

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6883/2014**
% **Date of decision: 14th August, 2015**

SURENDER KUMAR AGGARWAL Petitioner
Through: Mr. Rajat Aneja, Ms. Rashmi
Verma and Mr. Kartikeya
Bhargava, Advs. with petitioner in
person

versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS
..... Respondent
Through: Mr. S.K. Sharma, Adv. for R-2

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA
GITA MITTAL, J (ORAL)

1. The petitioner has filed the instant writ petition seeking inter alia issuance of a writ of mandamus to the respondent nos. 2 and 3 for issuance of no dues certificate and other certificates to the petitioner for converting his flat from leasehold to freehold and also for complying with the directions made by the Delhi Cooperative Tribunal vide its order dated 8th December, 2011.
2. So far as the basic facts with regard to membership of the Sadar Cooperative Group Housing Society Ltd. as well as allotment of flat no. 49 therein to the petitioner are concerned, there is no dispute at all. We note hereafter only some essential facts necessary

for the purposes of adjudication on the present petition. The Sadar Cooperative Group Housing Society Ltd. (hereafter referred to as the 'society') filed a case under Sections 70/71 of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as 'DCS Act') against the petitioner claiming recovery of money on the ground of maintenance charges; development charges; interest on the maintenance besides other charges, ground rent, interest thereon against the present petitioner. By an order dated 11th June, 2010, this case was referred to Sh.S.K. Parashar, Arbitrator for arbitration under Section 70 of the DCS Act, 2003. These proceedings culminated in an award dated 23rd October, 2010 wherein it has been held that the petitioner was liable to pay an amount of Rs.40,951.00 on the various counts noted above as well as arbitration fee @ 7.5% of the awarded amount quantified at Rs.2554/- and future interest @ 12% per annum on the entire amount till realisation thereof.

3. Aggrieved by the award, the petitioner assailed the same by way of an appeal under Section 112 of the DCS Act, 2003 which was registered as Appeal No. 165/10/DCT/2916-17. After a detailed consideration, the Tribunal decided the same finally by an order passed on 8th December, 2011. The operative part of the order reads as follows :-

“8.0 The issue involved in this appeal and findings of the Bench

After the arguments and discussion the society submitted that as on 04.10.2011 shown dues of Rs.57046/- it is reported by the society on 17.10.2011

that the Appellant had made payment in each of RS.20583/- on 10.10.2011 and Rs.15261/- vide Bank Draft No.119265 dated 10.10.11 total Rs.35844/- which were taken money in their books as suspense money which according to their calculation short by Rs.21202/- The calculations show award amount till 30.09.2010 and Rs.16095/- thereafter till December 2011. There are the following charges were found excess in award.

- (i) Mistake in calculation shown Rs.14100/- against Rs.12900/- excess charges of Rs.1200/-
- (ii) Ground rent difference between what shown Rs.6022/- while original claim Rs.3553/- shown in the statement i.e. Rs.2469/-
- (iii) The defaulter's penal interest was waived for Mr. Rani Devi Jain, flat no. 81 and Dinesh Kumar Flat No. 82. Suh charges in the statement submitted by society in Annexure 1 apart from ground rent penalty and abovenoted differences from 1st April, 2007 to 31st January, 2011 are :
Late payment charges Rs.1146/-; Rs.2014/-; Rs.1098/-; Rs.108/-; Rs.738/- total Rs.5304/-
- (iv) The claims before the Dy. Registrar filed were Rs.32810/- but the appellant has not calculated the Arbitration fee and other charges hence no concession can be claimed on this ground.

Total (i) to (iv) Rs.8973/- and further interest if levied on it may be in round figures Rs.10,000/- and he must pay Rs.5000/- more and close the matter for the above noted period.”

4. A reading of the above would show that the Tribunal held that an amount of Rs.10,000/- had to be deducted from the awarded amount of Rs.40,951/- and therefore the awarded amount had to be quantified at Rs.30,951/-. In addition, the Society was entitled to interest for approximately one year after the passing of the award on 23rd October, 2010 @ 12% which when quantified, comes to

₹3,272/-. The petitioner was also liable for the arbitration fees. To sum up these figures, the total liability of the petitioner in terms of the order dated 8th December, 2011 would stand quantified at Rs.37,265/-.

5. Before us, it is an admitted position that the petitioner has paid a total amount of Rs.40,844/- in the following manner :

- (i) On 10th October, 2011 in cash : Rs.20,583/-
- (ii) By a cheque drawn on the State Bank of India dated 17th October, 2011 : Rs.5,261/-
- (iii) By a bank draft dated 10th October, 2011 : Rs.15,000/-

This makes the total amount paid by the petitioner of Rs.40,844/-

The petitioner has contended that in view of these payments, he had thus paid the full amount which he was liable to pay under the orders of the Delhi Cooperative Tribunal dated 8th December, 2011.

6. We may note that the respondent-society has not appealed or assailed the findings returned by the Delhi Cooperative Tribunal by way of any further challenge and the same has attained finality.

7. A reading of para 8 of the order dated 8th October, 2011 shows that the society had quantified on dues of the petitioner as on 4th October, 2011 at Rs.51,046/- which were considered and the Tribunal had concluded that the amount had to be read as Rs.30,951/- as being the same total of the petitioner's dues on that

date.

