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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1674/2014 & CM 3508/2014
SUDHESH KUMAR JAIN & ANR

..... Petitioner

Through Mr Rajat Aneja and Ms Rashmi
Verma, Advs.

versus

DELHI CO-OP. GROUP HOUSING SOCIETY LTD. & ORS

..... Respondent

Through Mr Devesh Singh, ASC with Mr
Vinod Kumar Bhati, Advs. for
GNCTD

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 24.08.2016

This writ petition preferred by the petitioners – Sudesh Kumar Jain and Mahender Kumar Jain impugns the order dated 07.02.2014 passed by Delhi Cooperative Tribunal. The said order confirms the award dated 07.06.2012 in Arb. Case No.2836/DR/ARB/2010-11.

The petitioners herein had invoked arbitration proceedings under the Delhi Cooperative Societies Act, 2003 stating that their predecessor in interest, namely, Vinay Kumar Garg was the original allottee of car parking space under Flat No.51 in the residential complex constructed by the Delhi Group Housing Society Limited.

The Arbitrator had recorded evidence and vide the award dated 07.04.2012 held that the two petitioners, who were not the original allottee had failed to produce any document to show and establish that the original

allottee had paid Rs.17,000/- for the car parking space. The petitioners had relied upon the photocopy of receipt of Rs.46,147/- dated 23.03.1988, but the original receipt was not produced, inter alia, stating that the same had been lost and a police complaint was made on 30.09.1998. The contesting respondent, namely, Sharda Jain, on the other hand, had filed receipt number 7361 dated 03.03.1989 for payment of Rs.17,000/- towards car parking space. After examination and elucidating the evidence on record, the case of the petitioners was rejected in the award dated 07.04.2012.

Aggrieved, the petitioners had filed the Appeal No.111/2012/DCT which, as noted above stands dismissed by the impugned order dated 07.02.2014. The petitioners claim that they were entitled to car parking space as Vinay Kumar Garg, their predecessor in interest, had paid for the same. The impugned order notices the contentions raised by the petitioners before the Tribunal including the receipts dated 23.03.1988 and 30.06.1989 and that the originals were not produced during the course of arbitration proceedings on the pretext that they were lost and a complaint was made with the police on 30.09.1998. The Tribunal held that this assertion of the petitioners has to be taken as a pinch of salt. The Tribunal referred to the circular dated 13.07.1990 issued by the Secretary, that the possession of the flat had been handed over to the predecessor in interest of the petitioners, namely, Vinay Kumar Garg on 11.07.1990. This circular does not mention that the car parking space was allotted to Vinay Kumar Garg. An agreement dated 11.07.1990 was executed by Vinay Kumar Garg and the Cooperative Society. Again the agreement does not mention that the car parking space was allotted or earmarked for Vinay Kumar Garg. On the other hand, vide letter dated 25.07.1998 the Cooperative Society had categorically asserted

that Vinay Kumar Garg had not been paid Rs.17,000/- for car parking space. The respondent – Cooperative Society has placed on record several letters written by the Cooperative Society to other members for the month of August and September, 1998 allotting specific car parking space. No such letter was written to the petitioners or Vinay Kumar Garg. The police complaint was lodged on 30.09.1998, which is after the first letter was circulated amongst the members of the Cooperative Society in August, 1998.

The first receipt dated 23.03.1988 is for Rs.47,147/-. The payment was made by cheque and the receipt records of the said payment was on account of construction money and “car parking”. The words “car parking” appear to be in a different handwriting or pen. Vinay Kumar Garg was inducted as a member of the Cooperative Society on 23.03.1988 and had paid the share capital of Rs.1,888/- on the same date. The receipt dated 30.06.1989 mentions and records that payment of Rs.31,000/- was received. It does not specify or state that the payment was towards car parking charges. The allotment letter dated 11.07.1990 refers to the allotment of the flat. Similarly, the agreement dated 11.07.1990 refers to the allotment of flat but does not refer to allotment of car parking space. There is also a letter / circular dated 13.07.1990 which states that Vinay Kumar Garg was a member of the Society and had been allotted flat no. 51 in Ashirwad Apartments Group Housing Complex, Parparganj, Delhi and the possession of the flat was handed over on 11.07.1990. The Cooperative Society alongwith the counter affidavit have filed copy of the receipts executed in favour of the other members who had separately deposited Rs.17,000/- towards car parking account. These receipts state that the members had

made payment for car parking charges. The Special General Body meeting held on 17.04.1988 had directed allotment of car parking on payment of Rs.17,000/-. The minutes were circulated to the members on 22.04.1988. The receipt which the petitioners rely upon is dated 23.03.1988. The receipt is prior to the date of the Special General Body meeting in which it was decided that the members would be charged Rs.17,000/- for the car parking space / area.

Faced with the aforesaid situation, learned counsel for the petitioners submitted that even if there was no receipt, the claim of the petitioners should not be rejected for Vinay Kumar Garg had in fact paid for the car parking space. He relies upon the statement made in cross examination of Mahender Kumar Jain, the petitioner no.2 herein. In his cross examination, the petitioner no.2 had stated that they had paid Rs.2.80 lacs for the flat, though the actual cost of flat was Rs.2.55 lacs. It is submitted that the predecessor in interest of the petitioners must have paid Rs.17,000/- towards car parking charges. We are not impressed and are not inclined to accept the said argument. As per the statement made by the petitioner no.2 the total cost of flat was Rs.2.55 lacs and if we add Rs.17,000/- as car parking charges, the figure would be Rs.2.72 lacs. The amount paid as per the petitioner no.2 was Rs.2.80 lacs. This shows that the payment included interest etc. It is also the case of the Cooperative Society that the original member had made payment of Rs.7,000/- for scooter parking space and the said space stands allotted.

Be that as it may, we find that the award as well as the order passed by the Appellate Tribunal are cogent and well-reasoned and we do not see any reason to disturb and upset the findings of facts.

The writ petition is accordingly dismissed.

Pending CM also stands disposed of.

There shall be no orders as to costs.

SANJIV KHANNA, J

SUNITA GUPTA, J

AUGUST 24, 2016/*rd*