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

\+ **W.P.(C) 9193/2014 & CM Nos. 20901/2014, 6143, 12214/2015**

Date of decision : 20th July, 2015

NAVSANSAD VIHAR CGHS LTD. ..... Petitioner
Through: Mr. Kuldeep Mansukhani, Adv.

versus

GOVT OF NCT OF DELHI & ORS. ..... Respondent
Through: Mr. Sanjay Kumar Pathak, Mr. Anil Amrit, Mrs. Santosh Sardana and Mr. Sunil Kumar Jha, Advs. for R-3

WITH

\+ **W.P.(C) 9194/2014 & CM Nos.20903/2014, 6142, 12215/2015**

NAVSANSAD VIHAR CGHS LTD ..... Petitioner
Through: Mr. Kuldeep Mansukhani, Adv.

versus

GOVT OF NCT OF DELHI & ORS ..... Respondent
Through: Mr. Sanjay Kumar Pathak, Mr. Anil Amrit, Mrs. Santosh Sardana and Mr. Sunil Kumar Jha, Advs. for R-3

AND

\+ **W.P.(C) 1295/2015 & CM Nos.2293, 6141, 12216/2015**

NAVSANSAD VIHAR COOPERATIVE ..... Petitioner
Through: Mr. Kuldeep Mansukhani, Adv.

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent

Through: Mr. Sanjay Kumar Pathak, Mr. Anil Amrit, Mrs. Santosh Sardana and Mr. Sunil Kumar Jha, Advs. for R-3

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

GITA MITTAL, J (Oral)

1. The writ petitioner has assailed a common order dated 11th August, 2014 passed by the State Consumer Disputes Redressal Commission disposing of Complaint Case No.414/2012 filed by Sh. Ashok Sardana/respondent no. 3 in W.P.(C) No.1295/2015; Complaint Case No. 415/2012 filed by Sh. Vijay Sardana/respondent no. 3 in W.P.(C) No.9193/2014 and Complaint Case No. 363/2012 filed by Suparna Sardana Batra/respondent no. 3 in W.P.(C) No.9194/2014. Inasmuch as these writ petitions raise and are being disposed of on identical questions of law, they are being taken up together for the purposes of the present consideration.

2. The aforenoticed respondents no. 3 in the three matters are closely related inasmuch as Sh. Ashok Sardana is the father of Sh. Vijay Sardana and Smt. Suparna Sardana. They have claimed membership of the petitioner group housing society registered under the provisions of the Delhi Cooperative Societies Act, 1972 and the Delhi Cooperative Societies Rules, 1973. The impugned order was passed in three separate complaints which had been filed seeking

directions to the petitioner society to handover possession of flats allotted to the three private complainants (respondent no.3 in the present writ petition) in a draw of lots held on 11th August, 2002 conducted by the society.

3. It appears that at one point of time the petitioner had taken a decision for expulsion of the three private respondents from the membership of the society.

4. So far as Sh. Ashok Sardana is concerned, on 22nd September, 2004, the petitioner society issued an expulsion letter to him which was approved by the Office of the Registrar of Cooperative Societies. Sh. Ashok Sardana challenged this expulsion before the Financial Commissioner by way of R.P. No.197/2009. The Financial Commissioner allowed this petition, setting aside the order of the Registrar of Cooperative Societies upholding the expulsion of Ashok Sardana. This order of the Financial Commissioner was assailed by the petitioner society by way of W.P.(C) No.2805/2011 filed on 26th April, 2011. On 29th April, 2011, the writ petition was unconditionally withdrawn by the petitioner society.

5. It appears that thereafter the petitioner society filed yet another writ petition bearing W.P.(C) No.3537/2012 on the ground that Sh. Ashok Sardana had indulged in a benami transaction and sought to challenge the order dated 27th December, 2010 on this ground. This writ petition was also dismissed as withdrawn on 30th May, 2012.

6. We are informed that so far as Sh. Ashok Sardana's membership is concerned, the society had also challenged his eligibility to be a member of the society in a proceeding under Rule

25 of the Delhi Cooperative Societies Rules before the Registrar of Cooperative Societies which culminated in an order dated 22nd January, 2014 against the society. The society appears to have first filed R.P. No.70/2014 challenging the order dated 22nd January, 2014 by way of another revision petition filed under Section 116 read with Section 141 of the Delhi Cooperative Societies Act, 2003. During the pendency of this revision petition, it appears that a second revision petition, austensibly under Section 80 of the Delhi Cooperative Societies Act, 1972 has also been filed assailing the same order dated 22nd January, 2014 before the Financial Commissioner which petition is also pending.

