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

\+ **W.P.(C) 7130/2014**

% **Date of decision : 12th August, 2015**

DELHI CO-OPERATIVE GROUP HOUSING SOCIETY LTD.
..... Petitioner
Through: Mr. Vishwendra Verma, Adv.

versus

RAVINDER SINGH & ANR. ..... Respondent
Through: Mr. S.K. Sharma, Adv.

AND

\+ **W.P.(C) 7136/2014**

DELHI CO-OPERATIVE GROUP HOUSING SOCIETY LTD.
..... Petitioner
Through: Mr. Vishwendra Verma, Adv.

versus

GIRISH CHAWLA & ANR. ..... Respondent
Through: Mr. S.K. Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. With the consent of both parties, these writ petitions are taken up for consideration together.

2. The Delhi Co-operative Group Housing Society Ltd. (hereafter referred to as the 'society') petitioners assail similar orders dated 11th August, 20154 passed in Appeal No.45/08/DCT and Appeal No.46/2008/DCT. The facts giving rise to the present petitions are within a narrow compass and to the extent necessary are noted by us hereunder.

3. The private respondent no. 1 in both these writ petitions filed separate arbitration cases under Section 70/71 of the Delhi Cooperative Societies Act, 2003 before the Registrar of Cooperative Societies. It is undisputed that these were found admissible under the statutory provisions and referred to arbitration of the nominee of the Registrar of Cooperative Societies. These proceedings were contested by the Society and culminated in Arbitration Awards dated 11th March, 2008 in both the cases, the operative part whereof reads as follows :-

> "The defendant society is directed to pay a sum of Rs.2,10,137/- to the claimant being the principal amount of Rs.50,000/- plus interest as calculated till the passing of this award."

4. The society thereafter assailed the arbitration awards by way of appeals under Section 112 of the Delhi Cooperative Societies Act before the Delhi Cooperative Tribunal which were both dismissed by the impugned order 11th August, 2014.

5. By way of the present writ petitions, the society assails the orders of the Tribunal, inter alia, on the ground that there was no relationship between the petitioner and the respondent no. 1 and that

the private respondent no.1 in the writ petitions were not members of the petitioner-society. The second ground of challenge is that the respondent no. 1 in both the cases were claiming to have been allotted space in the basement of the society which allotment was impossible of satisfaction on account of orders passed in W.P.(C) No.3098/1991 by this court. It is submitted before us that the private respondents are relying on forged and fabricated share certificates which have never been issued by the society. It is also submitted that the orders passed in W.P.(C) No. 3098/1991 by this court bind the society even on date and it has not been possible to either complete the construction in the basement or to effect the allotments to the petitioners.

6. It is well settled that so far as issues of fact settled by the authorities below are concerned, they would bind the adjudication before us. However, keeping in view the submissions made before us, we have permitted the parties to satisfy us even on the questions of fact.

7. We find that the Arbitrator has conclusively held that the respondent no. 1 in both these matters were members of the society. The Delhi Cooperative Tribunal has agreed with the findings returned by the learned arbitrator.

8. The conclusions of the forums below with regard to Shri Ravinder Singh are premised on the following documents :-

(i) Share certificate serial no. 016 issued from book no. 8 on 4th November, 1989 which contains the signatures of Sh. M.C. Gupta, Honorary Secretary.

(ii) Sh. Ravinder Singh had placed before the authorities the correspondence received by him from the petitioner society duly signed by Sh. M.C. Gupta who was the secretary thereof. Among the correspondence relied upon by Sh. Ravinder Singh is a letter dated 30th June, 1990 informing him that the society had decided to have a draw of lots for the allotment of the basement on 8th July, 1990.

(iii) The Arbitrator & Tribunal have placed reliance on the payment of a sum of Rs.50,000/- made by the respondents to the society. The amounts were paid over a series of payments made overtime. The respondents have furnished cheque numbers as well as bank documents to support the payments which were made to the petitioner.

