

\$~1 & 3.

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

+ **WRIT PETITION (CIVIL) No. 94/2015**

% Date of decision: 3rd August, 2016

DINESH GUPTA Petitioner

Through Mr. Anuj Jain, Advocate.

versus

REGISTRAR OF COOPERATIVE SOCIETIES, DELHI & ORS.

..... Respondents

Through Mr. Satyakam, ASC for GNCTD along
with Mr. Jitender Kumar, AR, RCS, GNCTD.
Mr. Ajay Garg, Ms. Parul Parmar & Mr. Mayank
Francis Dias, Advocates for respondent No. 3.

WRIT PETITION (CIVIL) No. 7460/2015

M/S NEW MODERN CO-OP. G/H SOCIETY LTD..... Petitioner

Through Mr. Ajay Garg, Ms. Parul Parmar & Mr.
Mayank Francis Dias, Advocates.

versus

SHRI DINESH GUPTA & ANR. Respondents

Through Mr. Vikramaditya, Advocate for Mr.
Sanjoy Ghose, ASC for respondent No. 2-
GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

These are two cross writ petitions by Dinesh Gupta and M/s New Modern Cooperative Group Housing Society Limited. Dinesh Gupta has prayed for execution and implementation of the order dated 19th November, 2013 passed by the Delhi Cooperative Tribunal (Tribunal, for short) in Appeal No. 57/2003/DCT arising from Arbitration Case No. 03/JR/GH/00-01. The New Modern Cooperative Group Housing Society Limited (Society, for short), have challenged the aforesaid order dt. 19th November, 2013. The Cooperative Society has also challenged the order dated 21st February, 2014 whereby the review application was dismissed by the Cooperative Tribunal.

2. The facts of the present case are rather many and complicated with a number of litigations. Sufficient for the present decision would be reference to the order dated 22nd April, 2013, passed by a Division Bench of this Court in ***Dinesh Gupta versus Registrar of Cooperative Societies Delhi and Others***, in Writ Petition (C) No. 5170/2012. For the sake of convenience, we would like to reproduce the entire order, which reads:-

“The dispute inter se the parties relates to the claim of the petitioner for allotment of a flat in R-3/Society.

The petitioner sought reference of disputes under Section 60 of the Delhi Cooperative Societies Act, 1972 (‘the said Act’, for short) resulting in an award dated 7.02.2003. This award was assailed before the Delhi Cooperative Tribunal which passed the order dated

10.04.2007 setting aside the award. The review of this order sought by the petitioner did not succeed vide order dated 30.07.2008. The second review application was filed which was also dismissed on 13.10.2011.

A common thread which runs through the orders passed by the Delhi Cooperative Tribunal is that the petitioner having been expelled as a member of the Society, ought to have assailed the expulsion which the petitioner failed to do and thus the dispute ought not to have been referred to arbitration qua the entitlement of the petitioner to a flat.

The stand of the RCS before us is that the expulsion was never approved by the RCS as a proper request was not even received and thus it is not an expulsion in the eyes of law.

The other plea advanced before us by the petitioner is that insofar as the arbitrability of the dispute is concerned, the same stood concluded by an earlier judgment of this court in WP(C) No.915/2002 decided on 11.02.2002 but the petitioner was unaware of it as that writ petition filed by the Society was dismissed in limine. It is thus the submission of the petitioner that the order dated 13.10.2011 taking a contrary view was not sustainable. There is also another issue arising from the claim of the petitioner that monies have been accepted by the petitioner (*sic* respondent) post the alleged expulsion and that there are different dates of expulsion being propounded. This position factually is sought to be disputed by learned counsel for the Society.

In our view, there is conflict of factual claims which were required to be adjudicated by the Delhi Cooperative Tribunal. The Tribunal, however, sought to proceed on a basis as if there was a valid expulsion of the petitioner and the petitioner ought to have taken necessary steps for assailing the expulsion. The fact which really emerges is that there has been no approval of the expulsion by the RCS and thus really speaking there was no expulsion in law. Not only that, the arbitrability of the dispute is really not in question in view of the pronouncements of this

Court in the writ proceedings referred to aforesaid. Thus, the appeal of the Society ought to have been decided on merits after hearing both the parties rather than being allowed on the parameters it was so allowed.