7. With regard to Vijay Sardana and Suparna Sardana, the petitioner society had filed two writ petitions being W.P.(C) Nos.2806 and 2807/2011 contending that the matter of expulsion had not been finally considered by the Registrar of Cooperative Societies. W.P.(C) Nos. 2806/2011 & 2807/2011 came to be disposed of by this court by an order dated 29th April, 2011 with a direction to the Registrar of Cooperative Societies to take a decision thereon within two months on the letter dated 4th August, 2004 if the same had been received and if no decision had been taken thereon.

8. The Additional Registrar rejected the society's request for expulsion of the private respondents Vijay Sardana and Suparna Sardana by orders passed on 15th November, 2011.

The petitioner society has assailed the order of the Registrar of Cooperative Societies dated 15th November, 2011 by way of two separate revision petitions being R.P. Nos. 471/2011 and 472/2011 challenging the order. We are informed that all these revision petitions are pending even on date.

9. It appears that after the disposal of the writ petitions, the three private respondent sought possession of the flats which had been allotted to them. Complaints were made in regard thereto to the Registrar of Cooperative Societies which were of no avail. It appears that aggrieved by the failure to hand over possession of the flats allotted to the three private respondents, the matter was carried by them by way of the above detailed separate complaints to the State Consumer Dispute Redressal Commission.

10. It is an admitted position that these complaints were staunchly contested on behalf of the respondents on legal and factual objections.

11. These three complaints were considered at length and came to be disposed of by a common order dated 11th August, 2014 passed by the State Consumer Redressal Dispute Commission. Paras 9 and 10 of the order records the objections urged by the society opposing the complaints. We find that amongst other objections, the society had specifically challenged the maintainability of the complaints on the ground that the proceedings under the Delhi Cooperative Societies Act before the Financial Commissioner were still pending. A specific plea was taken that the dispute between the members and the society were governed by the provisions of Section 70/71 read with Section 83 of the Delhi Cooperative Societies Act and consequently, the proceedings under the Consumer Protection Act were not maintainable. Our attention is drawn to the observations and findings returned on these objections of the State Consumer Dispute Redressal

Commission which, in para 20 of its order, has noted that submissions were made at length by counsel for the society as well. Reliance was placed by the Commission on a pronouncement of the Supreme Court while ruling on the objections and the factual submissions. Inasmuch as we are disposing of the present writ petitions on a preliminary objection, we are not commenting on the factual matrix of the case.

12. The Commission finally issued a direction by its order dated 11th August, 2014 to the petitioner society to hand over possession of the flats to the private respondents and also to pay each of them sum of ₹2.5 lakhs as compensation for the mental pain, agony and harassment as well as a sum of ₹25,000/- towards the costs of the litigation. What transpired after the passing of these orders makes very distressing reading.

13. This matter came to be considered by the managing committee of the society in its meeting held on 16th November, 2014 when the following resolution came to be passed :-

> "Resolved that the President or the Secretary of the Society, or successors hereby authorise to file or defend any case on behalf of the Society and its office bearers and is also authorised to Sign, file, verify and process pleadings, file appeals or petition for execution, file affidavits or other documents which may be deemed necessary or proper prosecution of the case in all its stages. They are also authorised to instruct the advocate for defending the case and to determine/fix fees and other expenses to advocate upto finalisation.
> (Majority of the members are in favour that all the cases shall be handed by Sh.K. Mansukhani, Advocate)"

14. Pursuant to this resolution, it appears that the society under

legal advice filed three appeals before the National Consumer Disputes Redressal Commission being Appeal No. 1238/2014 against Suparna Sardana; Appeal No. 1239/2014 against Sh. Ashok Sardana and Appeal No. 1240/2014 against Sh. Vijay Sardana under Section 19 read with Section 21(a)(ii) of the Consumer Protection Act, 1986 assailing the orders dated 11th August, 2014.

The society thus took a conscious decision to avail its statutory remedy and acted thereupon.

15. These appeals came up for listing before the National Consumer Disputes Redressal Commission on 5th December, 2014. The appeals having been filed beyond the statutory period of limitation, were therefore accompanied by an application for condonation of delay. On the 5th of December, 2014, learned counsel for the petitioner sought time to file documents in support of the application for condonation of delay. In view of this request, the appeals were adjourned to 6th February, 2015.

