

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2585/2007 & CM.No.20951-52/2015**

% **Date of Decision: 15th December, 2016**

KAMLESHWAR PRATAP Petitioner
Through: Mr.Anand Yadav and Ms.Anita Tomar,
Advocates for the petitioner

versus

REGISTRAR COOPERATIVE SOCIETIES..... Respondent
Through: Mr.Naushad Ahmed Khan, ASC for
GNCTD and Ms.Hancy Wadhwa, Advocate.
Mr.P.S. Bindra, Advocate for respondent no.3/society
Mr.Sudhir Nandrajog, Sr. Advocate with Mr.Sumit
Tomar, Advocate for respondents No.4 to 8
Mr.Rakesh Munjal, Sr. Advocate with Mr.Kanwal
Choudhary, Advocate for respondent no.10

Mr.Ankur Arora and Ms.Srishti Sharma, Advocates
for the applicant in CM.No.20951-52/2015
Mr.Pawan Mathur, Advocate for the DDA

+ **W.P.(C) 2586/2007 & CM.No.21118-19/2015**

DEEPAK GUPTA Petitioner
Through: Mr.Anand Yadav and Ms.Anita Tomar,
Advocates for the petitioner
versus

REGISTRAR COOPERATIVE SOCIETIES Respondent
Through: Mr.Naushad Ahmed Khan, ASC for
GNCTD and Ms.Hancy Wadhwa, Advocate.
Mr.P.S. Bindra, Advocate for respondent no.3/society
Mr.Sudhir Nandrajog, Sr. Advocate with Mr.Sumit

Tomar, Advocate for respondents No.4 to 8
Mr.Rakesh Munjal, Sr. Advocate with Mr.Kanwal
Choudhary, Advocate for respondent no.10
Mr.Ankur Arora and Ms.Srishti Sharma, Advocates
for the applicant in CM.No.21118-19/2015
Mr.D.Relam, Advocate for the DDA

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA J. (ORAL)

1. This common order will dispose of the aforementioned writ petitions filed by Deepak Gupta and Kamleshwar Pratap (hereinafter referred to as the 'petitioners').
2. The two petitioners were enrolled as members of Vikas Cooperative Group Housing Society (hereinafter referred to as the 'society') vide resolution of the Management Committee dated 28th April, 2002. The enrolment was for the HIG category flat, also known as category 'A' flat.
3. To cut short the controversy, we would focus on and narrate the relevant facts for there have been several rounds of litigation and orders of the High Court, and the Registrar, Cooperative Societies.
4. The society had constructed 42 category 'A' flats and 68 category 'B' or MIG flats, which were to be allotted to the members depending upon the choice exercised and registered/accepted by the society. The society has already allotted 34 category 'A' flats (HIG flats) and 53 category 'B' flats (MIG flats) to different members. These allotments are not under challenge and these members are not parties to the present petitions.

5. The subject matter of the present writ petitions is the allotment of six (6) category 'A' flats (HIG flats) to following respondents:

- (i) Hanumant Bir Singh; Respondent No. 4 in W.P.(C) 2586/2007
- (ii) Rajesh Mehta; Respondent No. 5 in W.P.(C) 2586/2007
- (iii) Pushpa Kumari Bhasin; Respondent No. 6 in W.P.(C) 2586/2007
- (iv) Pradeep Kumar Puri; Respondent No. 7 in W.P.(C) 2586/2007
- (v) Surinder Singh; Respondent No. 8 in W.P.(C) 2586/2007
- (vi) Ajay Sawhney; Respondent No. 9 in W.P.(C) 2586/2007, and
- (vii) S.P. Sharma Respondent; No. 10 in W.P.(C) 2586/2007

6. The allotment to respondent nos.4 to 8, as well as Ajay Sawhney, (Respondent No.9) was made on the basis of draw of lots held on 10th September, 2003. Respondent no.10 (S.P. Sharma) had challenged the said draw of lots by filing the WP(C)No.583/2004, which was disposed of vide the order dated 1st March, 2007, which reads as under:

“1. Earlier we had dictated the detailed judgment, allowing the present writ petition.

