

\$~3

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

Date of Decision : 1st October, 2015

+ **W.P.(C) 4073/2013 & C.M.No.9603/2013**

PRASHEEL BHARADWAJ Petitioner

Through : Mr. R.R. Ojha, Advocate.

versus

REGISTRAR COOP. SOCIETIES & ANR Respondents

Through : Mr. D.S. Patial, Advocate for R1.
Mr. Naushad Ahmad Khan, ASC for
GNCTD(civil)/R2.
Mr. A.K. Upadhayaya, President of
the R2/society.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. With the consent of the learned counsels appearing for the parties, this writ petition is taken up for consideration. The present writ petition has been filed by the petitioner assailing the order dated 12th April, 2013 whereby, the grievance of the petitioner has been referred to the Arbitrator.

2. We are also informed by learned counsels for the parties that pursuant to the orders made by us on 31st August, 2015, the records of the society

produced by Sub Inspector from the Economic Offences Wing, Crime Branch, Delhi Police, have been inspected by them.

3. The facts giving rise to the instant petition are within a narrow compass and to the extent necessary are noted hereafter.

4. The petitioner became the member of the Din Cooperative Group Housing Society (hereinafter referred to as 'society') vide membership No. 411 after allotment of the land. The petitioner made a total payment of Rs. 9,25,000/- towards the cost of construction as well as other amounts as and when called upon by the managing committee of the society/respondent No. 2 from time to time.

5. Mr. Naushad Ahmad Khan, learned Additional Standing Counsel for GNCTD appearing for the Registrar of Cooperative Societies/respondent No. 1 confirms that he has inspected the society's records which reflect that pursuant to a notice dated 8th May, 1998 issued by the society under the signatures of Mr. Madan Sharma, the then Secretary, the petitioner made a payment of Rs. 4,25,000/- vide a cheque dated 30th May, 1998 drawn on his account in State Bank of India Account, Personal Banking Branch, New Delhi. The photocopy of the cheque No. 161376 has been produced before us which incorporates the endorsement that "it is the last payment" for the

petitioner /Prasheel Bhardwaj.

6. The petitioner has placed before us a certificate issued by State Bank of India Account, Personal Banking Branch, New Delhi certifying that the cheque No. 161376 issued in favour of “DIN Coop. Group Housing Society” was presented for clearing through State Bank of Indore, M 94, Cannaught Circus, New Delhi and paid through SBI Account No. 01191356127 on 10th July, 1998. In support of this payment, the learned counsel for the petitioner has handed over the copy of a receipt bearing No. 3598 dated 7th July, 1998 with regard to his membership No. 411 issued to him by the society under the signatures of the same secretary as aforenoted.

7. It is claimed that in a draw of lots held on 4th October, 1998 in the presence of the representatives of the DDA, Registrar of Cooperative Societies and other concerned persons as required, the petitioner was allotted flat No. 19 and possession was to be handed over to him after completion of formalities.

8. The petitioner relies on the list of verified members of the society amongst whom the draw of lots was conducted in 1998. We note that in the said list the name of the petitioner features at members ship No. 411 and he was allotted flat No. 19.

9. It is additionally submitted that the society confirmed the allotment of the flat to the petitioner vide a letter dated 5th October, 1998. This letter was issued in the nature of a congratulatory letter on behalf of the society issued by the same secretary of the society.

10. We extract hereunder, the contents of the letter dated 5th October, 1998 which speak for themselves:

“1. I express my sincere thanks for your cooperation and timely payment of instalments. We would not have achieved the goal but only because of you.

2. You may be aware that you have been allotted Flat No.19 in Block I of 3rd floor in the draw of lots of flats held on 04.10.98 conducted by officers of D.D.A. and RCS in the presence of the members of our society. On behalf of the Society I congratulate you for the allotment.

3. Now, Sub-lease deed is to be executed shortly. The exact date of execution of sub-lease deed will be intimated to you on hearing from DDA”.

(Emphasis by us)

The issuance of this letter is not disputed by the secretary of the society. The society, therefore, confirms that the petitioner has timely made payment of all the instalments and he has successfully drawn the flat No. 19 in the draw of lots held on 4th October, 1998 by the competent authorities.

11. The petitioner submits that for the reason he was residing in United

States of America, for the period between 20th February, 2001 to 24th February, 2002, the premises allotted to him by the society were occupied by his tenant. However, unfortunately after the tenant vacated the premises, the society taking undue advantage of the petitioner's absence from India, forcibly broke open the lock of the flat and came to occupy the same. The petitioner returned to India in 2005 and learnt of the said facts and ever since, the petitioner has been running from pillar to post seeking restoration of possession of the flat which has been forcibly taken over by the society. The matter was pursued even through his attorney during the petitioner's absence from India but the same was of no avail.