9. So far as Girish Chawla is concerned, he has relied on:

(i) A share certificate dated 4th November, 1989 which bear serial no.018 and has been issued from book no. 008 and admittedly bears the signatures of Sh. M.C. Gupta, the honorary secretary.

(ii) An allotment letter dated 8th July, 1990 whereby he was allotted extra space numbering 46 in the basement. This allotment letter is also duly signed by Sh. M.C. Gupta, honorary secretary.

10. It is noteworthy that the documents which were placed before the arbitrator (and filed before us as well by the petitioner) bears the

details of the share certificate relied upon by them noted by us heretofore.

These also show that each of the private respondents were issued shares. Sh. Girish Chalwa was issued shares at serial numbers 8491 to 8500 while Sh. Ravinder Singh was issued shares bearing serial numbers 8471 to 8480.

11. We may note that there is no dispute by the Society that Sh. M.C. Gupta was their secretary or that he has not signed these documents. We are also informed by Mr. S.K. Sharma, learned counsel for the private respondents in both the cases that no action at all has been taken against Sh. M.C. Gupta.

12. Our attention is also drawn by Mr. S.K. Sharma to the minutes of the annual general body meeting dated 3rd August, 2003 with regard to handing over of the physical possession of the basement space pursuant to the draw of lots.

At serial no. 2(a) of these minutes, the society has noted the details of the members and the particulars of the space allotted to them. We find that in the column of 'members', Sh. Ravinder Singh features at serial no. 10, and it is noted that space no. 10 has been allotted to him while Sh. Girish Chawla features at serial no. 40 in the column of 'members' and space no. 46 is noted as having been allotted to him. There is no dispute to the correctness and the legality of these documents as well.

13. So far as the dispute with regard to membership of the Society is concerned, Mr. Verma, learned counsel has doubted the same only on the ground that the share certificate contains the signatures of the

secretary of the society and not the other office bearers. It has been urged that as per the bye-laws of the society, signatures of three members of the Managing Committee were required to be affixed. This submission has been raised by the society for the first time in these proceedings. Even while making this submission, it is not denied that the share certificates of the private respondents actually bear the signatures of Sh. M.C. Gupta.

We find substance in the submissions of Mr. S.K. Sharma, learned counsel for these respondents to the effect that the findings of the arbitrator on this pure question of fact which have been upheld by the Delhi Cooperative Tribunal in this regard bind this court as well. There is merit also in the submission of the respondents that a member of the society has no control at all over the society or its Managing Committee.

Certainly, no member could have compelled the other office bears to affix their signatures.

14. We also note that when confronted with several documents issued by the Managing Committee of the society at the relevant time in the arbitration proceedings as well as the Delhi Cooperative Tribunal, the petitioner society appears to have taken a plea that the records before 1990 were not available. In this background, the plea that the petitioner is not a member is not supported by any record of the society. We find that the arbitrator has considered the fact that the petitioner society could not produce any share certificate which bore the signatures of any person other than Sh. M.C. Gupta. This would suggest that perhaps the practice which was followed by the

society at the relevant time that only the secretary had signed the certificates. Both these respondents have produced before us also their original record of the share certificates and the various communications which they have received from the petitioner society.

The dispute with regard to the membership and the challenge to the share certificates taken at this highly belated stage is malafide and completely misconceived.

15. We find that the statutory provisions also preclude such a plea at this stage. The issue of membership of a member of the society has to be considered by the Deputy Registrar who is approached by way of a claim petition by any person before making an order of reference of the disputes to arbitration under Section 70 of the Delhi Cooperative Societies Act. The provisions of Rule 84(4) of the Delhi Cooperative Societies Rules in this regard also support the submissions made before us.

16. Section 70 (i) which sets out all the disputes which could be referred, mandates that only disputes between members and the society can be referred for arbitration. A statutory appeal is provided under Section 112(1) sub-clause (i) against the orders which is passed under Section 70(i) referring the disputes to arbitration. It is an admitted position that the petitioner-society did not assail by an appeal the consideration by the Deputy Registrar of the validity of the respondent nos. 1's membership while making the referral order as back as around the year 2007.

