

\$~6,7,9 & 10

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

Decided on: 23.02.2016

+ **W.P.(C) 7227/2013 & CM No. 15546/2013**

SUBHASH KWATRA

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate
alongwith Mr. Abhimanyu
Singh Khatri, Advocate.

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS.

... Respondents

Through: Mr. Rahul Sharma, Advocate
alongwith Mr. Ankit Roy,
Advocate for R-1/RCS.
Mr. Kunal Sharma, Advocate
alongwith Mr. Abhishek Kr.
Singh, Advocate for DDA/R-3.
Mr. Subas Acharya, Advocate
for the interveners.
Mr. V.K. Tandon, Advocate for
Administrator.

And

+ **W.P.(C) 9554/2015 & CM No. 22527/2015**

VIMLA DEVI & ANR

..... Petitioner

Through: appearance not given.

versus

REGISTRAR CO-OPERATIVE SOCIETIES, GOVT. OF NCT
& ANR Respondents

Through: Ms. Niti Jain, Advocate for Mr.
Anuj Aggarwal, Advocate for
R-1.
Mr. Subas Acharya, Advocate
for the interveners.
Mr. V.K. Tandon, Advocate for
Administrator.

And

+ W.P.(C) 7225/2013

RACHIT SAHI

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate
alongwith Mr. Abhimanyu
Singh Khatri, Advocate.

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS.

..... Respondent

Through: Mr. Shantosh Kumar Tripathi,
Advocate for R-1.
Mr. Arjun Pant, Advocate for
DDA.
Mr. Subas Acharya, Advocate
for the interveners.
Mr. V.K. Tandon, Advocate for
Administrator.

And

+ W.P.(C) 495/2007 & CM Nos. 2875/2011 & 12052/2011

SUBHASH KWATRA

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate
alongwith Mr. Abhimanyu
Singh Khatri, Advocate.

versus

THE REGISTRAR OF COOPERATIVES Respondents

Through: Ms. Mini Pushkarna, Standing
Counsel, EDMC alongwith Ms.
Yoothica Pallavi, Advocate.
Ms. Shobhana Takiar,
Advocate alongwith Mr.
Udayan Kahndelwal, Advocate
for DDA.
Mr. Subas Acharya, Advocate
for the interveners.
Mr. V.K. Tandon, Advocate for
Administrator.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

23.02.2016

1. By all these proceedings, common reliefs are claimed by the writ petitioners who have approached this Court under Article 226 of the Constitution. They are aggrieved by the failure of the respondents to ensure that the flats which should have been allotted to them (for which they had fully paid and deposited monies long back) have not yet been handed over to them.

2. All petitioners are members of the Saraswati Cooperative Group Housing Society Ltd. (hereafter, "the Society"). In an earlier round (W.P.(Civil) No. 12594/04 and connected cases), a claim was

made by several members-like the present ones and including some of them- that despite accepting full consideration, allotments were not made to them. They were inexplicably kept in the category of “detained” members. The draw-of-lots for allotment of flats were held on three dates i.e. on 08.12.2001, 14.11.2002 and 20.06.2003. That the petitioners were fully eligible for consideration is not in dispute; nevertheless for inexplicable reasons against their names remark “detained” was given. This led to certain members-notably Mr. Rachit Sahi (petitioner in W.P.(C) No. 7227/2013) and Ms. Vimla Devi (petitioner in W.P.(C) No. 7554/2015) and Mr. Kishan Lal Aggarwal (petitioner in W.P.(C) No. 8720/2007) seeking remedies under Section 70/71 of the Delhi Cooperative Societies Act. These proceedings culminated in awards in their favour. The awards had the effect of declaring that the claimants were entitled to be included in the draw of lots and that names could not have been “detained”. Despite initiation of execution proceedings, they were unable to secure possession.

3. In the above background of circumstances, five writ petitions were filed before this Court. These previous five connected cases including W.P.(C) No. 12594/2004 i.e. W.P.(C) No. 8707/2005 (by Dr. Saroj); W.P.(C) No. 10151/2009 (by Smt. Subha Kapur); W.P.(C) No. 8720/2007 (by Mr. K.L. Aggarwal) and W.P.(C) No. 8527/2009 (by Mr. Mandal), were disposed of by a common order dated 17.08.2009.