We are thus of the view that though much time has elapsed since the earlier dismissal of the appeal by the Delhi Cooperative Tribunal, the only appropriate course of action would be to set aside the three orders passed by the Delhi Cooperative Tribunal dated 10.04.2007, 30.07.2008 and 13.10.2011 and to remand the matter back to the Delhi Cooperative Tribunal to decide the same on the merits of the appeal of the Society bearing No.57/2003.

The parties will appear before the Delhi Cooperative Tribunal on 02.05.2013 when the RCS will also ensure its representation as the records of the RCS would be required to come to a final conclusion by the Delhi Cooperative Tribunal.

Needless to say that the Delhi Cooperative Tribunal will endeavour to conclude the matter as soon as possible especially taking into consideration that is an old appeal.

The writ petition is accordingly allowed leaving the parties to bear their own costs.

The interim orders enuring for the benefit of the petitioner will so continue to enure till the disposal of the appeal. However, it is stated by the Society that there is no vacant flat available, but then it is simultaneously conceded that the last allotment is without the DDA holding a draw of lots and thus those six flats are clearly not properly allotted. They would have to be dealt with by seniority of membership by the Delhi Cooperative Tribunal depending upon the result of the appeal.

A copy of the order be sent expeditiously to the Delhi Cooperative Tribunal.

Dasti to learned counsel for the RCS.”

3. The aforesaid order, records the following:-

- (i) Dinesh Gupta was a member of the Society.
- (ii) The Society had claimed that Dinesh Gupta was expelled as a member in the General Body Meeting dated 09.02.1992 and, therefore, was not entitled to allotment.
- (iii) This expulsion of Dinesh Gupta was not approved by the Registrar of Cooperative Societies, and hence there was no expulsion in law. The Tribunal in their earlier order dated 10th April, 2007 had erred in holding that Dinesh Gupta had been expelled as a member. Thus, Dinesh Gupta was a member and continued to remain a member of the Cooperative Society.
- (iv) The arbitrability of the disputes raised by Dinesh Gupta was not in question.
- (v) The appeal filed by the Society bearing No. 57/2003 should have been adjudicated and decided on merits after hearing both the sides.
- (vi) The plea of the cooperative society that no flats were vacant and available was pressed. Albeit the Society had conceded that the last allotments were made without the DDA holding draw of lots, and thus six flats were not properly allotted. The question of allotment would have to be dealt with and examined by the Cooperative Tribunal with reference to seniority of membership and depending upon the findings, the appeal preferred by the Cooperative Society would be decided.

4. We have gone through and examined the order dated 19th November, 2013 passed by the Cooperative Tribunal pursuant to the aforestated order of remand. This order refers to and determines the question of limitation and observes as under:-

“15. Now so far as the question of limitation is concerned, the claim petition is dated 10/02/2000. In the claim petition it was mentioned that the last payment had been made on 31/03/1997. The payment had been made through cheques which were got encashed by the society.

XXXX

29. We are not going to accept the claim of the society that the respondent had been informed about his expulsion vide letter dt. 1.11.93, therefore, the period of limitation should be calculated from that particular date.”

We agree with the findings recorded by the tribunal that the claim petition filed by Dinesh Gupta on the aforesaid parameters cannot be held to be barred by limitation. The issue of limitation raised by the Cooperative Society on the basis of expulsion of Dinesh Gupta by a resolution of the General Body, communicated to Dinesh Gupta by letter dated 1st November, 1993, would be a non-issue for the reason that the expulsion was never approved by the Registrar. Order dated 22nd April, 2013, in W.P.(C) 5170/2012 forecloses the said issue as it has been held that Dinesh Gupta had continued to remain a member of the Cooperative Society and was never expelled as per law. Indeed the cooperative society has not

questioned these observations.

5. However, the Society had raised the plea and contention that Dinesh Gupta was a perpetual defaulter and had failed to make payments. Reference was made to the grounds of appeal and in specific sub-para (ii) to paragraph 1. As per the affidavit by way of evidence Rs. 10,69,172/= was due and payable by Dinesh Gupta as on 31st January, 2002. Learned counsel for Dinesh Gupta has contested the said calculations. He states that he had made full payment of the flat as was paid by other members. Some of the payments made by Dinesh Gupta to the Society were kept in suspense account and have not been fully accounted for.