This consideration and adjudication that there existed disputes between a society and its members (the private respondents) would bind the respondents even in the present case.

17. The statutory scheme is clear. Appeals against the awards which are passed on culmination of the arbitration are the subject matter of Section 71 of the legislature which has provided a separate appeal against the award under Section 112 (i)(k). The petitioner society exercised this remedy and had challenged the awards which came to be passed on 11th March, 2008 by way of the appeals before the Delhi Cooperative Tribunal.

18. Be that as it may, there is no dispute before us with regard to the payments which have been made by the private respondents have been actually received by the Society.

19. It is vehemently contended by Mr. Verma before us that the claim of the respondents in both these writ petitions was hopelessly barred by limitation for the reason that the payments have been made as back as in the year 1988-1989. It is really unfortunate that such an unfair stand is being taken before us. The private respondents in these two writ petitions have letters from the society of allotment of spaces in the basement. This allotment has not been revoked till date.

On the contrary, it is the stand of the petitioner society even today before us that the allotments stand interdicted on account of an order passed in a writ proceeding before us.

The plea of the claim being time barred is misconceived for the reason that the petitioner relies on an order dated 7th October, 1991 passed in W.P.(C) No.3098/1991 interdicting constructions in the basement of the petitioner-society. This writ petition was finally disposed of by an order dated 5th August, 2002 directing the concerned authorities that the DDA and the MCD to take a final view of the matter. The stand before us of the society is that no view has been taken by either of these authorities till date and for this reason it cannot hand over possession. The Arbitrator as well as the Tribunal have noted that the petitioner society has taken no step at all to get this order varied, modified or vacated. Therefore, so far as these private respondents are concerned, there was no occasion for them to seek the claims which they did. Even between the claim originally filed by the private respondents, they sought the first claim made by them was possession for the allotted spaces in the basement and the claim for recovery was an alternate claim. It was the stand of the respondent that it could not comply with a direction to hand over possession which has weighed with the arbitrator not granting the alternative claim of recovery of money.

Therefore, the question of the claims being barred by limitation is completely misconceived and has to be rejected.

20. Yet another reason which would persuade us to hold in favour of the private respondents is the fact that it is the admitted position that the petitioner-society has not placed before us a single communication informing the private respondents about the order of this court dated 7th October, 1991 or the order dated 5th August, 2002. This is for the obvious and dishonest reason of illegally appropriating the moneys of the private respondents.

21. For all these reasons, we are extremely distressed by the completely illegal stand of the petitioner-society in refusing to

comply with lawful orders passed by the Arbitrator as well as the Delhi Cooperative Tribunal and harassing private citizens by not making payment of amounts lawfully due to them. These writ petitions are completely misconceived. The petitioner society has no case at all, either in fact or in law. Valuable judicial time has been expended in compelling us to hear and adjudicate on the subject matter of these writ petitions. For all these reasons, we are of the view that the petitioner deserves to be burdened with heavy costs for filing this completely frivolous litigation.

22. It is also noteworthy that the payments were made between the year 1988-1989 by the private respondents. They have not only been deprived of the allotment of the space which they had booked but, given the rise of property prices the money (even if an interest liability was fastened thereon) would be of no insufficient for acquiring any other property today.

23. The arbitral award was passed on 11th March, 2008 i.e. six years ago. Even the passing of this Award did not persuade the petitioner to act in a bonafide manner.

24. In view of the above, both these writ petitions are dismissed with costs which are quantified at Rs.50,000/- each.

25. We also clarify that the respondent no. 1 in both the petitions shall be entitled to the interest quantified in the arbitral award dated 11th March, 2008 @ 12% per annum till payment.

26. The amounts as per the impugned Awards, order and this order shall be paid to the private respondents in both the writ petitions within a period of four weeks from today failing which it will be

open to the respondent no.1 to approach the court for appropriate reliefs or violation of the order and recovery.

GITA MITTAL, J

I.S.MEHTA, J

AUGUST 12, 2015
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