That order *inter alia*, stated as follows:-

"In these petitions, the petitioners are seeking allotment of flats in their favour. According to the petitioners, they are the legitimate members of the Saraswati Cooperative Group Housing Society. From the order dated 18.04.2009, it appears that DDA has filed a status report which indicates that 29 flats are lying vacant in the Society. The said order also indicated that a direction was issued to the Registrar Cooperative Societies to explore the position and require the presence of the Administrator of the Society in Court on the next date of hearing. The matter was listed on 25.08.2009, however, it was adjourned on that day for today. The Administrator of the Society is present and has made a statement that though, as per the record of the DDA there are 29 flats lying vacant with the Society, the ground reality is that all the flats are occupied.

We note that the status report given by the DDA has even indicated the numbers of the vacant flats in both category A and category B. It is also an admitted position that after 25.06.2003 no further draw-of-lots has been conducted in respect of the flats of the said society. The status report given by the DDA shows 29 flats vacant as on 20.06.2003. Any further allotment could have been done only with the concurrence of the DDA and the RCS. But there is no such concurrence on record. The fact that there is no vacant flat at present, as indicated by the Administrator, is demonstrative of the fact that people have illegally occupied the said 29 flats. This, once again, is clear from the fact that no further draw-of-lots has been made after 25.06.2003.

In this background, the only course of action which is required to be taken is to direct the RCS to ensure that

the flats which had not been formally and legally allotted to the occupants should be got vacated by them. In accordance with law and thereafter a draw-of-lots be recommended to the DDA for allotment of flats to the petitioners in these writ petitions, provided the petitioners are otherwise qualified for allotment. The Registrar of Cooperative Societies shall conclude all these formalities within one month from today. In case of any difficulty, the parties are at liberty to approach the Court."

4. A few individuals approached the Court by filing the review proceedings i.e. R.A.No. 367/2009. That was rejected on 17.09.2009. Some third parties to the earlier writ petitions, claimed to be aggrieved and sought leave to prefer special leave petitions before the Supreme Court. Their grievance was that the order of this Court dated 17.08.2009 had not taken into consideration the fact that they were lawfully occupying 29 flats which were constructed by the Society and which were handed over to them.

5. The Supreme Court declined to interfere with the directions of this Court by its order dated 12.11.2009 (in SLP (c) No. 18230-231/2009) in the following terms:-

"Taken on board.

Heard learned senior counsel for the petitioner.

Permission to file the Special Leave Petitions is granted.

The petitioner is challenging the judgment and order dated 17.08.2009 in Writ Petition No.12594 of 2004 and the order dated 17.09.2009 in Review Petition No.367 of 2009 in Writ Petition No.12594/2004. The

High Court has directed the Registrar of the Cooperative Societies to decide the claims made by the petitioners. We make it clear that the Registrar of the Cooperative Societies should decide the matter uninfluenced by any of the observations made by the High Court against the petitioners.

The Special Leave Petitions are accordingly disposed of."

6. In these circumstances, the process of verification required of by order of 17.08.2009 was followed up and monitored by this Court. In this background, the petitioners approached this Court once again claiming that the process of verification had not been completed. This led to fresh round whereby the series of orders were made. The most important one, at this stage, is the order dated 09.03.2010, made pursuant to the status report contained in an affidavit filed by the Registrar.

7. Applications were moved in the pending matters. On 09.03.2010 in W.P.(C) No. 495/2007, the Court took on record a status report filed by way of an affidavit filed by the office of the Registrar of the Society pursuant to the verification process undertaken. The Court then noticed that 27 individuals had approached Supreme Court questioning the order of 17.08.2009. The Court was of the opinion that the order of 04.02.2010 of the RCS had sought to initiate a general enquiry for the verification of individual members. It was felt that since the identity of 29 individuals who approached the Supreme Court was known, it was

imperative to verify whether they were in unauthorised occupation of the flats. The Court therefore observed as follows:-

“5. Perusal of the memo of parties filed by the respondent shows that out of 29 persons who stood identified on the record of W.P.(C) No. 12594/2004 as unauthorized occupants, only 10 persons had approached the Supreme Court for relief and redressal by way of the aforementioned SLP. These 10 persons were:

<i>Sl No.</i>	<i>Name of the Occupants</i>	<i>Flat No.</i>
1.	<i>Rajeev Bhatt</i>	<i>G-104</i>
2.	<i>Nirmal Rani</i>	<i>G-201</i>
3.	<i>Manish Gupta</i>	<i>E-301</i>
4.	<i>Ambrish Saxena</i>	<i>H-101</i>
5.	<i>Brijesh Kumar Verma</i>	<i>F-303</i>
6.	<i>Geeta Joshi</i>	<i>H-002</i>
7.	<i>P.L. Khanna</i>	<i>G-204</i>
8.	<i>Ajay Jalali & Sanjay Jalali</i>	<i>B-501</i>
9.	<i>Neelam Sabharwal</i>	<i>G-002</i>
10.	<i>Kanak Lata Dikshit</i>	<i>H-203</i>