2. At this stage Mr.R.S. Tomar, learned counsel for the Respondent no.2/ Society has appeared at 2:00 P.M. and stated that the Society has already accepted an amount of Rs.5,65,000/- (Rupees Five Lac Sixty Five Thousands only) from the Petitioner and is prepared to handover the upgraded HIG Category Flat. The appropriate recommendation in line of the above statement made by the Respondent No.2 / Society shall be made by the Registrar, Co-operative Societies to the Delhi Development Authority and appropriate action shall be taken by the DDA on or before 15th April, 2007 and the flat handed over by the Society within the above period.

3. Based on the above statement made by the learned counsel for Respondent no.2, learned counsel for the Petitioner is withdrawing the Writ Petition.

4. Mr.Anand Yadav Advocate appearing on behalf of the Respondent no.10 and 11 states that this order should not prejudice his rights.

5. We accordingly clarify that since the Petitioner is withdrawing the present Writ Petition based on the above statement made by the learned counsel for the Respondent no.2 / Society, rights of Respondent No.10 and 11 shall not be affected by the present proceedings. It will be open to the Respondent no.10 and 11 to adopt such proceedings as are available under law for vindication of their rights.

Accordingly, the Writ Petition is dismissed as withdrawn with all pending applications.”

The first paragraph of the aforesaid order states that the Bench had by a detailed judgment dictated earlier, allowed the writ petition. Albeit, counsel for the cooperative society had appeared at 2:00 p.m. and agreed to hand over possession of the upgraded category ‘A’ flat to S.P. Sharma (respondent no.10). On this basis, S.P. Sharma (respondent No.10) had withdrawn the writ petition, accepting the statement made by the counsel for the society. This order pertinently records that the 10th and 11th respondent to the said proceedings, could adopt such proceedings as are available under law for vindication of their rights. The petitioners before us in the present writ petitions, were respondent nos.10 and 11 in the aforesaid writ petition filed by S.P. Sharma (respondent no.10). Pursuant to the order passed in the said writ petition [WP(C)583/2004], respondent no.9 before us (Ajay Sawhney) gave up his entitlement for allotment of category ‘A’ flat and was allotted category ‘B’ flat. S.P. Sharma (Respondent No. 10) has been allotted a category 'A' flat.

7. Respondent nos. 4 to 8 and 10 had initially opted for category ‘B’ flat.

However, at different points of time, they had expressed their desire for upgradation of allotment to category 'A'. The Management Committee had examined the requests for upgradation to category 'A' made by S.P. Sharma (respondent no.10) and one Sanjeev Kumar Bhutani in their meeting held on 12th April, 2000, which were accepted. In the same meeting, applications for fresh enrolment of Kishan Lal Talwar and Alok Suri for category 'A' flats were also accepted. Kishan Lal Talwar has been allotted category 'A' flat and this allotment is not challenged. Alok Suri, who is not a party to the present proceedings, as per the Society, is eligible and entitled to category 'A' flat.

8. After elections a new Management Committee took over and in the meeting held on 22nd July, 2000 recalled the earlier resolution dated 12th April, 2000 granting upgradation in category 'A' to S.P. Sharma (respondent no.10 herein) and Sanjeev Kumar Bhutani, and reverted them to category 'B'. This resolution was challenged in two arbitration proceedings.

9. The Joint Registrar, in the case of Sanjeev Kumar Bhutani, vide his award dated 12th February, 2002 held that the previous Management Committee had lost vote of confidence in the general body meeting held on 19.12.1999, and their decision to upgrade Sanjeev Kumar Bhutani from Category 'B' to Category 'A' was illegal. The cooperative management was restored when the new Management Committee was elected. Pertinently, if there was any vacancy in the superior or category 'A', the Management Committee would fix a transparent criteria for considering upgradation, and should Sanjeev Kumar Bhutani be found fit, his application would be considered on similar lines as other eligible members.

