

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

+ *Reserved on: 19th November, 2018*
Pronounced on: 28th November, 2018

LPA 110/2015

STATE BANK OF INDIA

..... Appellant

Through: Mr. Vikas Singh, Senior Advocate
with Mr. Anil Kumar Sangal,
Mr. Siddharth Sangal and Ms. Antara
Rastogi, Advocates.

versus

SBI STAFF RESIDENTS WELFARE SOCIETY & ORS Respondents

Through: Mr. Mohit Chaudhary, Ms. Srishti
Gupta and Ms. Garima Sharma,
Advocates for R-1.
Ms. Shobhana Takiar, Advocate for
DDA.
Mr. Bhagwan Swarup Shukla and Mr.
Shashwat Sharma, Advocates for R-
UOI.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. The present appeal under Clause X of Letters Patent Appeal arises out of the judgment and order dated 18th February 2015 of the learned Single Judge passed in W.P.(C) 1509/2011 wherein the question of maintainability of the writ petition has been decided against the Appellant.

Factual Background

2. The scope of the present appeal, though a limited one, has several aspects that require us to go into the facts. This is necessary in order to decide the challenge in the present appeal in proper perspective.

3. The present case has a long history. SBI Staff Residents welfare society (hereinafter referred to as the "Respondent Society") and its members filed writ petitions before this Court in the year 1993. It is their case that the Respondent Society is registered under the Societies Registration Act, 1860 and has been founded for the welfare of 132 employees and ex-employees of State Bank of India (hereinafter referred to as the "SBI"). The society and its Members claim that Delhi Development Authority (hereinafter referred to as the DDA) had constructed certain flats and handed over the same to the Appellant for further allotment to its lower income group employees.

4. The Respondent Society further claims that on 6th October 1971, in accordance with Delhi Development Authority Regulation 1968, DDA formulated a scheme for allotment of flats to persons belonging to lower income group. Under this scheme, huge number of flats were constructed by DDA at various places including Lawrence Road, the subject matter of the present case. DDA offered the flats to several government corporations. SBI approached DDA for including them under the scheme for its employees belonging to lower income group.

5. Respondent Society relied upon certain internal notings of DDA, to

contend that that DDA considered the request of SBI for allotment of flats at Lawrence Road area. It is also averred that some of the members of the society received allotment letters and possession of the flats some time in 1974. The members of the Respondent Society contend that SBI instead of abiding by the terms of scheme formulated by DDA, allotted the flats to them on leave and license basis. The employees, who are members of the Respondent Society made a representation to SBI as well as DDA stating that they should be allotted flats on ownership basis. It is further alleged that the conveyance deed and the perpetual lease deed executed by DDA in favour of SBI on 27th November 1986, was without the knowledge of the members of the Respondent Society.

6. Sometime in October-November 1989 the allottee-employees on reaching their superannuation, began to receive eviction orders issued by SBI Estate Officer under the Public Premises Act 1971. The allottees challenged such orders by filing petition under Section 9 of the Public Premises Act 1971 before the Court of District Judge Delhi.

7. On 8th October 1990, DDA informed SBI, that it had decided not to execute any conveyance deed in favour of any individual employee occupying the flats unless SBI expressly requested to do so.

8. In 1991, the District Judge remanded the cases to the SBI Estate Officer for fresh consideration. The Estate Officer on reconsideration again came to the conclusion that the employees who had superannuated and were retaining the flats were unauthorized occupants and ordered them to vacate

the same.

9. Some of the employees filed writ petitions bearing no. W.P.(C) 779/1993 and W.P.(C) 1151/1993 before this Court seeking stay of the eviction orders. Respondent Society claims that during the proceedings, SBI officials assured them that employees would not be evicted from the flats and accordingly the Respondent Society (Petitioners in the writ petitions) withdrew the aforementioned writ petitions. The withdrawal orders become the subject matter of the controversy in the present appeal. The orders of withdrawal read as under:

“23.08.1993

CM No.779-1993 & 1331/1993

After some arguments, counsel for the Petitioners wants to withdraw the petition. Dismissed as withdrawn.”