6. The other 17 petitioners before the Supreme Court, apparently were claiming through the other occupants included in the list of 29 unauthorised occupants. These 17 petitioners before the Supreme Court were:

<i>S.No.</i>	<i>Name of the Occupants</i>	<i>Flat No.</i>
1.	<i>Prateek Singh</i>	<i>F-201</i>
2.	<i>Bal Kishan Tyagi</i>	<i>F-002</i>
3.	<i>Vishal Bhaskar</i>	<i>C-104</i>
4.	<i>Veena Mahajan</i>	<i>H-104</i>

5.	<i>Ashu Goyal</i>	<i>F-104</i>
6.	<i>Arjun Singh</i>	<i>D-601</i>
7.	<i>Ravinder Kaur</i>	<i>F-202</i>
8.	<i>Rekha Mahajan</i>	<i>F-001</i>
9.	<i>Raksha Sharma</i>	<i>H-301</i>
10.	<i>Deepak Jain</i>	<i>D-101</i>
11.	<i>Kamlesh Sharma</i>	<i>H-004</i>
12.	<i>Meenakshi Bhalla</i>	<i>H-204</i>
13.	<i>Saroj Thapar</i>	<i>D-301</i>
14.	<i>Ajit Kaur</i>	<i>F-004</i>
15.	<i>Lajja Devi & Vinay Kumar Bansal</i>	<i>H-003</i>
16.	<i>Richa Singhal</i>	<i>B-104</i>
17.	<i>Manish Mahendroo</i>	<i>F-302</i>

7. The two persons who did not challenge the order dated 17th August, 2009 at all were Sh. Vinod Kumar Wahi resident of flat No.F-301 and Sh. Kapil Krishan Malhotra resident of flat No.D-403.

8. There is, therefore, no justification as to why the respondents have not complied with the directions to proceed to seek eviction of the remaining 2 persons against whom the order dated 17th August, 2009 had attained finality.

9. Our attention has been drawn by learned senior counsel for the petitioner to a notice dated 25th November, 2009 (at page 139) issued by the Registrar of Cooperative Societies to

the said 29 persons who had been named in the list of unauthorized occupants filed by the persons filed by the administrator of the society (page 107). Twenty seven of these persons filed W.P.(C) No. 560/2010 assailing the said notice. These petitioners were the same persons who had preferred SLP (C) No.18230-231/2009. Therefore, 2 persons viz. Sh. Vinod Kumar Wahi resident of flat No.F-301 and Sh. Kapil Krishan Malhotra resident of flat No.D-403 were not even petitioners in W.P.(C) No. 560/2010.

10. Yet, we find that the respondents have made a statement on 04th February, 2010 (page 145) stating that the notice dated 25th November, 2009 issued by the Assistant Registrar, RCS to all the 29 persons be treated as withdrawn. A further statement was made that in pursuance to the order of the Supreme Court dated 12th November, 2009, the matter is being examined. Based on this stand the writ petitioners withdrew the writ petition at that stage.

11. By our order dated 04th March, 2010 we had noticed some of the above facts. We had also directed the respondents to disclose on affidavit full details of all pending cases relating to the respondent No.2 society. The respondents have made partial disclosure of some of the writ petitions in para 2 of the affidavit.

XXX

XXX

XXX

Accordingly, we direct as follows:-

(i) Mr. Sunil Fernandes, Advocate, mobile no.9891639491, who is present in court, is appointed as Local Commissioner in the matter. He shall effect physical verification of the persons in occupation of the 29 flats mentioned in the list at pages 107 to 110 of the record. The inspection shall be

conducted in the presence of the petitioner and/or her authorized agent.

(ii) A direction is issued to the persons in occupation of the said flats as well as to the respondents to fully cooperate with the local commissioner and to render all assistance and provide the requisite information.

(iii) The local commissioner shall also conduct an enquiry with regard to the title being claimed by the occupants of these flats. The occupants of these 29 flats shall provide copies of the documents of their respective title in support of their claim, status, right and interest, on the basis of which they are in occupation of the flats concerned, to the local commissioner.

