

CWP No.14982 of 2015

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.14982 of 2015
Date of decision:05.09.2017**

Harpal Singh

...Petitioner

Versus

Registrar Cooperative Societies-cum-
Deputy Commissioner and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashwani Prashar, Advocate,
for the petitioners in CWP Nos.14982, 15090 and 4363 of 2015.

Ms. Aakriti, Advocate, for Mr. Kulwant Singh, Advocate,
for the petitioner in CWP No.5270 of 2015.

Mr. Vijay K. Kajla, Advocate,
for the petitioner in CWP No.5458 of 2015.

Mr. Vikas Chatrath, Advocate,
for UT Chandigarh.

Mr. Kamal K.Sharma, Advocate,
for respondent no.2.

Mr. Aalok Jagga, Advocate,
for respondent no.3.

Rakesh Kumar Jain, J.

This order shall dispose of five petitions bearing CWP Nos.14982, 4363, 5270, 5458 and 15090 of 2015 as the issue involved in all these petitions is the same. However, for the sake of convenience, the facts are being extracted from CWP No.14982 of 2015.

In brief, the Chandigarh Sector 16 Cooperative House Building (First) Society Limited, Chandigarh (hereinafter referred to as the "society") is

registered under the provisions of the Punjab Cooperative Societies Act, 1961, as applicable to Union Territory, Chandigarh (hereinafter referred to as the “Act”). The society was allotted land by the Chandigarh Housing Board on 25.01.2002 in Sector 50, Chandigarh under the Chandigarh Allotment of Land to Cooperative House Building Scheme, 1991 (hereinafter referred to as the “scheme”).

The case of the petitioner is that a letter dated 08.06.2006 was circulated by the Registrar, Cooperative Societies, UT, Chandigarh (hereinafter referred to as the “RCS”) to the President/Secretary of all the Cooperative House Building (IST) Societies Ltd. in UT, Chandigarh regarding allotment of flats, surrendered by members of various Cooperative House Building Societies on account of expulsion/cancellation for default in payment etc. and substitution thereof. Accordingly, vide resolution dated 17.05.2010, it was decided by the General Body of the society that membership of the members, who are defaulters of more than ₹7,50,000/-, be cancelled and substitution be made against them as per seniority. The petitioner, who was interested in buying a flat, applied to the society for allotment of a flat and vide resolution dated 27.05.2010, name of the petitioner was substituted against one Sarabjeet Singh. Thereafter, the petitioner was issued a Share Certificate after cancellation of membership of Sarabjeet Singh and possession certificate qua Flat No.2011 of Category ‘B’ was issued to him on 31.05.2010. The case of the petitioner and others was sent to the Joint Registrar, Cooperative Societies (JRCS), UT, Chandigarh on 22.10.2010 for approval of the substitutions, though it is alleged that there was no such requirement in view of letter dated 08.06.2006. Sarabjit Singh challenged the order of cancellation of his

membership before the JRCS, which was allowed, against which the society filed the revision before the Adviser to the Administrator, UT, Chandigarh, who initially granted stay on 06.09.2013 but, ultimately, the revision was dismissed as not maintainable. Thereafter, the society filed CWP No.20581 of 2013, which was allowed and the case was remanded to decide afresh after hearing both the parties. It is alleged that on 10.02.2015, the petitioner received a communication from the Administrator of the society, informing him that allotment of Flat No.2011 in his favour has been cancelled. It is alleged that the resolution dated 05.02.2015 was passed by the Administrator of the society on the basis of letter dated 30.01.2015 issued by the RCS.

The petitioner has, thus, challenged the validity of the orders dated 10.02.2015 and 30.01.2015 alleging that there is no provision in the Act or the Rules for cancellation of the allotment as the sole prerogative lies with the society. It is also alleged that constitutional right to property enshrined under Article 300-A of the Constitution of India has been violated. It is also submitted that the petitioner is a *bona fide* purchaser. As a matter of fact, the petitioner has solely relied upon the letter dated 08.06.2006, issued by the RCS, by which he had given permission for substitution of the members against the vacancy arising out of expulsion of the members on account of default of payment etc. It is also submitted that the impugned order has been passed without issuing notice.