10. In another W.P.(C) 1151/1993, similar order was passed on the same date. The said order reads as follows:

“23.08.1993

CM No.5955/1993 & 1151/1993

After some arguments, counsel for the Petitioners wants to withdraw the petition. Dismissed as withdrawn.”

11. It is stated that after the withdrawal of the above noted writ petitions, members of the Respondent Society continued to press their demands and follow up with DDA and SBI for allotment of the flats on ownership basis.

12. After 18 years since the withdrawal of the petitions, the Respondent

Society woke up and filed a fresh writ petition in the year 2011 bearing No. W.P(C)1509/2011. In order to explain the delay and justify the maintainability of the second writ petition, Respondent Society relies on a letter dated 9th February 2007 written by DDA to Central Government. This letter makes some comments on the action of the Management of the SBI for not allotting their flats to the individual employees. This communication is being relied upon by the Respondent Society to justify the maintainability of the second writ petition and therefore it is necessary to reproduce the contents thereof:

“DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE DIRECTOR (HOUSING)-I
B- Block, 3rd Floor, Vikas Sadan,
New Delhi-110023

No. F.20 (30) 71/LAB (H) / LIG/Pt/ 232 Date: 9-2-07
To
Shri S.N. Gupta,
Under Secy to Govt of India
Ministry of Urban Development,
(Delhi Division), Nirman Bhawan,
New Delhi-110013

Sub: Regarding ownership rights of 132 flats allotted by DDA to State Bank of India during the year 1972 Sir, I am directed to invite a reference to your letter No, 4890/DDR/2006/DDIIA dated 12.12.2006 on the subject cited above and to state that the flats at Lawrence Road Housing Scheme were allotted in bulk to State Bank of India and other Public Sector Undertaking like LIC, FCI etc during 1972. Basically these Dwelling Units (Flats) were constructed and earmarked for economically weaker section on "NO PROFIT AND NO LOSS BASIS".

The allotment of flats in bulk made to State Bank of India and other Public Sector. Undertakings was subject to the conditions

that these would be further allotted in the name of individual employees on ownership basis as per their eligibility at that time. It is clear that the flats allotted in bulk to State Bank of India and other Public Sector Undertakings were meant for further allotment to their employees, on Cash down or on Hire-purchase basis, as per their convenience and were not to be used as Staff Quarters. It is also stated that Organizations like LIC, FCI etc have already transferred/ allotted the flats individually ' in the name of: their employees on ownership basis.

The representation of State Bank of India Staff Colony Residential Welfare Society clearly reads that the State Bank of India has not allotted the above flats in the name of their employees on ownership basis so far. The action on the part of the Management of State Bank of India for not allotting these flats to the individual employees was not in order.

Yours faithfully,
[RAKESH BHATNAGAR]
Director (Housing)-I"

Copy of the letter dated 9.2,2007 is annexed and marked as "Annexure P-17".

13. In order to further substantiate the maintainability of the second writ petition, the Respondent Society states that the parties participated in mediation proceedings before this Court with the hope that they would resolve the disputes. However, the same could not be accomplished. The proceedings were terminated on 16th December 2010, without any settlement.

14. The Respondent Society filed second writ petition being WP(C)

No.1509/2011. SBI filed its reply to the petition and raised objections with respect to maintainability of the writ petition. The maintainability of the writ petition was challenged by the SBI on several grounds, that are enumerated herein below:

i. Writ petition is barred by acquiescence and estoppel: The members of the society have got the allotment and possession of the flats on a “leave and license basis”. The allotment is subject to the terms and conditions contained in the allotment letter itself and thus the members of the Respondent Society were estopped in law to make a claim contrary to the terms of allotment.

ii. Writ petition is barred by delay and laches: The Respondent Society is aware that the conveyance deed and lease executed in favour of SBI on 27th November 1986 has no stipulation or condition requiring SBI to make allotment to its employees. The cause of action had arisen way back on 13th March 1985 when Respondent Society had issued notices to SBI. However, the Respondent Society moved to the court only after a gross delay and is thus barred by laches.

iii. The subject matter of writ petition is no longer *res integra*: The reliefs in the second writ petitions were also raised earlier in two writ petitions namely, W.P.(C)s 779/1993 and 1151/1993 filed by the members of the Respondent Society. The said petitions were dismissed as withdrawn vide orders dated 23rd August 1993.

