IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5276 of 2013
Date of Decision.05.04.2017

Ram Parkash and another ....Petitioners

Vs

Advisor to the Administrator, U.T., Chandigarh and others
........Respondents

2. **CWP No.5283 of 2013**

Deepak Kalra ....Petitioner

Vs

The Chandigarh Administration, Chandigarh and others
........Respondents

3. **CWP No.5300 of 2013**

Ms. Rekha ....Petitioner

Vs

Union Territory of Chandigarh through the Administrator, U.T, Chandigarh and others
........Respondents

4. **CWP No.5632 of 2013**

Charanjeev Singh ....Petitioner

Vs

Union Territory of Chandigarh through the Administrator, U.T, Chandigarh and others
........Respondents

Present: Mr. B.S. Bedi, Advocate
for the petitioner in CWP No.5276 of 2013.

Mr. Puneet Bali, Senior Advocate with
Mr. Amar Vivek, Advocate
for the petitioners in CWP No.5283 of 2013.

Mr. M.S. Kang, Advocate
for the petitioners in CWP Nos.5300 and 5632 of 2013.

Mr. Suvir Sehgal, Advocate and
Mr. Vikas Bali, Advocate

Standing counsel for U.T., Chandigarh.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate and
Mr. Aalok Jagga, Advocate
for the private respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

This order of mine shall dispose of four writ petitions. The question involved in the present writ petitions is whether the orders reinstating the membership of expelled members i.e. private respondents, whose membership according to the petitioners was validly terminated and despite entered into arbitral reference did not deposit the amount upto the cut off date i.e. 08.08.2008, are sustainable in the eyes of law or not?

In order to answer the question, it would be apt to give pre-face of the controversy/facts raised in the present writ petition. The facts are being enumerated from CWP No.5276 of 2013. The respondent No.8-The Private Teachers Cooperative house Building 1st Society Limited, Goodwill Enclave, Sector 49, Chandigarh was allotted land by Chandigarh Housing Board. The said Society was comprised of 28 members including respondent Nos.3 to 7, out of which six members i.e. respondent Nos.3 to 7 and one Sunita Jain, became defaulter in making the payment of dues o the Society. Notice dated 21.08.2006 and 8.11.2006 (Annexures P-1 and P-2 respectively) were issued to the defaulters which were challenged by the private respondents by raising the dispute before the Consumer Disputes Redressal Forum-II, U.T., Chandigarh by filing two complaints. Both the aforementioned complaints filed by the defaulters were dismissed vide order dated 07.08.2007 and 11.09.2007 (Annexures P-3 and P-4 respectively).

Aggrieved of the aforementioned orders, two appeals bearing

No.694 and 637 of 2007 against the order dated 11.09.2007 and 07.08.2007 were preferred before the State Consumer Disputes Redressal Commission, U.T., Chandigarh which were dismissed vide order dated 12.12.2007 (Annexure P-5).

The Society on 22.01.2008 (Annexure P-6) passed a resolution invoking Clause 17 of the Bye Laws of the Society, calling upon the defaulting members to make the payment of dues by 05.02.2008 or else face expulsion of the membership. The said resolution, according to the averments, in the writ petition has not been challenged by the defaulters. However, in the meantime, the Society, as per the averments and submissions made on behalf of Mr. Puneet Bali, learned Senior Counsel initiated arbitration proceedings. The Award of the Arbitrator came to be passed on 09.07.2008 (Annexure P-7) vide which the defaulting members were found liable to pay dues along with interest @12% per annum, cost of lift and service tax within 30 days from the date of passing of the Award i.e. the cut off date was 8.8.2008. The Managing Committee of the Society thereafter on 28.07.2008 (Annexure P-8) passed a resolution directing the defaulting members to make the payment upto the due date i.e. payment of the dues by 08.08.2008. Only one defaulter namely Sunita Jain made the payment of dues. After expiry of the period of 30 days i.e. after 8.8.2008, vide resolution dated 30.08.2008 (Annexure P-9), the Society expelled the respondent Nos.3 to 7 from the membership of the Society, in essence, their membership was terminated.

