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

+ W.P.(C) 10154/2015 and CM No. 25006/2015

SAROJ SURI

..... Petitioner

Through: Ms Chandni Mehra, Adv.

versus

INDIAN AIRLINES WORKERS CGHS LTD. Respondent

Through: Mr Rajiv Vig, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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14.01.2016

1. The petitioner is aggrieved by an order of the Delhi Co-operative Tribunal dated 07.08.2015. By the said order, the award made by the Arbitrator in the petitioner's favour under Section 71 of the Delhi Co-operative Societies Act, 2003 was set aside.

2. The facts, in brief, are that Smt. Jaya Sahdev, who was a member of the respondent-society (hereinafter referred to as "the Society") was allotted a flat which she sold to the present petitioner on 21.06.1999. On 26.12.2002, the Society gave options to some of its members to acquire additional open space adjacent to Flat No.564. Such additional space was allotted to three other members (owners) i.e., of Flat No.161, 264 and 461. The petitioner exercised the option and paid the required charges. The Managing Committee, which was later elected, was of the opinion that such Resolution was unwarranted. It cancelled the allotment of such additional space to

other members. This led to disputes; the Arbitrator, to whom the disputes were referred, rendered an award in favour of the members. Ultimately, the matter reached this Court by way of a writ petition (**Anil Bhalla vs. Indian Airlines Cooperative Groups Housing Society W.P.(C) No. 6402/2007**). The Court rejected the writ petition and held that the Resolution allotting additional space could not in the first instance have been made. The Court held as follows:

“7. It cannot be lost sight of that though there may be a number of areas for common use by the society members and the society may for consideration permit appropriation of certain spaces for specified users such as for example parking of car etc., there is a distinction to be carved out from normal common area as to extra common areas and fundamental common areas like the stair case, the roof etc. which cannot be appropriated by anyone even if some amount is paid for the same. It is not also the case where a society short of funds sought to raise funds in this manner. It does appear that petitioner No.1 taking advantage of his position in the Managing Committee of the society sought to create an extra room for himself by appropriating the roof and then constructing on the same. This is completely impermissible.”

3. The Society, in the present case, had not appeared before the Arbitrator; the matter was proceeded with *ex parte* and a decision was given in favour of the petitioner. When it became aware of the adverse order, the society approached the Tribunal with an application for condonation of delay. The delay was condoned and the appeal was considered on merits.

4. The Tribunal in the course of its impugned order noticed and extracted this Court’s ratio in **Anil Bhalla (supra)** and held that since

the resolution stood quashed, the appeal had to be allowed. The Tribunal also observed that the judgment of this Court had attained finality.

5. The petitioner argues that she has been in continuous enjoyment of the space allotted to her and it would be inequitable to dispossess her now.

6. This Court is of the opinion that since the petitioner's primary entitlement—the Resolution of the Society dated 19.05.2002, which was followed by the letter of offer dated 26.12.2002—itself has ceased to exist on account of the Court's declaration and consequential direction to quash it, the petitioner cannot claim a better right than the others who too stood on the same footing and were beneficiaries like her. It is not disputed that the said order of this Court in *Anil Bhalla's* case (*supra*) has attained finality. The petitioner's grievance, i.e, the withdrawal of allotment being illegal is identical to the grievance articulated in *Anil Bhalla's* case (*supra*). In these circumstances, the Tribunal had no option, but to follow the decision in *Anil Bhalla's* case (*supra*) which we feel no reason to depart with.

7. In the light of the above discussion, the petition has no merit and the same along with the pending application is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 14, 2016/bg