10. By another award dated 18th August, 2003, in the case of S.P. Sharma,

(10th respondent before us), the Joint Registrar had passed an almost identical award, observing that the change of category from category 'B' to category 'A' was illegal and *void ab initio*, for the then Management Committee had already lost confidence. The award was also critical of the new Management Committee, which had not acted transparently in the matter of upgradation of flats, as one Rajesh Mehta, who was impleaded as respondent No.2 to the said arbitration proceedings, was allowed upgradation. The upgradation of flats was allowed to members of the committee itself, including those junior to S. P. Sharma (respondent No. 10). Even after the award dated 12th February, 2002 in the case of Sanjeev Kumar Bhutani, the society had not taken steps to adopt a transparent and fair method or criterion for upgradation. The argument that S.P. Sharma (respondent No.10) had made an application for upgradation, but other members had not, was rejected, as the society had not laid down any criteria or procedure to be followed for upgradation for vacant category 'A' flats. The award directed the Management Committee to fix a transparent criteria for consideration of upgradation of flats and should S.P. Sharma (respondent No. 10) be found fit, his application would be considered on merits.

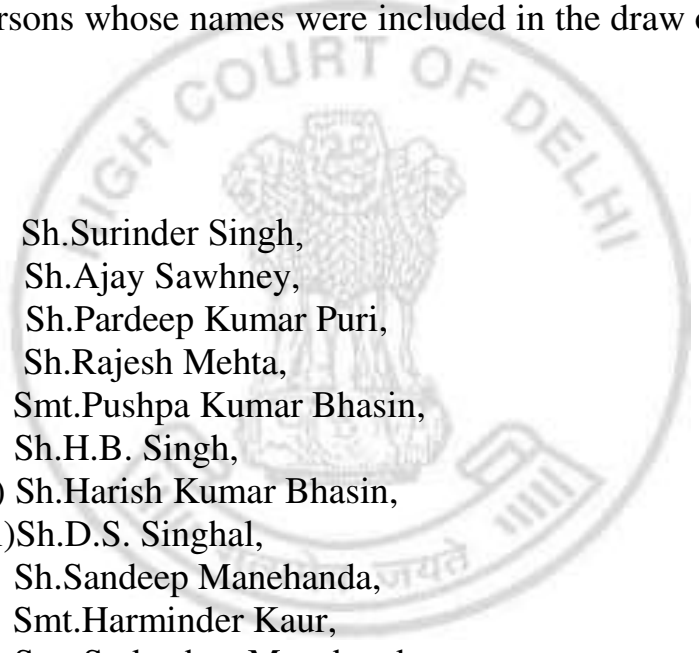
11. The two awards dated 12th February, 2002 and 18th August, 2003 have attained finality.

12. Consequent to the directions in the two awards, the Management Committee had made allotment of category 'A' flats by draw of lots. Minutes of the Management Committee dated 10th September, 2003 mention a notice inviting applications from members who were interested in upgradation to category 'A' flats and that 15 applications were received against six vacant flats of category 'A'. Notices had been sent to S.P. Sharma (respondent No.

10) and Sanjeev Kumar Bhutani, who had failed to respond. The previous applications were not taken into account and accordingly the names of S.P. Sharma (respondent no. 10) and Sanjeev Kumar Bhutani were not included in the draw of lots.

13. S.P. Sharma (respondent no. 10) had then filed W.P.(C)No.583/2004, challenging the draw of lots and Minutes of the Management Committee dated 10th September, 2003 which, as noted above, was disposed of vide order dated 1st March, 2007.

14. The 15 persons whose names were included in the draw of lots, read as under:

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- “(i) Sh.Surinder Singh,
 - (ii) Sh.Ajay Sawhney,
 - (iii) Sh.Pardeep Kumar Puri,
 - (iv) Sh.Rajesh Mehta,
 - (v) Smt.Pushpa Kumar Bhasin,
 - (vi) Sh.H.B. Singh,
 - (vii) Sh.Harish Kumar Bhasin,
 - (viii)Sh.D.S. Singhal,
 - (ix) Sh.Sandeep Manehanda,
 - (x) Smt.Harminder Kaur,
 - (xi) Smt.Sudershan Manchanda
 - (xii) Smt.Sonia Kapoor,
 - (xiii)Sh.Kashmiri Lal,
 - (xiv)Sh.Jagat Singh,
 - (xv) Sh.J.P. Singh.”

It is apparent that the petitioners' name, who had been enrolled as members in the category 'A' vide resolution dated 28th April, 2002 were not included in the draw of lots. The two petitioners are aggrieved and have

challenged the upgradation of the respondents Nos. 4 to 9 vide Minutes of the Committee dated 10th September, 2003, and the society's subsequent acceptance of upgradation of respondent No. 10 in place of respondent No. 9.