12. Placing reliance on a letter dated 19th February, 2007 issued by the new secretary of the society, the petitioner submits that he was required to submit the following documents in support of his case:-

“1 (a) To submit an affidavit duly attested by the Notary to the effect that your name has not been transferred to Rama Krishna CGHS Ltd. or any other Group Housing Society.

(b) That you have neither resigned nor taken refund of the amount paid by you.

2. A certificate from your Bank that the amount paid by you vide cheques indicated by you were credited to

Din CGHS Ltd.

3. Original Share Certificate and Possession Letter.

4. An indemnity bond indicating that you will indemnify the society in case of any financial loss suffered by the Society in case the flat is handed over or refund is made to you as the case may be.”

13. In this letter for the first time, the petitioner came to be informed that as per the records available with the Managing Committee of the society and as per the meeting held on 11th February, 2007, the name of petitioner does not feature as a member of the society.

14. In response to the letter dated 19th February, 2007 sent by the society questioning the membership status of the petitioner, the petitioner through his power of attorney, sent the relevant documents as required by the society vide letter dated 19th February, 2007 alongwith a cheque for US\$ 2200 towards maintenance charges of the flat.

15. In the counter affidavit, which has been filed before us, the society has not disputed the correctness of the information contained in the list which mentions that the flat No. 19 was allotted to the petitioner and that his name features at serial No. 88 of this list.

16. The petitioner submits that he has duly submitted all the documents in his power and possession including the allotment and possession letter. He

has also furnished the list of members with the details of the flats drawn by them in the draw of lots. The petitioner has furnished the requisite certificate from the State Bank of India showing the amounts paid to the society as well as letter dated 14th November, 1996 along with the receipt issued by the society and the Indemnity Bond of the petitioner to the society as sought.

17. The petitioner additionally paid a sum of US\$ 2200 vide a Pay Order No. 026013673 dated 20th march, 2007 drawn on Commerce Bank, New York, USA towards the maintenance of the flat as demanded by the society.

18. The requirement of the affidavit as communicated by the respondent No.2/society by the letter dated 19th February, 2007 to the effect that the petitioner's name had not been transferred to other societies, is a reflection on the manner in which the functioning of the society was being conducted. That CBI investigation came to be conducted is a further testimony to the malfunctioning and misdoings of the managing committee. The society does not have any records of payments. The petitioner's rights cannot be jeopardised because the managing committee acted in an illegal manner.

19. The petitioner made a representation to Assistant Registrar-South-West requesting for directing the respondent No. 2 to hand over the possession of the flat to him. Nothing happened.

20. For the reason that no further response was received from the society or from the Registrar of Cooperative Societies on requests in this regard, the petitioner filed a writ petition bearing No. 10455/2009 before this court. This writ petition was dismissed as withdrawn on 28th July, 2009 with liberty to the petitioner to approach the Registrar of Cooperative Societies with the grievances as mentioned in the writ petition. The petitioner sought one week's time to file the application before the Registrar of Cooperative Societies who was directed to dispose of the same within a period of four weeks in accordance with law.

21. The petitioner has complained that despite approaching the office of the Registrar of Cooperative Societies, no action at all has been taken in accordance with law to do justice to him. In the given facts, it is complained that irreparable loss and damage is enuring to the petitioner on account of deprivation of the property.

22. The present writ petition is stated to be filed in the above factual background. The petitioner has pointed out that instead of taking a view on the application of the petitioner filed on 4th August, 2009 in terms of order dated 28th July, 2009 passed in W.P.(C) No. 10455/2009, the respondent No. 1/Registrar of Cooperative Societies after a lapse of four years on 12th April,

2014 instead of taking a decision upon the issues raised in the application, passed on order dated 12th April, 2013, thereby abdicating his responsibility to decide on the merits of the case and merely referred the matter to an Arbitrator. The petitioner has challenged this order before us.

23. It is pointed out that in the meantime, the society is merrily keeping the flat of the petitioner and using the same for its purposes. Before us, a counter affidavit has been filed taking a bald plea to the fact that the petitioner resigned from the membership of the society. There is not a whisper of any detail as to when or the reason as to why the petitioner resigned from the membership of the society. The counter affidavit filed by the respondent No. 2/society does not mention the date of resignation letter allegedly submitted by the petitioner nor any copy thereof has been placed on record. It has to be noted that the resignation from the membership of a society is a serious matter. Submission and acceptance of resignation letter by a member of the society cannot be left to the whims and fancies of the managing committee of the society. The legislature has carefully mandated the procedure which has to be followed. This is provided under Rule 26 of the Cooperative Societies Rules, 2007 which reads thus:-

“Rule 26 of the Cooperative Societies Rules, 2007

“26. Withdrawal of members

(1) *Subject to the provisions of the Act, these rules and the bye-laws of a co-operative society, a member may withdraw his membership by submitting a resignation in writing to the society and the committee shall dispose off his resignation within forty five days after receipt of the resignation.*

(2) *No resignation of a member shall be accepted by the co-operative society unless the member has paid in full his dues, if any, to the co-operative society and has also cleared his liability, if any, as surety to any other member.*

In case of co-operative housing societies committee shall endorse a copy of resolution under sub-rule (2) within twenty one days to the Registrar.