15. SBI also raised several other objections. These objections can be

summed up as under:

- a. The allotment of flats by DDA to SBI was not pursuant to the advertisement dated 6th October 1971.
- b. SBI could not be an individual registered with DDA in the low income group.
- c. The allottees to whom the flats in question were originally allotted by SBI, have not been registered with DDA in lower income group.
- d. The flats sold by DDA to SBI, were not for the purpose of allotment to lower income group employee. However, the flats were allotted by SBI to class IV employees as per their own criteria. The terms and conditions of allotment on leave and licence basis has been duly accepted and countersigned by the allottees.
- e. The terms of the conveyance deed and lease deed executed by DDA in favour of SBI, specifically prohibits SBI to transfer or assign the flats to anyone. In this regard, SBI relied upon Clause 6 of the lease deed that reads as under:

“6.The Lessee shall , not transfer, assign or otherwise part with the possession of the whole or any part of the said land and/or the flats except with the previous consent of the Lessor in writing which it shall be entitled to refuse in his absolute/discretion.

PROVIDED that in the event of transfer being made without obtaining previous consent the Lessor in writing,. such transfer

shall not be, recognized by the Lessor and it shall be open to the Lessor to terminate the Lease.....

16. During the proceedings in the writ before the learned Single Judge, SBI filed an application being CM No. 8767/2014 and placed on record certain additional documents. These additional documents are the certified copies of the orders dated 23rd March 1993 passed in W.P.(C)s 779/1993 and 1151/1993. The said orders have already been reproduced in the preceding paras.

17. Relying on the aforesaid documents, SBI raised the objection of maintainability of the second writ petition. This objection has been answered in favour of the Respondent Society.

Submissions

18. Mr. Vikas Singh learned senior counsel appearing on behalf of the SBI argued that the writ petition is not maintainable. He submits that the Respondent Society had earlier urged identical grounds and sought identical reliefs in the petitions filed in the year 1993. Mr. Singh argues that since the earlier petitions had been dismissed as withdrawn without the permission or liberty granted by the Court, Respondent Society cannot file a fresh petition on the same cause of action. The Respondent Society cannot be permitted to re-agitate the issue after fourteen years. The learned senior counsel has taken us through to the pleadings filed in the earlier petitions and has drawn our attention to the prayers sought in the two petitions. These reliefs indeed are similar and the same are necessary to be reproduced herein below:

Prayer in W.P (C) 1151/1993 (first writ petition):

- (i) Issue appropriate writ or direction directing the Respondent No. 1 State Bank of India, to produce the records related to allotment of 132 flats in issue,
- (ii) Issue appropriate writ, order or direction in the nature of writ of certiorari or mandamus or any other writ directing the Respondent Nos. 1 to 3 to make the petitioners herein as the owners of flats in issue,
- (iii) Issue appropriate writ, order or direction in the nature of mandamus directing the Respondent Nos. 1 to 3 to allot the flats in respect of names of the petitioners occupying/entitled to the flats out of these 132 flats in issue;
- (iv) Issue writ, order or direction directing that the lease deed dated 27.11,1986 between the Respondent Nos .1 to 3 and the Respondent No.4 to be null and void.
- (v) Direct the Respondent Nos. 1 to 3 to refund the excess amount over and above the cost of the flat paid by them to Respondent Nos. 1 to 3 alongwith interest;
- (vi) Grant cost to the petitioners all through; and
- (vii) To pass such other orders as deemed fit and proper in the facts and circumstances of the case."