(iv) The local commissioner shall file a report before this court within a period of two weeks from today. The local commissioner shall be paid a fees of Rs.50,000/- to be borne by the petitioner at the first instance.

(v) In case it is considered necessary, it shall be open for the local commissioner to seek police assistance. The SHO of the concerned police station is directed to render full assistance to the local commissioner if approached for the same.

(vi) The Registry shall furnish a certified copy of the list at pages 107 to 110 to the local commissioner along with copy of this order."

8. After receipt of the inspection report as well as the report of the Local Commissioner, the Court on 29.10.2010 took note of the inspection report of the Administrator. It observed and directed and follows:-

"The administrator has filed an inspection report in the Court. It transpires that while allotting 163 flats as noted in our order dated 06.08.2010, the DDA appears to have made a double allotment in two cases. Thus two-persons did not take possession of two additional flats and actually 161 flats were allotted in pursuance to the draw of lots held by the DDA. The result of this is that there were, in fact, not 29 but 31 flats stated to be allotted by the Managing Committee. Simultaneously, it has been brought to our notice that actually 5 occupants out of 29 flats were, in fact, validly allotted flats. It is also stated that there are seven even other allotments made by the Managing Committee against these 5+2 flats. The administrator states that thus the number ultimately comes to 31 flats which have been allotted by the Managing Committee without a draw of lots being held by the DDA. Learned counsel for R-1/RCS states that as per the information so far derived from records, there are 15 persons including the petitioners who have awards in their favour and who would be entitled to flats. Apart from this, there are proceedings pending in respect of the claims by some other members also, which are yet to be finalized."

9. It is thus clear from the above narrative that as on 29.10.2010 due as a consequence of the verification undertaken by the Administrator and the inspection directed by this Court (both after the order of the Supreme Court dismissing the special leave petition of the 29 individuals who had sought impleadment in the proceedings), it was both clear that the occupants in possession of the flats had no title to it in the sense that they were not given possession after any draw-of-lots. Likewise, the Registrar had stated on the record that at least 12

individuals including some of the petitioners had succeeded in awards made in their favour – in establishing that they were rightfully entitled to be considered but deprived without a cause for the flats. It is further a matter of record that all the petitioners had paid for the flats.

10. The order sheet reveal these proceedings -after 29.10.2010 appear to have acquired a different dimension altogether. The Court appears to have drawn into a controversy as to whether it is possible to accommodate the unauthorised occupants by enabling the Society to construct other flats so that some form of weighing of equities is carried out or balanced. The orders made in all these cases thereafter show that the directions were issued to the Delhi Development Authority (DDA), the Society and other authorities to explore the possibility of constructing the other vacant area owned by the Society. However as on date, the proposal has not yet been clear. This Court also observes that the several existing members of the Society have aired a grievance in application with CM No. 12057/2011, stating that they are likely to be affected in some manner or the other if additional construction is carried out.

11. What is absolutely clear is that the 29 individuals, who had approached the Court, were aware as to the proceedings, the verification of the records as well as the inspection carried out pursuant to this Court's directions is clear from the several facts. Firstly, the Local Commissioner who visited the site obtained their signatures and placed them in the report which is part of the record. Secondly, the said individuals made a representation on 4.11.2001 and

have also approached this Court for seeking impleadment in CM No.6093/2010. In none of these proceedings have these individuals indicated when precisely they were handed over possession of the flats, if currently they are in occupation, the legality of such possession and pursuant to which draw-of-lots lawfully held under the authority of the DDA and the Registrar of Cooperative Societies they occupied the premises. It is a matter of record-established by several orders of the Court that the last draw-of-lots was conducted in 2003. The order of 17.08.2009 also records that the DDA has stated at the relevant times that 29 flats were vacant.

12. In view of the above established facts and the series of directions issued by the Court, it is imperative that suitable orders are made to the respondent authorities to ensure that unauthorised occupants are firstly affected and thereafter a proper draw-of-lots is held in accordance with the rules, with the involvement of DDA and the Registrar of Cooperative Societies, in which the names of the present petitioners and all other eligible candidates are duly included. This Court therefore directs that:-

- (1) The respondent authorities, especially the Registrar of Cooperative Societies takes appropriate steps to evict the 29 unauthorised occupants whose possession is plainly unlawful.
- (2) This process shall be completed at the earliest and in any event not later than eight weeks from today. If necessary, the Registrar shall seek the assistance of all authorities including the Delhi Police in ensuring that the process is complete.