16. In the meantime, it appears that the private respondents filed execution proceedings being Execution Petitions Nos. 32, 33 and 34, 2014 before the State Commission which were also listed on 5th December, 2014. On this day, in the execution proceedings, the State Commission was wrongly informed on behalf of the petitioner that notices had been issued in the appeals by the National Commission to the private respondents for 6th February, 2015 for filing reply to the condonation of delay application and its hearing and disposal whereas the matter had actually been simply adjourned by the National Consumer Disputes Redressal Commission. The State Commission,

however, took a strict view of the matter noting that the bailable warrants issued by it stood served on the secretary of the society who had not taken any steps in the matter. The bank account of the society in the said Bank of Travancore stood attached to the extent of ₹14,88,893.57 in partial compliance of the order of the Commission which had directed that the amount ordered by it should be sent to the Commission for payment to the complainants. A direction was issued for the appearance of the Branch Manager by the Commission to explain as to why Contempt of Court proceedings be not initiated for the non-compliance.

17. We are informed by learned counsel for the petitioner that pursuant to the order of attachment by the State Consumer Dispute Redressal Commission dated 10th November, 2014 in the execution proceedings, the Travancore Bank had already transferred a total amount of ₹8.25 lakhs in the three Execution Petitions to the Commission (compensation of ₹2.50 lakhs and litigation expenses of ₹25,000/- in each case) which were dispersed to the private respondents herein.

18. Without stating any of the facts relating to the filing of the appeals before the National Consumer Disputes Redressal Commission or the orders which had been passed in the appeals at the instance of the private respondents, on 17th December, 2014, the petitioner society has filed two writ petitions being W.P.(C) Nos. 9193 & 9194/2014 impugning the order dated 11th August, 2014 of the State Commission. Interestingly, the writ petitions have been creatively drafted making a selective disclosure of the attachment in

the execution proceedings concealing from this court that the society had availed the statutory remedy challenging the same order by way of the appeals before the National Consumer Disputes Redressal Consumer Dispute Redressal Commission. A jurisdictional objection was urged on behalf of the writ petitioners whereby this court was persuaded on 22nd December, 2014 to pass an exparte interim order of stay of the effect and operation of the order dated 11th August, 2014.

19. We may note that on or after 22nd December, 2014, unknown to the private respondents and concealing the material facts from this court, the writ petitioner filed identical applications in two of the appeals (Appeal No. 1238 & 1240/2014) before the National Consumer Disputes Redressal Consumer Dispute Redressal Commission inter alia submitting as follows :-

> "3. In the meantime the petitioner society was directed to deposit a sum of Rs.8.25 lakh towards compensation which was accordingly deposited vide Bankers Cheque no. 429737 dated 16.12.2014 by debiting the society account no. 67103514413 pursuant to the order of the State Commission.
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> 4. In view of the above the appellant society has decided to withdraw the aforesaid appeal."

These two appeals were consequently dismissed as withdrawn.

20. These applications were accepted by the National Consumer Disputes Redressal Commission by its orders dated 23rd January, 2015 (page 200) observing that the "*petitioner had moved the application as it had deposited the amount awarded by the commission*". In such circumstances, the application was allowed and the appeal was dismissed as withdrawn for the reason that the

petitioner society had partially implemented the order.

21. So far as the third private respondent Sh. Ashok Sardana is concerned, an identical application of withdrawal as the aforenoted application was moved in the First Appeal no. 1239/2014 and the appeal was permitted to be withdrawn by an identical order dated 23rd January, 2015. The society filed W.P.(C) No.1295/2015 on 3rd February, 2015 which came to be listed before this court on 10th February, 2015.

22. The private respondents were aggrieved by the interim orders which came to be passed by this court in the present writ petitions and had filed applications for vacation of stay (CM 6142/2015 in W.P.(C) No.9194/2014; CM No.6143/2015 in W.P.(C) No. 9193/2014 and CM No.6141/2014 in W.P.(C) No.1295/2015) as well as brief grounds of reply pointing out the concealment of the material fact that the petitioner society had assailed the order impugned in the writ petition by way of the statutory appeal before the National Consumer Disputes Redressal Commission which challenge was pending. We propose to deal with this objection at a later stage of the present order.

23. For the time being, we note hereunder the grounds on which the petitioner had assailed the order of the State Commission dated 11th August, 2014 by way of the appeal before the National Consumer Disputes Redressal Commission. Amongst others, the society had urged the following grounds :-

> "6. The process of adjudication under the Delhi Cooperative Societies Acts and Rules starts from the level of the Registrar of Cooperative Societies and the aggrieved persons may file appropriate appeals before the

Financial Commissioner and when they fail to get justice they are required to approach the Hon'ble High Court for settlement of their grievances. The Hon'ble State Commission has taken upon itself to discharge the function of the Hon'ble High Court when the matter is already before the appellate authorities. The intent of the legislature was not to grant additional authority to the State Commission to adjudicate existing disputes on the question of validity of the membership in respect of a Cooperative Society.