(3) *Any member, whose resignation has been accepted by the co-operative housing society, or any heir or legal representative of a deceased member, may demand refund of the share capital held by such member or deceased member and the co-operative society shall, subject to the provisions of section 27 or section 28, as the case may be and subject to the provisions of the bye-laws, refund the amount within ninety days after the acceptance of resignation or as the case may be, the date of demand by the heir or legal representative of the deceased member. Intimation regarding acceptance of resignation shall be sent by registered post to the member and in case of cooperative housing society a copy of the same shall also be sent to Registrar.*

(4) *In all cases where share capital is to be refunded,*

valuation of the shares shall be made in accordance with the provisions contained in rule 27

(5) Irrespective of the nature of liability of a co-operative society, the share capital subscribed by the Government in a co-operative society or by a Apex/ Federal/ Central will be retrieved in such a manner and during such period as may be determined by the Registrar from time to time”.

Thus, the resignation letter submitted by a member is required to be scrutinized by the Managing Committee within 45 days of its submission and the member concerned has to be notified of its acceptance. The resignation letter can be accepted only after the clearance of all dues.

24. The factum of the resignation and its acceptance has to be submitted by the society to the office of the Registrar of Cooperative Societies. Therefore, if the petitioner had actually submitted a resignation letter, it would have left its footprints in several records. Even if such letter was not available, resolution of the society accepting it ought to be there. This would be supported by ancillary records from the office of the Registrar of Cooperative Societies.

25. In the proceedings before us, on 9th October, 2014, we had directed the Registrar of Cooperative Societies as well as the respondent No. 2/society to produce all records relating to flat no. 19 before us. At this stage, a stand was taken before us by Mr. D.S. Patkal, learned counsel for

respondent No. 2 that the entire record of the society had been seized by the crime branch. We had consequently on 9th October, 2014 and thereafter issued directions to the concerned Investigating Officer of FIR No. 548/2003 to produce the entire record relating to the society before us. It appears that some criminal investigation was undertaken by the police against the Secretary and Treasurer and some of the office bearers of the managing committee of the society resulting in registration of FIR No. 548/2003, P.S. Uttam Nagar. A charge sheet in this regard was filed before the court of concerned ACMM.

26. On 11th February, 2015, we were informed by Mr. Saleem Ahmed, learned Standing counsel for Government of NCT of Delhi that by an order dated 11th February, 2010 passed by Sh. Raj Kumar Tirpathi, ACMM the proceedings in the case arising out of FIR No. 548/2003, P.S. Uttam Court stood abated on the ground that the accused had expired. We were also informed that the original documents which were seized by the investigating agency were filed on the record of the trial court along with the Charge-sheet.

27. In this background that the entire record of the case arising out of the FIR No. 548/2003 decided by the order dated 11th February, 2010 were

directed to be sent to this court before us. By the order dated 9th April, 2015, we had given opportunity to the learned counsels for the parties to inspect the record which was being directed to be kept in safe custody by the registry of this court.

28. On 31st August, 2015, given the stand taken by the respondent No. 2 before us we had called upon Mr. Naushad Ahmad Khan, learned counsel for the Registrar of Cooperative Societies to verify the following facts from the record which has been produced by the police authorities:

“(i) to examine the seizure memos and ascertain as to whether any resignation letter by the petitioner was seized by the police. He shall also verify as to whether such letter is available on the record.

(ii) to ascertain as to whether any payment has been made by the petitioner to the society pursuant to their claim of his having resigned.

(iii) Steps, if any, taken by the society in case the petitioner had W.P.(C) actually resigned, so far as the flat in question is concerned.”

29. We may also note that on 31st August, 2015, Mr. Ghanshyam Vashisht, learned counsel for the petitioner has submitted that he had inspected the record and it confirmed the position of the petitioner that no

record of any resignation letter of the petitioner had ever been seized by the police. He had also made a categorical statement that refund of even a single penny had not been made by the society to the petitioner. This fact supports the petitioner's plea that he had never resigned from the membership of the society.

30. We are informed by Mr. Naushad Ahmad Khan that he has carefully inspected the record in its entirety and that, though the record refers to a file in the name of the petitioner, however, there is no record at all of any resignation letter or its acceptance in the entire record of the society seized by the police. Mr. Naushad Ahmad Khan has also referred to the society's reminder dated 18th May, 1998 calling upon the petitioner to make payment of the amount of Rs.4.25 lacs which the petitioner claims to have deposited on 7th July, 1998.