(3) Within six weeks of completion of the steps indicated in No.1 above, the DDA and RCS shall ensure that the names of the present petitioners-and all other individuals while like them (whose names are mentioned in Annexure 2 to the affidavit of Sh. Jitender Kumar Singh, Assistant Registrar of August 2012 in W.P.(C) No. 7227/2013) and all others placed similarly are included in the draw-of-lots.

(4) the respondents shall ensure that based upon the results of the draw-of-lots, the possession of the flats allotted to those successful in the draw- of- lots are handed over within four months from today.

13. The writ petitions are allowed in the above terms. Order be given *dasti* under the signatures of the Court Master.


S. RAVINDRA BHAT, J


DEEPA SHARMA, J

FEBRUARY 23, 2016/sapna

11/11/18

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

Date of Judgment 13.09.2018

+ **W.P.(C) 7225/2013**

RACHIT SAHI

..... Petitioner

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS.

..... Respondents

Present: Mr. A.K. Singla, Sr. Adv. with Mr. Abhimanyu
& Mr. Ankit Panwar, Advs.

Mr. Santosh Kumar Tripathi, ASC for GNCTD with Mr.
Jayadev Sarangi, RCS and Mr. Jyoti Taneja, for
GNCTD.

Mr. Arjun Pant for DDA.

Mr. Vivek Kumar Tandon with Ms. Mamta Tandon for
Society.

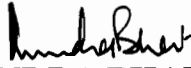
CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.

For detailed orders see W.P.(C) 495/2007.


S. RAVINDRA BHAT
(JUDGE)


A.K. CHAWLA
(JUDGE)

SEPTEMBER 13, 2018

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

% *Date of Judgment 13.09.2018*

+ **W.P.(C) 495/2007**

SUBHASH KWATRA Petitioner
versus

THE REGISTRAR OF COOPERATIVE SOCIETIES & ANR.
.... Respondents

+ **W.P.(C) 7225/2013**

RACHIT SAHI Petitioner
versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS.
..... Respondents

Present: Mr. A.K. Singla, Sr. Adv. with Mr. Abhimanyu & Mr. Ankit Panwar, Advs. for petitioner.

Mr. Santosh Kumar Tripathi, ASC for GNCTD with Mr. Jayadev Sarangi, RCS and Mr. Jyoti Taneja, for GNCTD.

Mr. Arjun Pant for DDA.

Mr. Vivek Kumar Tandon with Ms. Mamta Tandon for Society.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.

CM APPL. 29672-29673/2018 in W.P.(C) 495/2007
CM APPL. 30787/2018 in W.P.(C) 7225/2013

1 The applicant seeks directions for the implementation of the judgment of this Court. On 23.02.2016, the Division Bench of this Court had disposed of WP(C) Nos.495/2007 and 7225/2013 (filed by the present applicants) and WP(C) Nos.7227/2013 and 9554/2015 by a common judgment.

2 The Court had noticed that the writ petitioners were the members of the Saraswati Cooperative Group Housing Society – respondent (hereafter referred to as “the Society”). The complaint of the petitioners in an earlier round of proceedings [WP(C) No.12594/2004] was that despite their eligibility their names were not considered for draw of allotments of flats held on three different dates in 2001-2003. This led to their approaching the Court and seeking remedies under Section 70 of the Delhi Cooperative Societies Act, 1972 (hereafter as “the Act”). All the petitioners succeeded in those proceedings under the Act. The Court had in its earlier judgment disposed of all the writ petitions directing the occupants of the flats that the flats illegally occupied by them should be vacated; the Registrar of co-operative societies was asked to take steps in this regard and also conduct a draw of lots in regard to the same flats, for allotment to the rightful members, including the petitioners. Some of those occupants approached this Court in R.A. No.367/2009 which was disposed of on 17.09.2009. Especially, the R.A. was disposed of against them with some observations.

3 In its judgment dated (of 23.02.2016) in para 7, the Court had extracted the previous order which listed out the individuals – totaling 29

who were considered to be as unauthorized occupants. Thereafter the Court finally proceeded to issue the following directions:

“12. In view of the above established facts and the series of directions issued by the Court, it is imperative that suitable orders are made to the respondent authorities to ensure that unauthorized occupants are firstly affected and thereafter a proper draw-of-lots is held in accordance with the rules, with the involvement of DDA and the Registrar of Cooperative Societies, in which the names of the present petitioners and all other eligible candidates are duly included. This Court therefore directs that:

(1) The respondent authorities, especially the Registrar of Cooperative Societies takes appropriate steps to evict the 29 unauthorized occupants whose possession is plainly unlawful.

