said respondents were removed from the list of members as their enrolment was cancelled. This cancellation had become the subject matter of proceedings initiated by the respondent nos. 6, 7 and 9 under Ss. 60 and 61 of the Delhi State Cooperative Societies Act, 1972. Initially, the claim made by the respondent nos. 6, 7 and 9 was rejected by an award dated 25.02.2002. However, the said respondents succeeded in the appellate proceedings before the Delhi Cooperative Tribunal in Appeal Nos. 95/2002/DCT/, 96/2002/DCT and 97/2002/DCT vide order dated 25.05.2007. The operative portion of the appellate award reads as under:

"It appears from the record that the appellants' claim U/s 60 was admitted by the Joint Registrar's order dated 16.10.2000 and the arbitrator was required only to decide the claim on its merits. Though the arbitrator has touched upon the merits of the claims he has also in passing mentioned that the real remedy available to the appellants was to file an appeal under the relevant provisions of the Act and not to route their claims through Section 60/61. So far as the merits of the appeals are concerned, we feel that the appellants have a very strong case. It is true that there is a different times, maintained waiting list of members. It is also true that at least in the initial stage of any society's life there is a huge turnover of members and in case of expulsion / resignation of members, it sometimes becomes difficult or too time consuming to enrol new members. For these reasons the societies have in practice been maintaining waiting lists. Also, a common man wanting a roof over his head in a place like Delhi is not supposed to know such legal issues like the validity or otherwise of waiting list etc. If they are enticed or mislead into believing that they can become members in a society they definitely do so by doing whatever the M.C. / Society asks them to do. It is also very difficult for a common man to know the authorities of various office bearers of managing committee and their competence and, therefore, whenever somebody approaches him and invites him to become a member, he normally does not hesitate to do so. For these reasons, the arbitrator's stand that the enrolment of the appellants was not legally valid is not reasonable and cannot be accepted. The arbitrator has not gone into the issues raised by the appellants that after throwing them out, the society, in fact, enrolled new members, thus violating the principles of natural justice. There also appears to be some dispute regarding the approved strength of the society and it is not clear whether it is 110 or 129. Since the society is presently under supersession and the administrator also appears to be non-functional for various reasons, we think that the interest

of justice would be served if the RCS now investigates the whole issue and verifies the exact date of vacancies and new enrolment after the date on which the then MC of the society scrapped the waiting list and threw out the waiting list members. In case it is found that the society did enrol any members after this date the RCS should prepare a fresh waiting / seniority list of members and decide as to who should get a membership against which vacancy. This stand has also been supported in the Delhi High Court judgment in Civil Writ Petition No.913 of 1988 – Sh. Ravi Kumar Sethi v. RCS & Ors, in the case of Bhirochi Cooperative House-Building Society Ltd. wherein it has been held by the High Court that the persons who were enrolled earlier should be given priority in the waiting list as compared to the members who have been enrolled subsequently. It is, however, made clear that this order does not in any way, decide the eligibility of the individual appellant to become a member of the respondent society. What we are laying down is only a principle that no member who was enrolled after throwing out the appellants should be considered to be senior to the appellants without first considering their claim for such a membership of the society and the allotment of a flat. This order also does not do away with any other formalities to be completed by the appellants in respect of their membership / allotment of flats.

In view of the above, the awards of the arbitrator dated 25.02.2002 in all the three appeals are set aside and the matter is referred to the RCS to investigate the matter and to decide the claims of the appellants as per the directions given in the preceding para."

The directions given by the Delhi Cooperative Tribunal were challenged by the respondent no.1 Society in W.P.(C) No. 5094/2007, 5095/2007 and 5173/2007. In these proceedings, applications were filed by Deepak Gupta, Kamleshwar Pratap, Sudershan Manchanda, Harish Kumar Bhasin (petitioner no.3 herein), Ajay Sawhney and Satvinder Kaur for impleadment on the ground that the directions given by the Appellate Tribunal were contrary to their interest. After some arguments, these applications were not pressed and were dismissed as withdrawn with liberty to the applicants to agitate their grievance as admissible in law.

Harish Kumar Bhasin and Sudershan Manchanda subsequently approached this Court by way of W.P.(C) No.5527/2008 in which Vishal Arora, Alok Puri and Surinder Kumar were made respondent Nos. 3 to 5. The prayer was that the petitioners therein, should be allotted flats as they were bonafide members. The challenge was to the seniority position claimed and allotted to the respondent nos. 3 to 5 therein. The writ

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petition was not pressed as recorded in the order dated 01.08.2008. Liberty was granted to the petitioners therein to pursue any statutory remedy as would be available.

Two other, namely, Deepak Gupta and Kamleshwar Pratap, had filed W.P.(C) No. 11809/2009 before the High Court impelading Surender Kumar, Alok, Suri and Vishal Arora as respondent nos. 4, 5 and 6. The prayer made was to quash the order dated 25.05.2007 passed by the Delhi Cooperative Tribunal and to direct the Cooperative Society and the Registrar Cooperative Society to remove the said respondents from the list of members and not to give them any benefit. By order dated 13.09.2010, this writ petition, after some arguments, was withdrawn by the counsel appearing for Deepak Gupta and Kamleshwar Pratap. This order also records that it would be open to Deepak Gupta and Kamleshwar Pratap to resort to independent proceedings for their grievances in accordance with law.