Thereafter, the Society vide letter dated 27.10.2008 informed the Registrar of holding a General Body Meeting on 20.11.2008 at 10.30 AM at Platinum Hotel, Sector 35-B, Chandigarh. In response to the letter dated 27.10.2008 of the Society, the Joint Registrar, Cooperative Societies granted the permission to hold the General Body Meeting vide letter dated 07.11.2008 (Annexure P-10). Notices of the aforementioned meeting were sent to all the members vide Annexures P-11 and P-12. Accordingly, the General Body Meeting was held on 20.11.2008 wherein there were many agendas. However, as per Agenda No.3 of proceedings book (Annexure P-13), it was resolved and unanimously decided that all the proceedings of the Managing Committee from 24.09.2006 onwards till date and all the resolutions passed by the Managing Committee except the resolution dated 30.08.2008 were approved, adopted and ratified by the General House but it was further resolved and passed that vide resolution dated 30.08.2008, the Managing Committee of the Society had acted upon an earlier resolution of the House dated 02.06.2002 and had forfeited the shares and entire earnest money and other dues paid in respect of the erstwhile defaulting members, whose membership had already been expelled, in essence, they have been expelled from the membership namely Ravish Sethi, Joginder Singh, Baltinder Kaur, Rajni Vij and Ranish Singh/Ranju were expelled from the members of the Society. For the sake of brevity, the relevant resolution of the General Body meeting against Agenda No.3 reads as under:-

> *"Agenda No.3 Resolved and unanimously decided and passed that all the proceedings of the managing committee from 24.09.2006 onwards till date and all the resolutions passed by the managing committee except the resolution dated 30.08.2008 are approved and adopted and are ratified by the General house. Further resolved and passed that vide a resolution dated 30.08.2008, the Managing Committee of the society had acted upon an earlier resolution or the house dated 02.06.2002 and had forfeited the shares and entire earnest money and other dues paid in respect of the following*

five erstwhile defaulting members, who already stand expelled and has decided to resell their flats after having expelled then from membership whose names are Ranish Singh, Rajni Vij, Ravish Sethi, Joginder Singh, Baltinder Kaur respectively. Further resolved that the General House has approved resolution dated 10.09.2008 of the Managing Committee and has ratified the same and has condoned the cutting of dates thereon, which are duly initiated by the President. The resolution dated 30.08.2008 is fully approved with the modification herein.

Resolved that the General House hereby approved the entire action proposed and taken by the Managing Committee against the aforesaid five expelled members, with the only modification in resolution dated 30.08.2008 is hereby made by the General house that after expelled the aforesaid 5 erstwhile members the dues actually paid by them to society be refund to them after due deductions of the actual expenses incurred by the society, due to the aforesaid members, including charging litigation expenses, court expenses and other incidental expenses incurred by the society in this regard. However, no interest shall be paid to those five expelled members, as firstly the amount is being refunded to them as a concession instant of forfeiture, secondly till date they are in litigation with the society. The managing committee is fully authorized to take final action for this and full power are given to it for undertaking final.

It is further resolved that the Managing Committee of the Society is authorized to take further action in this regard.

The meeting ended with thanks.

Sd/- 20.11.2008"

Vide Proceeding Book dated 24.11.2008 (Annexure P-14), it was resolved that five flats lying vacant were at the disposal of the society and decided that an advertisement shall be caused in the newspapers namely in Dainik Bhaskar and Indian Express for disposal, in essence, the applications shall be invited from general public as per the eligibility with 10% earnest money of the flat's price indicated in the notice, strictly on first come first serve basis and the applicant shall furnish an affidavit duly attested by the Notary Public as bona fide resident of Chandigarh at least three years prior to the date of application and in case, any information is found false, the earnest money shall be forfeited and upon allotment, the applicant shall make the balance payment of 15% amount within a period of 10 days and remaining three balance installments of 15% within a month thereafter and no extension shall be granted for making the payment of 75% balance amount.