7. The state Commission has erred in passing the aforesaid order which is under appeal for handing over the flat to respondent no. 1 despite his not fulfilling the criteria of being a member of the Cooperative Society. Since, the membership is disputed no claim can be made for possession of the flat.

8. The citation of the Hon'ble Supreme Court quoted in "Thiorumurgan Cooperative Agriculture Society vs. M/s Lalita 2004 CTJ 1 that as per section 3 of the act it is stated that the provisions of 1986 act shall be addition to and not in derogation of the provision of any other law for the time being enclosed" is not applicable to Cooperative House Societies. It is pertinent to mention that the State Commission has erred in comprehending that unlike the purchase of property through builders etc., in respect of Cooperative Societies it is not the general public who can purchase the flats/houses but those only those who do not have any house/flat are entitled to purchase of the flats. Moreover, the Consumer Protection Act does not give mandate to a person to trade in investments in property through benami deals and through false affidavits for obtaining flats by any means. It was never the intention of the Consumer Protection Act to shield and enable such people to manipulate and obtain property illegally.

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11. The petitioner has already filed an appeal which is

pending before the Financial Commissioner who is an appellate authority, in this case and in the event of any grievance from the orders of the appellate authority, the petitioner is entitled to approach the Hon'ble High court for the settlement of the grievances. The order of the State Commission as curtailed the legal right of the petitioner to challenge the order of the Registrar/Financial Commissioner.

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13. The basic issue which is required to be considered is whether a member of a Cooperative Society is a consumer and whether his demand of seeking possession of 3 flats justifies the orders of the State Commissioner of allotting flats without following the rules.

14. Another issue which is also important for consideration is whether the Consumer Court can permit circumvention of rules of persons who were otherwise required to follow the same at different stages in the process of the adjudication of disputes."

24. It is an unfortunate fact that even in W.P.(C) No. 1295/2015, filed in Ashok Sardana's case, the society has made no reference at all to the filing of the statutory first appeal before the National Consumer Disputes Redressal Consumer Forum or the fact that it has complied with the monetary award under the impugned order dated 11th August, 2014 prior to the filing of the writ petition. This court was not informed that the statutory appeal was withdrawn for the sole reason that the society had in fact partially complied with the order which was sought to be assailed afresh by way of the writ petition.

In these circumstances, on 10th February, 2015, this court had been persuaded to pass an order identical to the interim order of stay as passed in the other writ petitions.

25. The above narration of facts would show that the petitioner assailed the order of the State Consumer Dispute Redressal Commission dated 11^{th} August, 2014 by way of the statutory appeal and had sought interim stay of its effect and operation as well. Having failed to secure the same, the writ petition was used as a device to somehow interdict the effect and operation of the said order. For this reason, these writ petitions have been filed without disclosing the factum of even filing of the statutory appeal let alone the orders which were passed when the appeals were first listed.

26. We are of the view that the filing of the appeals and the orders passed thereon was a material fact and the petitioners were bound to make a fair disclosure of the fact that the statutory remedy had been invoked by the society. This court would have taken on the maintainability of a writ petition simultaneously against the same impugned order, once this fact was disclosed. It is obvious that this fact has been concealed with the malafide intention of somehow or the other getting a stay of the effect and operation of the order dated 11^{th} August, 2014 by the State Commission. It is unfortunate that this court was not informed even of the details of the execution or the proceedings undertaken by the State Consumer Dispute Redressal Commission in this petition. Other than mentioning the attachment of the bank accounts, the petitioner nowhere discloses that it has partially complied with the impugned order dated 11^{th} August, 2014.

27. We may note that when the private respondents entered appearance in the matter and objected to the filing and maintainability of the present writ petition on the grounds that the petitioner had

invoked the statutory remedy before the National Consumer Disputes Redressal Commission, we had directed the petitioner society to file an affidavit disclosing the details of the appeals filed before the National Consumer Disputes Redressal Commission. Pursuant to our orders, affidavits have been filed in all the three petitions. To say the least, a very unfortunate stand has been taken in these matters. We do not find a whit of an explanation as to why the material factum of the filing and pendency before the National Consumer Disputes Redressal Commission was not disclosed in the writ petition. On the contrary, the petitioner has resorted to making unfounded allegations against the counsel who had conducted the case of the society before the State Consumer Dispute Redressal Commission and the Financial Commissioner. The submission in the affidavit that the statutory remedy was invoked because such decision was taken in the meeting of the managing committee on 17th November, 2014 is also not supported by the resolution which we have extracted above. It is obvious that the society had taken a considered decision to invoke the statutory remedy only because it was considered an appropriate remedy. We may also note that such remedy was not availed by learned counsel who had contested the matter on behalf of the society before the State Consumer Dispute Redressal Commission but by the learned counsel who has filed the present writ petitions. A specious plea with regard to a "close door meeting of the secretary and other members of the society on 18th December, 2014" has been referred to in the affidavit without any minutes thereof being filed. The factual narration with regard to the meetings etc in the affidavit attested on

10th July, 2015 are also not supported by the record of the writ petitions.