On the other hand, counsel for the respondents has submitted that the letter dated 08.06.2006 has been misread by the petitioner because it is mentioned specifically therein that the society would take their own decisions in the General Body meetings, provided such decisions are consistent with the

terms and conditions of allotment of land to the society. It is submitted that at the time of allotment of land various conditions were laid including condition nos.21 and 22, which read as under:-

“21. The society shall allot the dwelling units to its eligible members (category-wise) as per list enclosed. A copy of allotment letter issued to each member (as mentioned in the list attached) shall be sent to the Chief Executive Officer, Chandigarh Housing Board and Registrar, Coop. Societies. If the dwelling unit is allotted to some other person, whose name does not include in the enclosed list, the allotment of that dwelling unit shall be cancelled, and the earnest money so deposited shall be forfeited. However, substitution of members as per prescribed policy/procedure, with the prior approval of the Registrar, Cooperative Societies, UT, Chandigarh may be allowed subject to fulfillment of the eligibility conditions under the Scheme called “The Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991”.

22. Unit full price of the site has been paid, no transfer of any right or title or any interest in it shall be permitted and the society/its members shall not sell or otherwise transfer his/her rights in the site or part thereof for a period of five years from the date of completion of the building. All such transfers shall be with the proper permission of the Estate Officer.”

Counsel for the respondents has submitted that the substitution of the members can only be done with the prior approval of the RCS, whereas in the present case, no prior approval was taken. It is also submitted that the allotment of flat to the petitioner has been made in an arbitrary manner without draw of lots. It is also submitted that the cancellation of allotment is the handy

work of the alleged President of the society, namely, Kulwant Singh Gill, who is in jail and facing charges of criminal breach of trust and misappropriation of funds of the society to the tune of ₹3.9 crores etc. It is further submitted that notice in this case would be an empty formality and referred to a decision of the Supreme Court rendered in the case of **Ashok Kumar Sonkar vs. Union of India and others**, 2007(3) SLR 501. It is also submitted that the petitioner cannot take the plea of *bona fide* purchaser because of the principle of 'buyer beware'.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The only issue involved in this case is as to whether the cancellation of the allotment in favour of the petitioner is justified?

The petitioner has relied upon the letter issued by the RCS dated 08.06.2006 by which he has permitted substitution of the members on account of cancellation of the membership by way of expulsion on account of non-payment of dues etc. The society claims that the new members were substituted because of the permission granted by the RCS.

On the other hand, the respondents have submitted that the letter dated 08.06.2006 pertinently provides that substitution has to be in consonance with the terms and conditions of the allotment of land to the society. The text of the letter dated 08.06.2006 is reproduced as under:-

“From

The Registrar,
Cooperative Societies,
UT, Chandigarh.

To

The President/Secretary,
All Cooperative House Building (IST) Societies Ltd.,
UT, Chandigarh.

Memo No.Coop/HB.K-135/
Dated, Chandigarh, the

Sub:- Allotment of flats surrendered by member of various Cooperative House Building Societies available on account of expulsion/cancellation for default in payment etc.- Substitution thereof.

The matter has been examined and it has been decided that after allotment of land to the societies, some of the members withdrew, surrendered their shares and also some dwelling units have become available due to expulsion, cancellation for default in payment etc. and the said dwelling units are unallotted. For this purpose the substitution issue was discussed in detail and it was decided that the Cooperative House Building Societies may take their own substitution decisions in their General Bodies, provided such decisions are consistent with:-

- i. The provisions of the Cooperative act and rules framed thereunder;
- ii. Articles of associations/Bye-laws of the said Cooperative House Building Society;
- iii. The terms and conditions of allotment of land to the society.

Sd/-
Registrar,
Cooperative Societies,
UT, Chandigarh”

Conditions No.21 and 22 of the allotment letter, which have already been reproduced above, specifically provides that in case of substitution of members, as per the prescribed policy, the society has to take prior approval of the RCS, which may be given subject to fulfillment of the eligibility conditions under the scheme.

In the present case, admittedly the prior approval of the RCS, which was *sine qua non*, is conspicuous by its absence and, thus, the respondents have rightly passed the order of cancellation of allotment of flat in favour of the petitioner.

The argument of the petitioner that the opportunity of hearing was

not granted is virtually a formality because the only thing which is to be determined is as to whether the society has taken prior approval of the RCS before substituting the members against the expelled members, which has been found to be wanting in this case.

Consequently, I do not find any merit in these petitions and hence, the same are hereby dismissed.

September 05, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No