(2) This process shall be completed at the earliest and in any event not later than eight weeks from today. If necessary, the Registrar shall seek the assistance of all authorities including the Delhi Police in ensuring that the process is complete.

(3) Within six weeks of completion of the steps indicated in No.1 above, the DDA and RCS shall ensure that the names of the present petitioners-and all other individuals while like them (whose names are mentioned in Annexure 2 of the affidavit of Sh. Jitender Kumar Singh, Assistant Registrar of August 2012 in W.P.(C) No.7227/2013) and all others placed similarly are included in the draw-of-lots.

(4) the respondents shall ensure that based upon the results of the draw-of-lots the possession of the flats allotted to those successful in the draw-of-lots are handed over within four months from today”.

4 After the main order, Review Petitions (R.P. Nos. 182/2016 and 212/2016) were filed. By order dated 10.11.2016 the Court partly allowed the Review Petition, noting as follows:

6. As far as the review petitioners' submissions are concerned, the previous orders of the Court especially the one dated 29.10.2010 clearly shows that flats involved were 31 in numbers and that 7 of them had been allotted to legitimate and regular members. The records clearly show that the predecessor of Mr. Himanshu Aggarwal, one of the review petitioners in R.P.182/2016, was Shri K.K. Malhotra. The inspection report clearly bears out that Mr. Malhotra was an original Member and had been allotted Flat No.D-403. Likewise in Shri Wahi's case (in R.P.212/2016) too, the record speaks of his having approached the Court earlier in W.P.(C)2598/2002; the Registrar did not dispute his claim. The documents placed on record by him show that at all material time he was, right from the inception, a member of the respondent society. As a consequence of the wrongful exclusion of his name from the draw of lots, he approached the Court which ultimately resulted in flat no.F-301 being handed over to him. During the hearing, the respondent, i.e., the Registrar and the Society did not dispute the correctness of these facts.

7. In the light of these developments, the main judgment of this Court dated 23.02.2016 is hereby reviewed to the extent that the flats under occupation of the said two individuals, i.e., Himanshu Aggarwal (transferee/deriving title from the original member K.K. Malhotra) and Shri Vinod Kumar Wahi - presently occupying D-403 (Category A) and F-301 (Category B) respectively shall not be included in the list of occupants (who are to be evicted) and shall not be included in the list of flats which shall be vacated.

8. As far as the submissions of the other parties, i.e., other members to be evicted are concerned, the Court sees no justification or rationale to review its directions. The final judgment itself would show that the matter with respect to

legitimacy or occupation of the 29 flats was pending consideration from 2004; on 17.08.2009 those petitions were disposed of; even the review petitions were rejected later. The Court had noticed another previous Petition - W.P.(C)495/2007 and various orders made from time to time in that case as well as the order dated 29.10.2010. The legality of the possession of subsequent occupants - who were given the flat after the draw of lots in the 163 built up flats - was, therefore, held to be unlawful.

9. Having regard to the findings which are based upon a series of previous orders, the Court sees no reason to disturb the final directions in its main judgment of 23.02.2016.

10. The review petitions - R.P.No.182/2016 & 212/2016 are allowed to the extent that the occupants in Flat Nos.D-403 (allotted to the original member Shri K.K. Malhotra) and F-301 (Category B allotted to Shri Vinod Kumar Wahi) shall not be evicted and their names shall not be included in the list of occupants who are to be asked to vacate from the premises.

5 Non-parties, i.e. the occupants who were to be evicted on account of the time bound directions which required vacation of flats by the occupants approached the Supreme Court by filing Special Leave Petition (CC) No.435-436/2017 aggrieved by the judgment dated 10.11.2016 in the Review Petitions. The said Special Leave Petition was dismissed on 13.01.2017 in the following terms:

“Upon hearing the counsel the Court made the following

O R D E R

Permission to file the special leave petition is granted.

Delay condoned.

The special leave petition is dismissed.

However, six months, time is granted to the petitioners to vacate the suit premises on filing the usual undertaking within four weeks from today.”

6 On 01.05.2017 the Supreme Court passed an order directing the holding of draw of lots by 30.5.2017 in the following terms:

“Having heard learned counsel appearing for the applicants and upon perusal of these interlocutory applications, we direct the respondents to hold draw of lots of the flats in question before 30.05.2017, in accordance with the Rules and By-laws.”

With the aforesaid directions, I.A. Nos.23-24/2017 filed in SLP(C) Nos.1718-1719/2017, stand disposed of.