Resultantly, notice was caused through advertisement dated 29.11.2008 vide Annexures P-15 and P-16. In pursuance of the said advertisement, the present petitioners sought for membership and they were issued allotment letters dated 09.12.2008 (Annexures P-17 and P-18) and possession of the plots, after deposit of 25% of the price of the flats, was handed over on 11.12.2008, which is evident from the possession certificates vide Annexures P-19 and P-20. No due certificate was issued to petitioner No.2 Kamruddin Khan as Annexure P-21. Share certificates had also been issued vide Annexure P-22/A and P-22/B.

Respondent Nos.3 to 7 approached the Joint Registrar, Cooperative Societies against the resolution dated 20.11.2008 and obtained a stay vide order dated 10.12.2008 (Annexure P-23), which was later on vacated by this Court. In the interregnum, the Society received the substantial payment from the five new applicants of the flats. However, in the meantime, the Award aforementioned i.e. dated 09.07.2008 (Annexure

P-7) was assailed before the Registrar Cooperative Societies, who vide order dated 13.10.2010 (Annexure P-24) dismissed the same. They filed appeals by challenging the resolutions dated 30.8.2008, 20.11.2008 and 24.11.2008 after a delay of 9 months and 22 days. The copy of the appeal and application of condonation of delay have been annexed as Annexures P-25 and P-26. The Registrar Cooperative Societies accepted the appeals of the aforementioned respondent Nos.3 to 7 i.e. the defaulting/expelled members and set aside the resolutions vide orders dated 21.03.2011 (Annexure P-27 to P-31). The newly inducted members filed the revision petitions assailing the aforementioned orders of the Registrar but the same were dismissed vide order dated 11.02.2013 (Annexure P-32).

It is a matter of record that the proceedings of the meeting dated 24.11.2008 inducting new members were communicated to the five expelled members but according to Mr. Bali, they have not challenged the resolution dated 30.08.2008. In view of the orders dated Annexures P-27 to P-31 passed by the Registrar, Cooperative Societies, the Managing Committee of the Society, which according to the petitioners, was well conversant with the case of the defaulting members, on its own without following any Rules and Regulations or Bye Laws passed the resolution dated 17.06.2011 (Annexure P-33), cancelling the membership of the petitioners without serving any copy of the resolution and forfeited the amount paid. It is in this backdrop of the matter, the petitioners had assailed the impugned orders dated 21.03.2011 and 11.02.2013 passed by the authorities and sought quashing of the same in the present writ petition.

On the contrary, Mr. D.S. Patwalia, learned Senior Counsel assisted by Mr. Sehaj Bir Singh and Mr. Aalok Jagga, Advocates appearing for the private respondents supported the impugned orders by raising the numerous objections that concurrent finding of fact and law of both the authorities below cannot be challenged and upset on factual dispute in a writ jurisdiction. The claim of the petitioners is no sustainable on the basis of the allotment letter dated 24.01.2002, which has intentionally not been placed on record whereby allotment of land was made by the Chandigarh Housing Board for construction of residential flats, to be built thereon, in essence, no allotment of flat in contravention of the terms and conditions was/is permissible. In fact, the allotment made in favour of the petitioners is in contravention to the provisions of Clause 21 of the allotment letter which envisaged that the society shall allot dwelling units to its members only as per the list enclosed which included the names of the original members. No approval of the Registrar in favour of the regarding allotment was obtained. The writ petition is bereft of any pleadings, much less, documentary evidence qua the prior approval of the Registrar, which according to the submissions of Mr. Patwalia is a sine qua non.