Prayer in W.P (C) 1509/2011 (second writ petition):

- “a) Issue an appropriate writ directing the Respondent No.2 to release the retirement benefits amounting to over one crore two lakh sixty five thousand eight hundred and eighty eight with interest as per Annexure P-27 to the members of the Petitioner society.
- b) Issue appropriate writ, order or direction in the nature of writ certiorari or mandamus or any other writ directing the

Respondent No. 1& 2 to allot the flats in respect of names of the petitioners occupying/entitled to the flats out of 132 flats in issue.

c) Issue writ, order or direction directing that the lease deed dated 27.11.1986 between the respondent No. 1 & 2 to be null and void.

d) Allow the Petitioner to amend the petition if necessary to bring out other prayers and reliefs if necessary;

e) Issue any other order/ direction that this court may deem fit.”

19. Mr Vikas Singh further relied upon the judgment of the Supreme Court in *Sarguja Transport Service v. State Transport Appellate Tribunal, MP, Gwalior* 1987 1 SCC 5 and urged that continuation of the second writ petition would be an abuse of the process of court as it would amount to allowing the Respondent Society to re-agitate the cause of action that was of the subject matter of the earlier writ petitions. He further referred to the letter of allotment of staff quarters and urged that the terms of the allotment clearly state that the flat was being given on leave and license basis subject to the condition that the allottee would vacate the same on his resignation/termination/discharge/dismissal or retirement and therefore the Respondent Society could not seek a writ of mandamus praying for a direction to SBI to confer ownership of the flats, contrary to the terms of agreement. Mr. Singh also referred to the terms of the conveyance deed and perpetual lease of the subject land that puts an embargo on SBI to transfer, assign or otherwise part with the possession of any portion of the land for the flat in question. His argument is that since the flats in question were not allotted under the scheme which is being relied upon by the Respondent

Society, there was no legal basis for the Respondent Society to claim ownership of the flats. The allotment of the flats was only for the duration the employees were in service of SBI. They were required to vacate the flats on their retirement in accordance with the terms of the allotment. Lastly, he submitted that at present only 30 such original allottees or their legal heirs were in unlawful occupation of the flats and the rest of the employees had already vacated the same.

20. Mr. Mohit Chaudhary learned counsel appearing on behalf of the Respondent Society, on the other hand endeavored to explain that the earlier writ petition was based on a different cause of action. He submitted that the society was constrained to approach the Court by filing the first writ petition in the year 1993 on account of the eviction notices being served upon the members of the society and the second writ petition was on account of a different cause of action, that being the refusal on the part of the SBI to confer ownership of the flats in question, in violation of the allotment scheme of DDA. He further submitted that the earlier writ petition was withdrawn on the assurance given by SBI that they would not pursue with their eviction proceedings. He submits that in fact SBI kept its promise and did not evict the members of the Respondent Society and for this reason, the Respondent society and its members took no legal steps for fourteen years. He strongly relied upon the letter dated 9th February 2007 and urged that after the withdrawal of the writ petition, several new aspects were brought to light by virtue of the said letter. Respondent Society was able to get information about the allotment of the flats by other Public Sector Undertakings such LIC, FCI etc. On becoming aware of these facts by way

the aforementioned letter, the Respondent Society had a fresh cause of action to approach the court again. He relied upon the judgment of Supreme Court in *State of Haryana v. MP Mohla* 2007 1 SCC 457 and urged that the withdrawal of the first writ petition would not bar the second writ petition, as the question raised in the first writ petition had not been decided by this court. He also relied upon the judgement of *Sarva Shramik Sanghatana (K.V), Mumbai v. State of Maharashtra* AIR 2008 SC 946 and argued that the Supreme Court had considered the decision of *Sarguja Transport Service* (supra) and had observed that the withdrawal of the writ petition without seeking liberty cannot be a bar to file a second writ petition. He submitted that the judgment in each case is on different set of facts and circumstances and each case has to be examined on its own facts.

21. In rejoinder, Mr. Vikas Singh learned senior counsel for SBI submitted that the letter dated 9th February 2007 cannot give rise to a fresh cause of action. The said letter was nothing but reiteration of the earlier stand. He states that all the grounds that were taken in the second writ petition were also urged in the first writ petition and therefore the letter dated 9th February 2007 cannot be pleaded as the fresh cause of action.