7 As a result of the previous order of the Court and the judgment, the rights of the individuals who were unlawfully kept out from the draw of lots had crystallized corresponding to those who were in occupation of the premises i.e. the concerned flats were declared to be unauthorized occupants. Their attempt to have the judgment reviewed was to no avail. Even the Supreme Court did not interfere and grant any relief. In the circumstances, the Supreme Court on an application made subsequent to its earlier order of 01.05.2017, modified the directions with respect to the holding of draw of lots and stated as follows:

“Heard and perused the applications for directions.

We direct that the time granted earlier by this Court is further extended till Respondent No.1 finalizes the process of fresh draw of lots of the flats in question and hands over the possession to the successful allottee/s.

In view of the above, these applications stand disposed of.”

8 The applicants here complain that despite repeated orders and judgments of the Court, the Registrar of Cooperative Societies has not taken any action to implement the directions. It is pointed out that even though initially the Supreme Court merely granted time to the non-applicant/third parties for six months (to vacate the premises) and later, to the Registrar, to complete the draw of lots by 30.05.2017, now by virtue of extension granted on 21.7.2017, under the pretext of finalizing the fresh draw of lots no has been taken. The applicants rely upon letter dated 24.11.2017 and 18.4.2018 written to the Registrar of Cooperative Societies.

9 It is pointed out that this Court in its main judgment of 23.02.2016 had clearly stated [in para 12(2)] that the names of those individuals mentioned in Annexure-2 of affidavit of Jitender Kumar Singh was to be included in the draw of lots. The successive status reports by the Administrator of the Society included the names of the applicants despite which, no attempt is made on behalf of Registrar to take action.

10 On behalf of the non-applicant it is urged that the process of drawing up the correct list of participants in the draw of lots would entail examination of the record and that the Registrar should be afforded adequate chance. Besides, it is also urged that non-parties' rights have not been considered. It is submitted that such occupants cannot be called unauthorized or in illegal occupation for the reason that they did seek a secured allotment which was on the basis of ultimate right. There were vacancies in the society which were filled, and that led to construction of flats for which amounts were paid by these occupants who cannot be called

unauthorized occupants. The flats too were allotted to them by the Society. At this length of time therefore, it cannot be said that at the behest of writ petitioners (who did not pay more than nominal amount) that those in occupation who were granted flats by the Society itself discontinued to hold it illegally.

11 It is evident that the main judgment of this Court (dated 23.02.2016) was the culmination of a series of orders that had required the eviction of those who could not have been allotted the residential flats constructed by the respondent-Society. The writ petitioners' claim with respect to their illegal exclusion from the draw of lots was upheld by the Registrar and confirmed by this Court in a series of orders. The judgment dated 23.02.2016 was therefore to give effect to the orders which had attained finality with respect to the writ petitioners' claim to the flats. The efforts by these non-parties – many of whom have been represented during the course of proceedings which were set aside but to no avail especially the writ petitions were rejected. In fact, the non-parties were even asked to vacate the premises and granted time for the purpose. It is only by the last order of the Supreme Court (dated 21.07.2017) that the sequence of directions contained in this Court's judgment was referred so to say. The non-parties were given time to vacate till such time the Registrar could finalize the draw of lots. The Supreme Court has not altered the directions or modified the findings; consequently, it cannot be contended that the applicant/writ petitioners have no right. The repeated findings of the court have been that they are the injured party, excluded deliberately and unfairly from the

allotment and the occupants, whose names and flats stand identified, are beneficiaries.

12 From the above discussion, it apparent that the substantive rights of the parties have been settled once for all. The only thing left for the Registrar is to finalize the list of names – which too is clearly indicated in the second Annexure of the affidavit, indicated in Para-12(3) of the judgment dated 23.02.2016 and ensure that a draw of lots for the appropriate category of flats among that list of names is held. The draw of lots shall be in respect of the flats that are under occupation by the 27 individuals who could not have been granted any allotment and whose names are also part of the record and spelt out. As this Court discerns, there is nothing complicated nor does the exercise entail great deal of effort or exertion. The applicants appear to be justified in saying that the Registrar is indulging in delaying tactics.