28. We may also note that the society had taken a categorical stand explaining the reasons for the delay in filing the statutory appeal before the National Consumer Disputes Redressal Commission. In the application for condonation of delay dated 24th November, 2014 filed under the signatures of Sh. K.R. Sharma, Secretary of the petitioner by the present counsel, the society had urged that delay in filing the appeal had resulted for the following reasons :-

> "2. That the Honorary Secretary of the Society was suffering from High Blood Pressure and when the urgent meeting of the management committee was called, the members were not available due to Pooja, Diwali and other festivals.
>
> 3. That after seeking legal advice, the Hony. Secretary handed over the documents to the counsel which were collected from the office of the Registrar of Cooperative Society of Delhi. The counsel took some time to prepare the appeal.
>
> 4. That the delay in filing the appeal has neither been wilful nor intentional but due to circumstances beyond the control of the appellant."

It is, therefore, obvious that a considered decision was taken by the society to file the appeal before the National Consumer Disputes Redressal Commission.

29. So far as the grievance against the counsel who conducted the case before the State Consumer Disputes Redressal Commission is concerned, we find that the counsel had taken all the grounds which have been raised by the petitioner in the present writ petitions (just as

in the appeals). The same have been noted in the order dated 11th August, 2014 and dealt at length by the State Consumer Disputes Redressal Commission. The very same preliminary submissions and objections about jurisdiction stand taken and decided before the National Consumer Disputes Redressal Commission. For all these reasons, the stand taken in the affidavit filed before us, therefore, cannot be accepted.

30. In this background, we find not a whit of an explanation as to why the important fact that the petitioner have invoked the statutory remedy by way of an appeal before the National Consumer Disputes Redressal Commission as well as the failure to get any interim order of stay was not disclosed in the writ petitions. Having availed the remedy of the statutory appeal, the present writ petitions were obviously misconceived and we find no justification for invoking the extraordinary jurisdiction of this court other than the same being a malafide attempt to somehow or the other obtain interim orders of stay by wrongful concealment. In our view this is a serious matter which would invite proceedings under the Contempt of Court Act against the concerned office bearers of the petitioner society. Inasmuch as there is partial compliance of the orders passed by the State Commission in the Execution Proceedings and the appeals stand withdrawn because of this reason, we are refraining from initiating Contempt of Court Act proceedings against the office bearers of the petitioner society. However, the petitioner deserves to be burdened with heavy costs in each of these writ petitions in order to compensate the private respondents no. 3 for the harassment in contesting two

remedies for the same relief.

31. The application for withdrawal of the appeals, dated 22nd December, 2014 which was filed in all the three appeals was premised on the compliance of the stay order by the society abandoning the grounds of challenge. The application for withdrawal was therefore, with prejudice. No liberty was reserved to press the grounds on which the challenge had been laid. The applications for withdrawal were supported by a duly authorised person i.e. secretary of the society who was duly authorised by the aforesaid resolution dated 16th November, 2014.

32. We find that so far as the challenge by way of these writ petitions is concerned, it is premised on the very grounds placed before the State Commission and the National Consumer Disputes Redressal Commission some of which have been set down above. The intention of the society to abide by the order of the State Commission is manifested from the statements made in the withdrawal application made on or after dated 22nd December, 2014 and the unconditional withdrawal of the appeal. The challenge by way of the present writ petitions would, therefore, not survive.

33. In view of the above, these writ petitions are dismissed with costs which are assessed at ₹50,000/- each to be paid to the private respondent no. 3 in each of the writ petitions. The costs shall be paid within a period of four weeks from today. Compliance report shall be filed before this court.

34. We may observe that we are not opining on the merits of the petitioners' contentions in the pending proceedings before the

Financial Commissioner and nothing herein contained deem to be an expression of opinion on the merits of those cases.

In view of the dismissal of the writ petition, the interim orders dated 22nd December, 2014 and 15th February, 2015 stand vacated. Parties shall appear before the State Commission in the Execution Cases on 6th August, 2015 for further proceedings.

GITA MITTAL, J

I.S.MEHTA, J

JULY 20, 2015
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