In view of the above facts, the aforementioned payments by the petitioner, therefore, satisfies all demands of the respondent society up to 4th October, 2011.

8. It appears that having made the payments the petitioner had addressed letters dated 13th December, 2011 and 31st December, 2011 to the Society requesting it to issue a no dues certificate to enable him to seek the conversion of his property from leasehold to freehold.

9. A perusal of the letter dated 22nd December, 2011 of the Society to the petitioner which has been placed before us would show that the society was misreading the order of the Tribunal dated 8th December, 2011. The Society was reading the order as if the Tribunal had held the petitioner as required to pay Rs.10,000/- instead of the said amount being deducted from the awarded amount. This was incorrect. Despite the request of the petitioner to act fairly, the respondent society was refusing to do justice to him.

10. In these circumstances, the petitioner before us filed a petition dated 23rd January, 2012 seeking initiation of contempt proceedings against the respondents. While notice was initially issued on 23rd January, 2012, however, by an order dated 22nd February, 2012, the Tribunal noted that it was taking cognizance of the contempt for reporting the same to the appropriate forum for further consequential action.

11. Faced with this order, on 22nd March, 2012 the society sought review of the orders dated 8th December, 2011 and 22nd February,

2012. The society urged that the findings of the Tribunal with regard to the amount payable by the petitioner were incorrect. So far as the review of the order dated 8th December, 2011 was concerned, it was rejected by the Tribunal by its order dated 31st May, 2013. The order dated 22nd February, 2012 was, however, recalled with the direction to the Registrar of Cooperative Societies to proceed with the contempt application under Section 105 of the DCS Act with Rule 29.

12. It is important to note that the Society did not assail the order dated 31st May, 2013 of the Tribunal. The issue of the quantification of the liability of the petitioner therefore attained finality. Yet the Society refused to act fairly and do justice to this hapless petitioner.

13. Before us, the petitioner points out that he made requests on 13th December, 2011, to the Society for the certificates and documentation for conversion of his flat from leasehold to freehold. As the petitioner was not being issued the no dues certificate or the other required documents, he was compelled to file this writ petition. We had issued notice in the writ petition.

14. Before us the respondents were still insisting that the petitioner had not complied with the order of the Tribunal. Consequently, both parties were asked to place their statement of accounts before us. It is necessary to note that the petitioner who was appearing in person was unable to place the case before us. We therefore, requested Mr.Rajat Aneja, Advocate to assist us in the matter on behalf of the petitioner. We note that because of the

inability of the petitioner to put across his case, we were almost persuaded by learned counsel for the respondents to wrongly hold that the petitioner was a defaulter and to dismiss the writ petition. Grave injustice would have resulted to the petitioner if we had not appointed a counsel. We record our deep appreciation for the valuable assistance rendered by Mr.Rajat Aenja, Advocate who has painstakingly prepared the brief and assisted us in ensuring justice. For the purposes of this order, we are relying on the statement of accounts placed by the respondent society before us. The same contains the entries of the three payments made by the petitioner in compliance with the orders of the Tribunal, which we have extracted above.

15. The extract of its ledger relied upon by the society, which is placed before us show that all demands of maintenance charges etc made upon the petitioner have been complied with and stand duly paid by the petitioner. The same have been duly credited in the accounts of the respondent society to the credit of the petitioner. We are informed that the ledger is upto date and contains entries up to 7th August, 2015. It is, therefore, not possible to hold that the petitioner is owing any amount to the respondent society as on date. A bogey of the petitioner being a defaulter has been created in the accounts by merely carrying forward the illegally claimed amount of Rs.10,000/- on which the learned Tribunal as well as the Arbitrator have authoritatively ruled.

16. In our view, the petitioner is being unduly harassed for no fault of his and despite having complied with every lawful demand

of the society. The petitioner was entitled to the issuance of the no dues certificate as back as on 13th December, 2011 after he had made all payments in terms of the Tribunal in October, 2011 itself. His request on 13th December, 2011 should have been favourably considered.

17. We also find it unfortunate that the bogey of the same demand is being pressed before us even today.

18. Valuable judicial time has been expended on a complete non-issue. The respondent Nos.2 and 3 are office bearers and responsible for the affairs of the Society. In these circumstances, the petitioner is required to be compensated with payment of costs by the Society and the respondent nos. 2 and 3.

19. In view of the above, we direct as follows :-

- (i) The Society as well as the respondent nos. 2 and 3 shall issue a no objection certificate/no dues certificate in such format as would satisfy the Delhi Development Authority for conversion of the flat from leasehold to freehold within a period of two weeks from today.
- (ii) In case, any other documents are required by the petitioner for the purpose of conversion to freehold, the same shall be furnished within two weeks of his request for the same. It shall be the responsibility of the respondent Nos.2 and 3 to ensure compliance of our order.
- (iii) The writ petition is allowed with costs which are quantified at Rs. 20,000/- which shall be paid by Sadar Cooperative Group Housing Society. The costs shall be paid within a period of

two weeks from today.

- (iv) Before we part with this case, we once again record our deep appreciation for the valuable assistance rendered by Mr.Rajat Aneja, Advocate who has very ably assisted us in this matter.
- (v) List for directions on 19th August, 2015

GITA MITTAL, J

I.S.MEHTA, J

AUGUST 14, 2015
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