15. During the course of hearing, counsel for the society has accepted that Sonia Kapur, Harish Kumar Bhasin and Sudershan Manchanda were enrolled as members on 7th December, 2002, i.e. post the enrolment of the two petitioners.

16. We fail to find any good reason or ground in not including the names of the two petitioners herein in the draw of lots held on 10th September, 2003. Once the society had decided to invite fresh applications for upgradation from category 'B' to category 'A' flats and follow the lucky draw procedure as the criteria for allotment of category 'A' flats, and members who were enrolled post the enrolment of the two petitioners were included and had participated in the draw, then the exclusion of the petitioners is incomprehensible and unfathomable. This was certainly not just, fair, and equitable. The two petitioners were enrolled as members for category 'A', hence, were entitled to participate in the draw of lots. Consequently, the petitioners should have been included in the said draw of lots. Participation/inclusion of others may be justified, for earlier enrolment for category 'A' as in the case of the two petitioners, was not undertaken in a transparent manner after giving an opportunity to the existing members to seek upgradation. We are not objecting or striking down their inclusion, but are unable to uphold exclusion of the two petitioners, when those enrolled after the two petitioners were included in the draw of lots and considered for upgradation for category 'A' flats. Thus, members who were junior to the

petitioners were allowed to participate in the draw of lots and they were given chance of allotment of category 'A' flat. However, the two petitioners were not given the said chance.

17. Counsel for the respondent no.4 to 8 had submitted that the draw of lots held by the Managing Committee on 10th September, 2003 was for members who sought upgradation from category 'B' to category 'A' and therefore, the two petitioners, who had applied for and were enrolled for allotment of category 'A' flats, were ineligible and were rightly excluded. The said argument would have substance if there were sufficient category 'A' flats. All vacant category 'A' flats, (except two flats, which are not reserved for the two petitioners) were included in the draw of lots held on 10th September, 2003. The two petitioners thus faced down-gradation from category 'A' to category 'B'. Therefore, the contention should fail and has to be rejected. In fact on account of exclusion, the petitioners have been discriminated and denied consideration for allotment of category 'A' flats, the category in which they were enrolled on 28th April, 2002.

18. It is the case of the two petitioners that they had made substantial payment, as demanded by the society for category 'A' flats. Details of these payments are on record, but we would not over emphasise the said aspect, as we find that a case of clear and invidious discrimination is made out against the two petitioners.

19. At this stage, we would record that it is not the case of the society that the two category 'A' flats left vacant and available after allotment of six (6) flats were to be allotted to the two petitioners. The case of the society is that the two flats stand reserved and are to be allotted to Alok Suri and Amit Bajaj. It is the case of the society that both Alok Suri and Amit Bajaj are

senior to the two petitioners and had applied for category 'A' flats.

20. Be that as it may, we are not examining the case of Alok Suri and Amit Bajaj in the present writ petitions as they are not parties before us. What is clear and apparent is that if the six category 'A' flats are allotted to respondents Nos.4 to 8 and 10, then the petitioners cannot possibly be allotted to category 'A' flats and, therefore, they would have to opt for category 'B' flats. It is in this context, it is pertinent to equate the two petitioners and treat them at par along with others who were included in the draw of lots.

21. Counsel for the respondents Nos.4 to 8 had submitted that they had applied for upgradation of flats from category 'B' to category 'A' in November, 2000, which is earlier in point of time and before the two petitioners herein were enrolled as members on 28th April, 2002. Though factually correct, this precept was not the criteria or basis adopted by the society for making allotment of the six category 'A' flats. Allotment was not on the basis of seniority but on draw of lots. The awards i.e. award dated 18th August, 2003 and 12th February, 2002 in categorical terms had directed the society to follow a transparent and fair criteria for allotment of flats in category 'A' provided there was a vacancy. Thus, all members enrolled in category 'B' were to be equally treated without any preference or favour.

22. It is not the case of the society that the petitioners were excluded from the draw of lots for the reason that they were enrolled as members and had opted for category 'A' flats, post the request of upgradation of flats made by respondents no.4 to 8 and 10. Indeed, the said position is not argued by the society and it is not their case as well. Possibly, they are constrained and cannot raise the argument, for juniors and those enrolled for category 'B' flats post the enrolment of the two petitioners were included in the draw of lots.