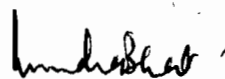
13 Given that the Registrar of Cooperative Societies has hardly indicated any time frame within which the exercise of finalizing draw of lots would be carried out and also having regard to the fact that the judgment of this Court had attained finality for over 2½ years (further that more than 1 year and 2 months elapsed since Supreme Court order dated 21.07.2017), the Registrar of Cooperative Societies is hereby directed to strictly comply with the judgment and orders of this Court and carry out the draw of lots within six weeks from today. The date time and venue of the draw of lots shall be appropriately given to the concerned parties. Upon the draw of lots, necessary and consequential steps to ensure that the flats are handed over to the fresh allottees (i.e. such as writ petitioners and members who were

69
11/11/11

excluded wrongly from participation in the earlier draw of lots) by evicting those who are in occupation should be completed within eight weeks from the draw of lots. The Registrar shall be held personally responsible and made to account in the event of failure, through appropriate proceedings by this court.

14 List for reporting compliance with the above directions on 19.12.2018. The applications are allowed in these terms.

Order dasti under signatures of court master.


S. RAVINDRA BHAT
(JUDGE)


A.K. CHAWLA
(JUDGE)

SEPTEMBER13, 2018

\$~53 & 54

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 495/2007
+ W.P.(C) 7225/2013

SUBHASH KWATRA
RACHIT SAHI

..... Petitioner
..... Petitioner

versus

THE REGISTRAR OF CO-OPERATIVE S
THE REGISTRAR OF COOPERATIVE
SOCIEITES & ORS.

..... Respondent
..... Respondent

Present: **For the Petitioner**
Mr.Abhimanyu Singh Khatri & Ms.Babita Verma, Advocates

For the Respondent
Mr.Ramesh Singh, Std.Cousnel with Mr.S.K.Tripathi and
Ms.Jyoti Taneja ASC for GNCTD with Mr.Shashank S. Tiwari
& Mr.Rishabh Ostwal, Advocates.
Mr.Vivek Kumar Tandon & Ms.Mamta Tandon, Advocates for
the Society.
Mr.Arjun Pant, Advocate for DDA

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
10.12.2018

%

CM APPL.Nos.29672-29673/2018 in W.P.(C) 495/2007
CM APPL.30787/2018 in W.P.(C) 7225/2013

1. These applications are preferred by the Registrar of Cooperative Societies [hereafter referred to as 'RCS'] who seek directions with respect to the draw of lots, and state that despite queries from the Society [Saraswati

W.P.(C) 495/2007 & W.P.(C) 7225/2013

Page 1 of 3

35

Co-operative Group Housing Society Limited] the required facts were not disclosed on time and as a consequence the list had to be revised on four different occasions. The final judgment of the Court as well as the later orders, in review and clarificatory orders – the last one being dated 13.09.2018, have indicated the proper sequence/methodology to be adopted by the RCS.

2. In these circumstances, there ought to have been no doubt about the procedure – the refrain in all the orders is to ensure that 29 persons who were excluded from the draw of lots, under no circumstances be excluded from the final allotment and every one of them ought to be accommodated. It is a matter of record that only 21 out of 29 individuals originally have come forward.

3. During the course of hearing Dr.Sanjay Gupta, who was one of the allottees, and who had approached the Supreme Court at an earlier stage against the order dated 23.02.2016, when the main judgment was made, submitted that the tentative seniority list which framed the basis of the court's order, the affidavit was furnished sometime in August, 2012, is deeply fraudulent and entirely incorrect. Dr. Sanjay Gupta drew the attention of the Court to the fact that the list so drawn contains the names of members indicative of lower seniority even though the enrolment numbers were earlier as against those who were shown to have later enrolment numbers [as compared to them] but who were shown higher in the membership list.

4. This Court was of the opinion that the list was duly considered and dealt with in the previous orders of the Court which ultimately culminated in the final judgment and that too was tested. Furthermore, review proceedings were also initiated in which all these points were considered and

appropriately dealt with. Further clarification too was sought.

5. In these circumstances, the Court is of the opinion that the argument made cannot be accepted at this late stage.

6. The application is disposed of with the direction that the Government of NCT shall strictly comply with the terms and the procedure indicated in the main judgment and as clarified by the subsequent order especially the order of 13.09.2018. All the concerned officials and the officer-bearers of the society [Saraswati Co-operative Group Housing Society Limited] shall corporate in this regard. Mr.Tandon who represented the society submits that according to the instructions received by him from the Secretary, Mr.Sudhir Bhalla, the co-operative society would render all assistance to ensure that the draw of lots is completed.

7. The respondents therefore, are directed to complete the entire process within six weeks.


S. RAVINDRA BHAT, J


PRATEEK JALÁN, J

DECEMBER 10, 2018
'hkaur'