Mr. Patwalia also referred to Rule 80 of the Punjab Cooperative Societies Rules, 1963 to contend that before calling for General Body Meeting, which as per Rule 22 is competent to expel the members of the Society, is required to give at least 15 days clear notice specifying not only the date, place, time but also the specific agenda for the meeting and as per Rule 80(1-a), the Registrar may on his own motion or on the reference made to him declare such proceedings of the General Body Meeting invalid. There was no specific agenda for expelling the respondents ever approved from the Registrar but still in contravention, the Society erroneously expelled them, thus, for all purposes the private respondents had been expelled from the Society through General Body Meeting dated 20.11.2008 without any agenda item got approved from the Registrar, much less, its circulation amongst the members with mala fide/ulterior motive.

The society had shown undue haste in alienating the flats and also handing over the possession and the entire exercise had been done without approval of the Registrar, thus, the orders under challenge have rightly highlighted the impugned action of the society, not only in complete haste but without adhering to the procedure.

Even the Award of the Arbitrator specifically indicated that in case members do not deposit the amount, the society would act in accordance with law, in essence, could have invoked the provisions of Section 63 for seeking the execution of the Award and therefore, no occasion arose for termination of the membership and in terms of the Award, all the members have deposited the amount as per Annexure R-3/11 i.e. dated 18.10.2010. The petitioners are backdoor entries in a most erroneous and illegal manner, much less, contrary to the Rules, thus, do not have any locus standi to challenge the impugned orders. Availing of the remedy before the Consumer Forum by way of filing appeal, much less, dismissal of the appeal against the Award is inconsequential, thus, urges this Court for dismissal of the writ petition.

In rebuttal, Mr. Puneet Bali has relied upon judgment rendered by Hon'ble Delhi High Court in ***Inder Sain Sharma Vs. Registrar Delhi Co-op Societies 2000(4) RCR (Civil) 647*** and ***Surendra Kumar Vs. Registrar of Cooperative Societies 2010(9) AD (Delhi) 253*** to contend that where the cooperative group found that members are perpetual defaulters and failed to deposit the dues in spite of repeated demands, such persons cannot be re-inducted as members and society had been directed to remit them their amount lying with it, in essence, the defaulters to be blamed themselves for the action against them.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the aforementioned submissions of Mr. Bali, for, the authorities below have not taken note of the fact that the private respondents preferred the appeals before the Joint Registrar, Cooperative Societies against the Award dated 09.07.2008, therefore, the finding that no appeals were pending at the time when the new members were inducted in place of expelled members is not correct. On the contrary, they have chosen to do nothing to comply with and adhere to the Award whereby a month's time had been given to deposit the amount i.e. 08.08.2008 whereas cheques Annexures R-3/11 are dated 18.10.2010 i.e. beyond the date and the expulsion has been ordered vide resolution dated 20.11.2008 (Annexure P-13) passed in the General Body Meeting. The Joint Registrar vide letter dated 07.11.2008 had already granted the permission to hold the General Body Meeting whereby it had decided to expel the members, therefore, the approval of the Registrar is already there. For the sake of brevity, the contents of the letter dated 07.11.2008 (Annexure P-10) are extracted here-in-below:-

> "*Reference your request dated 27.10.2008 on the subject cited above.*
>
> *Permission is hereby granted to hold the General Body Meeting on 20.11.2008 at 10.30 AM at Platinum Hotel, Sector 35-B, Chandigarh to discuss the following agendas:-*
>
> *1. Decision for list installation and new agreement.*

2. Approval of bills 1st April 2007 to till GBM.

3. Approval of proceedings passed by the managing committee.

You are also directed to give a public notice in a newspaper in addition to notice to individual members will before 15 days from the date of General Body Meeting. The general body meeting should be as per guidelines/instructions issued by the officials attending the meeting.

sd-
Joint Registrar
Cooperative Societies
U.T., Chandigarh."