Findings

22. The question of maintainability of a writ petition has several facets. The impugned order essentially deals with one aspect i.e. maintainability of the writ petition in view of withdrawal of the first petition without a permission granted by the Court to re-agitate the matter at the time of withdrawal. The learned Single Judge has considered several decision of the Supreme Court

on the subject and has come to a conclusion that the writ petition is maintainable. A perusal of the impugned judgment, shows that the parties addressed arguments on the question of maintainability in the context of the objection *viz.* the withdrawal of the earlier writ petitions without seeking leave or liberty to file a fresh one. Nonetheless, we have proceeded to consider the question of maintainability of the writ from other angles as well.

23. The first issue that arises for our consideration concerning the maintainability of the second writ petition arises on account of withdrawal of the earlier writ petitions without liberty or permission granted by the Court. This contention of SBI can be appreciated only after examining the reliefs sought in the petition. A perusal of the reliefs sought in the first set of writ petitions would show that the Respondent Society was seeking a writ of mandamus directing SBI to confer ownership of the flats on the members of the society. The Respondent Society had also sought a direction that the lease deed dated 27th November 1986 executed between SBI and their Officers and DDA to be declared null and void. Besides a further relief was sought against SBI and their Officers to refund the excess amount over and above the cost of the flat paid by the members of the Respondent Society to SBI. Clearly all reliefs were beyond the scope of Article 226 of the Constitution of India by way of a writ petition. The Respondent Society is seeking quashing of the lease deed to which they are not even a party. Further, the Court was being asked to issue a writ of mandamus to confer ownership rights, completely contrary to the terms of allotment of the flats i.e. leave and license basis. The Respondent Society alleges that they were

constrained to approach the Court on account of eviction orders passed by the Estate Officer. The eviction orders resulted on account of termination of leave and licence agreements between the members of the Respondent Society and SBI. The nature of the reliefs thus clearly impinged the maintainability of the writ petition. The Respondent Society had an efficacious remedy under the Public Premises Act and thus could not have approached the court challenging the eviction proceedings by way of a writ petition. Moreover, in the writ, Respondent Society was seeking conferment of the ownership rights. This relief clearly conflicted and negated the effect of the eviction proceedings/orders. The writ was argued by the members of the Respondent Society (petitioners therein) on 23rd August 1993. This is evident from order of dismissal. The court records that ***“after some arguments the counsel for the petitioners wants to withdraw the petition”***. The aforesaid observation assumes significance. Though certainly we were not hearing the matter in 1993, but the order of dismissal has to be understood in the context of averments and the reliefs sought therein. Faced with several legal objections noted above, after some arguments, the members of the Respondent Society unconditionally withdrew the petition. Respondent Society thus abandoned the remedy to seek a writ under Article 226 of Constitution of India. The members of the Respondent Society did not take permission of the court to file the second writ petition. At this stage, allowing the second writ petition to continue, would be an abuse of the process of the Court as the Respondent Society cannot be given another chance to re-agitate the issues that were raised in the first set of petitions. It would be relevant to note the following observations of the Supreme Court in the case of ***Sarva Shramik Sanghatana*** (supra):

“13. We are of the opinion that the decision in *Sarguja Transport* case (supra) has to be understood in the light of the observations in paragraphs 8 & 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the first writ petition the Bench is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient bench, then if he withdraws it he should not be allowed to file a second writ petition unless liberty is given to do so. In other words, bench-hunting should not be permitted.”

24. What is noted above is the exact situation in the present case. Therefore this judgment though relied upon by the Respondent Society is of no help to them and rather goes against them. The facts and context of the aforesaid judgment is also entirely different as can be noticed in paras 4 to 7 of the said judgment. The judgment in the case of *State of Haryana* (supra) is also of no assistance to the Respondent Society as the same only deals with aspect of subsequent cause of action having arisen in the matter of implementation of a judgment by filing a fresh one. The decision in the case of *Surinder Kumar and Ors v. Delhi Development Authority* 1989 (16) DRJ 90 cannot be cited as a precedent. In the said case, there was no dispute on facts as has been noted in para 5 of the said decision.