31. It is therefore, amply clear from the above facts that so far as the plea of resignation of the petitioner from the membership of the society is concerned, the same has been set up as a defence to this writ petition. It is not supported by any material particulars in the counter affidavit. This plea is not supported by any record placed by the society before us. The record of the society seized by the police including the record placed before the

criminal court also does not contain any resignation letter of the petitioner. There is no reference to any such resignation letter as well in any record of the society.

32. Even if it could be assumed, though it is not permissible, that some record may have been misplaced by the Investigating Agency, however a copy of the record would have been available with the Registrar of Cooperative Societies. No such record is available with the office of the Registrar as well.

33. For all these reasons, we find force in the submission of the petitioner that he had never resigned from the membership of the society. We may note that the list of persons have been certified as valid and these names were included in the draw of lots held on 4th October, 1998 has been obtained by the petitioner on an inquiry made in the Right to Information Act, 2005 from the DDA. The list contains the petitioner's name as noted above at serial No. 88 and he had admittedly drawn flat No. 19 which was allotted to him. In this background, we find substance in the grievance of the petitioner who is suffering due to high handedness and malafide attitude of the society.

34. We may note that a completely unwarranted stand has been taken by

the society, despite the fact that it has no record at all to support the same resulting in grave injustice and loss to the petitioner. We are informed that the society has placed its records in flat No. 19. This clearly shows that the flat is in the occupation of the society.

35. Learned counsel for the respondent No. 2/society submits that the hands of the society were tied by the loss of record and the valuable amount involved in the matter was at stake. Be that as it may, a quietus needs to be put to this matter. The letter dated 5th October, 1998 confirms that the petitioner had made timely payments of all the instalments to the society. There is no dispute at all to the validity of the petitioner's membership or the fact that he was rightly allotted the flat No. 19 in a draw of lots conducted by the DDA and the Registrar of Cooperative Societies on 4th October, 1998.

36. In this background, there was no dispute at all before the office of the Registrar of Cooperative Societies which could have been referred to arbitration. In fact it appears that order dated 12th April, 2013 has been illegally passed with the object of avoiding the consideration of the request of the petitioner. Such order was completely unwarranted in the aforementioned facts and circumstances. The petitioner is therefore, legally entitled to the possession of the flat allotted to him. The society has confirmed before us

that as on date possession of this flat is in its control.

37. We therefore, direct as follows:-

(i) The impugned order dated 12th April, 2013 is hereby set aside and quashed.

(ii) The possession of flat No. 19 in the respondent No. 2/society shall be forthwith restored to the petitioner. In case any documentation is required to be completed by the petitioner, the same may be notified to him through his counsel within a period of two weeks from today.

(iii) The petitioner shall ensure that the same is completed and submitted with the society within a further period of four weeks thereof.

(iv) The respondent No.2/society shall also compute the maintenance and any other charges charges in respect of flat No. 19 payable by the petitioner. Information in this regard be also communicated to the petitioner within four weeks. In case the records are not available with the respondent No. 2/society, the petitioner will be held liable to make payment of the maintenance charges w.e.f year 2002.

(v) The respondent No. 2/society shall return to the petitioner the Pay Order No. 026013673 dated 20th March,

2007 drawn on Commerce Bank, New York, USA paid by the petitioner towards the maintenance of the flat No. 19 which is stated to have not been encashed by the society till date.

(vi) Keeping in view the fact that the petitioner admitted the liability of US\$ 2200 towards the maintenance of the flat at that time, the petitioner shall for the time being deposit an amount of US\$ 15,000/- towards all the arrears, if any, on account of maintenance etc. due and payable to the society, within a period of two weeks from today. In case the deposit of US\$ 15,000/- as directed by us, is in excess of the arrears due and payable to the society, the excess amount would be subject to adjustment against the future dues.

(vii) The payment of US\$ 15,000/- be made by RTGS mode of payment by the petitioner on the details of account number etc. being made available to him by the respondent No. 2/society through his counsel.

(viii) It is submitted by learned counsel for the petitioner that either the petitioner himself or his attorney shall take the physical possession of the flat.

(ix) Given the peculiar facts and circumstances of this

case, the petitioner is held not entitled to any costs. The petitioner shall keep making payment of all the current dues of the society immediately on taking the possession of the flat.

(x) We make it clear that we have not adjudicated upon the legality of charges claimed by the society. It shall be open to the petitioner to challenge the same, if aggrieved thereby. The direction to deposit by this order is without prejudice to the rights of the petitioner.

38. This writ petition is allowed in the above terms.

Dasti to parties.

**GITA MITTAL
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

OCTOBER 01, 2015

j