6. The order dated 19th November, 2013 does not decide and elucidate on the said lis. The Cooperative Society had raised this contention in the review petition, but the submission was rejected in the order dated 21st February, 2014 of the Cooperative Tribunal in the following words:-

“15. (B) The respondent had been a chronic defaulter. He has not disputed these facts. Therefore, irrespective of the right of the society to expel him, he (the respondent) is not entitled to get the flat because of non-payment of the dues. The respondent had not mentioned as to what amount had been paid by him and what amount was due. He had also not mentioned as to what was the total cost of the flat.

16. This argument is devoid of merits. There was a procedure prescribed under DCS Act 1972 and the DCS Rules 1973 to deal with defaulters. In this appeal we cannot expand the scope.”

The aforesaid reasoning, in our opinion, requires re-examination. The Act and the Rules may prescribe a procedure to deal with defaulters, but here the question is different. The core issues are: (i) whether Dinesh Gupta was a defaulter? (ii) if so, then the quantum of default? and, (iii) whether in spite of the default Dinesh Gupta would be entitled to the allotment of a flat? The last aspect would include a decision on the issue and affect the allotment of flats to newly enrolled members who had paid the full amount. The Cooperative Tribunal may also have to examine whether a new member was enrolled on the basis that Dinesh Gupta had been expelled? The effect of such enrolment would have to be re-examined in light of the finding recorded in order dated 22nd April, 2013, that Dinesh Gupta had continued to remain a member of the Cooperative Society. The question of seniority of members including that of the newly enrolled members along with the issue whether the allotment of 6 flats was proper and correct will have to be examined.

7. One Kanwal Kumar has filed Writ Petition (C) No. 3725/2015. Kanwal Kumar states that he has purchased the flat allotted to one of the newly enrolled members, namely Rajesh Gupta. Rajesh Gupta and three others were inducted as members of the cooperative society on 22nd August, 1997, though the share certificates issued to them are dated 30th April, 1997. These persons were inducted because the original or earlier members were either defaulters or had been expelled. Questions would

also arise whether these new members can make any claim and negate the right and claim of Dinesh Gupta to the allotment of a flat once it is held that the expulsion of Dinesh Gupta was illegal and contrary to law. Counsel for Dinesh Gupta relies on the principle of *lis pendens* and *caveat emptor*. He submits that the new members would not have any right, for when the expulsion of Dinesh Gupta has been held to be *null* and *void ab initio*, necessary consequences would flow; the enrolment of new members would be void. Whether the said contention should be accepted, and even if it is accepted, whether Dinesh Gupta's right to ask for the allotment of a flat if he had defaulted in payment, would arise for consideration.

8. In light of what has been observed above, we remit the matter to the Tribunal for fresh adjudication. We may have gone into and examined these questions, but for the reason that the facts are disputed and have to be ascertained.

9. The findings recorded above will be kept in mind by the Cooperative Tribunal while adjudicating and deciding the appeal of the Society. The findings recorded and decided in the order dated 22nd April, 2013 will not be reopened and examined afresh. If required and necessary, Dinesh Gupta and the Cooperative Society will produce the original records, and file reconciled statement of accounts.

10. The issues, which would arise for consideration, are:-

(1) Whether Dinesh Gupta was a defaulter?

(2) What was the quantum of default or the amount payable by Dinesh Gupta?

(3) The effect and consequence of the said default?

(4) Whether Dinesh Gupta should be given an opportunity and chance to pay the default amount, with or without interest, and the rate of interest thereupon?

(5) In case Dinesh Gupta is not to be given the said liberty, or he does not avail of the opportunity and pay the amount, what would be the consequences?

(6) In case flats have been allotted and there is no vacant flat, the effect and consequences thereof.

(The question/issues listed above are not exhaustive and can have different facets and sub-issues).

11. To cut short delay, the parties are directed to appear before the Tribunal on 13th September, 2016.

12. Learned counsel for Dinesh Gupta and the Cooperative Society state that arbitration proceedings have been initiated by Kanwal Kumar. They may request the Cooperative Tribunal to adjourn the Appeal No. 57/2003/DCT to be taken up for hearing after the adjudication of the said arbitration proceedings. Parties will be at liberty to file a copy of this order before the Tribunal. It will be open to any third party to move an

application under Order I, Rule 10 of the Code of Civil Procedure, 1908 to be impleaded as a party before the Tribunal. If any such application is filed, the same will be dealt with and examined in accordance with law.

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

SANJIV KHANNA, J.

SUNITA GUPTA, J.

**AUGUST 03, 2016
VKR**