The two awards have adversely commented upon and deprecated the attempt made by some members to clandestinely seek upgradation to category 'A' notwithstanding that the other members were not given the same choice/chance.

23. Another contention raised by counsel for the respondent nos.4 to 8 relates to the enrolment of the two petitioners. Our attention was drawn to the counter affidavit filed by the Registrar, Cooperative Society on 19th September, 2007. This counter affidavit records that the Registrar, Cooperative Society had not approved membership of the two petitioners as was communicated to the society vide the Registrar's letter dated 23rd August, 2002. The Registrar, Cooperative Societies had then stated that the proposal had been considered and not approved due to pending court cases. This letter refers to and also relates to the enrolment of I.D. Manocha, who was also enrolled as a member on 28th April, 2002. The two petitioners have submitted that I.D. Manocha has been allotted a flat by the society. Further, the petitioners rely on the minutes/file noting of the Registrar, Cooperative Society for the period 17th January, 2003 to 30th June, 2003. As per the said minutes, the petitioners, who were enrolled at serial Nos.156 - 157 vide resolution of the management Committee dated 28th April, 2002 were taken on record and included in the list of the 28 eligible members. The said list includes those enrolled subsequently and after 28th April, 2002. This list of 28 members includes Harish Kumar Bhasin, Sudershan Manchanda and Sonia Kapoor, who were initially enrolled for category 'B' flats, but allowed to seek upgradation to category 'A' flat, and their names were included in the draw of lots held on 10th September, 2003. The names of the petitioners were not rejected on the ground that they were not the members of the society. It

is therefore, apparent that the two petitioners were treated as members of the society before the draw of lots held on 10th September, 2003.

24. In view of the aforesaid discussion, we have no other option but to set aside the draw of lots dated 10th September, 2003. As we have set aside the said draw of lots dated 10th September, 2003, consequential draw of lots held by the DDA on 14th December, 2003 will also have to be set aside.

25. In view of the aforesaid factual matrix, there would be 8 claimants for 6 category 'A' flats (or 10 claimant members for 8 category 'A' flats, about which we make no comment). We have excluded from the said list other members, who had applied for upgradation to category 'A' flats, but were not successful in the draw of lots. We have also excluded from the said list respondent no.9 (Ajay Sawhney) and Sanjeev Kumar Bhutani, as it is pointed out that both of them have been allotted category 'B' flats and they do not have any grievance. Other members of the society never sought upgradation to category 'A'.

26. We leave it open to the society to undertake and decide the criteria for allotment of category 'A' flats in consultation with the Registrar, Cooperative Societies. The criteria applied and made the basis of allotment would keep in mind the Rule position or office orders of the Registrar. Unsuccessful members would be allotted category 'B' flats (MIG flat).

27. The aforesaid exercise would be carried out by the Management Committee of the society in consultation with the Registrar, Cooperative Society within a period of four months from the date of receipt of a copy of this order. The interim order restraining respondent nos.4-8 and 10 from alienating, transferring or creating any encumbrance, will continue till the allotment exercise is completed. Respondent nos.4-8 and 10 will abide by the

final decision of the Management Committee to be taken in consultation with the Registrar, Cooperative Society. Of course in case any party is aggrieved by the said decision, they have the option to challenge in accordance with law.

28. We also clarify that the case of the members, who were enrolled for category 'B' and had not sought upgradation to category 'A' but have not been allotted flats in view of the pendency of the present writ petition, would be considered for allotment of category 'B' flats in accordance with law. The said exercise would be completed within five months from the date of receipt of copy of this order. We have granted an additional one month for the reason that two out of eight parties to the present writ petition would have to be accommodated in category 'B'.

29. In case any of the six members, i.e. respondent Nos. 4-8 and 10 is entitled to allotment, whatever the criteria, they would be allowed to retain the same flat in their occupation at present. However, in case the member/allottee, is not allotted a category 'A' flat, he will forgo his right to a category 'A' flat and surrender the same to the successful member.

30. The writ petitions are accordingly disposed of. No order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

DECEMBER 15, 2016/ssn