25. The facts of the present case are squarely covered by the judgment of the Supreme Court in the case of *Sarguja Transport Service* (supra).

26. Now the second aspect is that whether the letter dated 9th February 2007 is a fresh cause of action or not? It is pertinent to note that in 1993 there

has been a complete silence on the part of the Respondent Society. Perhaps the Respondent Society engaged with SBI and explored a possibility of resolving the disputes. The mediation proceedings admittedly resulted in no settlement. With eviction orders having attained finality, the Respondent Society was faced with a difficult situation. The Respondent Society attempted to give another try. They approached this Court by way of a second writ petition and pleaded that a fresh cause of action has arisen in their favour to file the petition. This new cause of action is nothing but a communication between the DDA and SBI that is reproduced above. The said letter is written by an officer of DDA stating that the action of SBI of not allotting the flats on ownership basis is contrary to the scheme. This communication has to be appreciated in light of the terms of the allotment of flats by DDA to SBI. We have examined the conveyance deed as well as the perpetual lease and find no mention of any such stipulation as is being urged by the Respondent Society. Mr. Vikas Singh has rightly pointed out that DDA's allotment is subject to the condition that there shall not be any transfer or allotment of the rights. The letter dated 9th February 2007 surely cannot be considered as a fresh cause of action. The cause of action for the Respondent Society and its members is the refusal on the part of SBI to fulfill its commitment. It is to be noted that refusal on the part of SBI to confer ownership to the allottees is a cause of action which had materialized way back in 1985 or certainly by 8th October 1990, when allegedly the director DDA wrote as under:

“I am directed to inform you that after consultation with our law Deppt., Vice Chairman, DDA had decided not to execute conveyance deed in favour of any individual employee occupying these flats unless state Bank on India expressly

requests us to do so and surrender the allotment already made in its favour.”

27. The stand of the parties i.e. SBI and DDA was clear and it stood crystallized in 1990. DDA as well as SBI denied the Respondent Society's right to claim ownership over the flats. This cause of action cannot be extended or said to have arisen afresh by virtue of the communication dated 9th February 2007. The subsequent communications averred in the writ petition are of similar nature and do not help the Respondent Society. Respondent Society cannot rely on the letter dated 9th February 2007 to revive the controversy that was laid to rest in 1993.

28. Now we proceed to examine the controversy from another aspect. Let's assume for the sake of argument that the letter dated 9th February 2007 is indeed a fresh cause of action and examine the question of maintainability yet again. If we look at the nature of reliefs in the second writ petition, we would note that once again an attempt is being made by the Respondent Society and its members to seek ownership right of the flats. Respondent Society are praying for a writ of mandamus directing SBI to allot the flats in the names of the members of the Respondent Society. Curiously in prayer (b), Respondent Society is seeking the allotment of flats in the name of the persons occupying the flats. This indicates that the original allottees have transferred possession of the flats. The Respondent Society is seeking a declaration that the lease deed of 1986 executed between SBI and DDA is null and void. Respondents also seek release of retirement benefits that have been retained by SBI. These disputed amounts arose on account of

overstay of the members of the Respondent Society in the flats in question as unauthorized occupants. This dispute is interlinked with the eviction orders. There is no dispute that the allotment of the flats to the members of the Respondent Society is on leave and license basis. The question as to whether the allotment of flats is contrary to the actual understanding of the parties is purely a disputed question of fact that cannot be examined in the writ petition. The reliefs sought in the first petition are essentially in the nature of re-writing the contract between the parties. Even if there is some law in the favour of the Respondent Society to persuade the Court to grant the reliefs as prayed for, indisputably the remedy is not by way of writ petition. Thus, in sum and substance, this Court is being asked by way of the second writ petition to grant reliefs, that are palpably beyond the scope of Article 226 of the Constitution of India.

29. In view of the above discussion we find that the writ is not maintainable. Accordingly, we allow the appeal and set aside the impugned judgment and dismiss the writ petition.

SANJEEV NARULA, J

S. MURALIDHAR, J

NOVEMBER 28, 2018

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