Pursuant to the directions by the Cooperative Societies Appellate Tribunal in their order dated 25.05.2007, the seniority list under challenge was published on 7th March, 2011. As per the said seniority list, the respondent nos. 4 to 9 have been placed at serial numbers 17 to 22. The petitioners herein, as noticed above, have been placed at serial numbers 30, 26 and 27 respectively. Pertinently, in W.P.(C) No.2585/2007 titled Kamleshwar Prasad v. Registrar Coop Societies and Ors, directions were given by the Court for preparation of the seniority list. Subsequent order dated 21.04.2011 by the High Court acknowledges the fact that the seniority list had been prepared.

The petitioners, including petitioner no.3 in the present writ petition, have asserted that they for the first time came to know of this list dated 07.03.2011 in May 2015, and in perusal thereof, have found the same to be arbitrary, illegal, etc. [see paragraphs (xx) and (xxvi) of the present writ petition].

The primary question which arises is whether the petitioners herein can be permitted to challenge the said seniority list in this writ petition filed on or about 27.07.2015 i.e. after a period of about 4 years.

The contention of the learned counsel for the petitioners is that they were unaware and not notified about the seniority list published in March, 2011. Being ignorant, they possibly could not have challenged the said list.

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We have considered the said contention and are unable to agree with the counsel for the petitioners. One of the petitioners i.e. petitioner no.3 – Harish Kumar Bhasin, had earlier made applications on 10th July, 2008 for being impleaded as a party to the W.P.(C) Nos. 5094/2007, 5095/2007 and 5173/2007. These applications were dismissed as withdrawn, with liberty to the applicants, including the petitioner no.3 – Harish Kumar Bhasin, to initiate appropriate proceedings. The applications refer to the award of the Cooperative Tribunal. Harish Kumar Bhasin had subsequently filed an appeal in January, 2012 under S. 112 (1) (i) of the Delhi Cooperative Societies Act, 2002 before the Presiding Officer, Delhi Cooperative Tribunal, and in the said appeal, reference is made to the seniority list published in the month of March, 2011. In paragraph 10 of the said appeal, Harish Kumar Bhasin had stated that the Registrar had filed the list of members awaiting allotment of flats along with their reply to W.P.(C) No.2585/2007, and the said seniority list was titled as *"Seniority List of MIG Category Members of Vikas Cooperative Group Housing Society Limited (Regn. No.94-H) waiting for allotment of the flats"*.

In these circumstances, it is not possible to accept the contention that the petitioners herein were unaware of the seniority list published in the month of March, 2011.

Learned counsel for the petitioners submits that at best, the aforesaid facts would indicate that Harish Kumar Bhasin (petitioner no.3 herein) was aware of the said list as he has mentioned this fact in his appeal mentioned above, but in case of Rajan Gupta (petitioner no.1) and Pradeep Batura (petitioner no.2), it cannot be said that they were aware that there was a seniority list which was published in March, 2011.

We do not find any merit in the said contention for the reason that the question of seniority list was of utmost importance as there were a limited number of flats i.e. 24 flats, and the same were to be allotted as per the seniority list. Members lower down, in spite of being eligible, would be denied allotment. We have referred to the inter se litigation between different members and the applications being moved by them after the Award dated 25.05.2007 was passed by the Delhi Cooperative Tribunal. The Award was challenged in the writ petition before this Court by the Cooperative Society. The seniority

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list dated 7th March, 2011 is purportedly predicated on this appellate award.

It is not possible to accept and believe that the petitioner nos. 1 and 2 were oblivious and unaware of the seniority list published in March, 2011. The said list was made public and was in circulation, and hence, was certainly within the knowledge of the members of the Cooperative Society. The seniority position being of utmost importance and a contentious issue inter se the parties, the seniority list published in March, 2011 could not have gone and had not gone unnoticed. Some members lower down in the seniority list, including the third petitioner, had challenged the said list. The list was certainly questioned. It would be rather credulous and naive to accept that the petitioner Nos. 1 and 2 did not follow and know that the seniority list had been finalised. This being the position, we do not think the petitioners can claim that they were ignorant and strangers to the seniority position accorded to the respondent nos. 4 to 9 vis-à-vis petitioner nos. 1 and 2.

In the present case, being blind to the delay and laches would give credence and acquiescence to attempt and desire to keep the disputes and claims on a fester and boil, possibly with the hope and desire that with the passage of time, some advantage would accrue. At every stage, one or the other member should lay his claim. Delay and laches in such circumstances cannot be condoned and should be checked.

In view of the delay and laches, we are not inclined to go into other questions relating to the merits in the present writ petition. We clarify that the aforesaid observations would not affect or cause prejudice to any third person who has questioned the seniority list in accordance with law and without delay.

The petition stands disposed of.

Pending CM also stands disposed of.

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SANJIV KHANNA, J

Sunita Gupta
SUNITA GUPTA, J

JULY 20, 2016/rd