In pursuance thereof, a notice and advertisement also caused in the newspapers, thus, the argument of Mr. Patwalia does not hold any feet, much less, able to cut ice. Much water has flown thereafter. All the newly elected members i.e. the petitioners herein are in possession of the flats and they are living therein. If the orders under challenge are allowed to be sustained, it will tantamount to put the clock back. Had the private respondents not committed default in payment, this litigation may not have been conceived, much less, the entire litigation has been initiated at their instances. No explanation has come forth at any point of time as to how and why the amount required to be paid as per the terms and conditions of the allotment had not been paid, despite reminders. The conduct of the defaulting members is also a pointer and indicator, which has, prima facie, been ignored by the authorities while allowing their appeals.

It has been proved on record that the Society has followed the procedure as laid down in bye laws and passed the resolution dated 30.08.2008 after expiry of one month's time as granted by the Arbitrator. The society issued order dated 28.07.2008 to all the defaulters to make the payment by 08.08.2008. Advertisement dated 29.11.2008, indicated that the applications were invited subject to the final decision in the appeals before the Registrar, Cooperative Societies i.e. appeals filed against the Award dated 09.07.2008. For the sake of brevity, the relevant portion of the advertisement reads as under:-

> "*The submission of mere application does not confer any right on the applicant for allotment and the allotment shall be strictly made on the terms and conditions and the allotment shall be subject to final decision in appeals before the RCS*"

The argument of the private respondents that they were not given copy of the Resolution/agenda qua the meeting held on 29.11.2008 also falls flat, as they themselves went to the Joint Registrar, Cooperative Societies on 10.09.2008 and obtained stay of the Resolution. It is the same Registrar who had allowed the appeals and given a finding against the petitioners holding the expulsion of the private respondents to be bad in law, without noticing the fact that they were habitual and perpetual defaults and never cleared their dues.

There is another aspect of the matter. Respondent Nos.3 to 7 have not challenged the induction of the new members but they only questioned the resolution of expulsion. Therefore, the argument regarding obtaining the approval of Registrar, Cooperative Societies pales into insignificance. The authorities below have also not noticed the fact of non-impleadment of the petitiones and other members in the appeals preferred by respondent Nos.3 to 7 as by that time they had already secured respective allotments and a valuable right had accrued in their favour.

The impugned orders reflecting the induction of the members under undue haste are not sustainable as the Society cannot run without funds. It was in need of funds and had been perpetually running after the private respondents for clearing the payments, as the entire expenditures of the Society were borne by the other set of members. As per bye-law 11 (b), the right of filing of appeal is within 30 days and it does not prevent the society to induct the new members after the expulsion of defaulting members within 30 days. The appeals have also not been preferred within 30 days. In my view, the petitioners were required to be given an opportunity of hearing before passing the order and resolution dated 17.06.2011, regarding induction of the expelled members, much less, the same was also not communicated to them at any stage. It is a classic case where the Registrar, Cooperative Societies had dismissed the appeal of the private respondents preferred against the Award dated 09.07.2007 and the resolution dated 20.11.2008 but thereafter, volte faced. No such clause in the allotment letter has been pointed that the allotment to the new members cannot be done without approval of the Registrar, Cooperative Societies.

The conduct of the private respondents is evident from the facts indicated above. In my view, the private respondents had no intention to pay the installments as demanded by the society and if new members have been inducted in their place and thereafter, there is no further vacancy, the defaulting members are themselves to be blamed for such action. The aforementioned view of mine is derived from the ratio decidendi culled in the judgments of Delhi High Court rendered in ***Inder Singh Sharma, Vs. Registrar, Delhi Co-op Societies*** and ***Surendera Kumar Vs. Registrar of Cooperative Societies*** referred to above.

All these factors ought to have been weighed in the mind of the authorities. In fact, in all the five appeals preferred against the Resolutions dated 30.08.2008, 20.11.2008 and 24.11.2008 i.e. Annexures P-9, P-10, P-14 and P-14A, the petitioners were not impleaded. It would be a farcical exercise in remanding the matter back, as the Registrar itself had passed the order dated 13.10.2010 (Annexure P-24), after examining the minutes book, records of dispatch, publication of newspapers circulating agenda of meetings in advance and serving of orders dated 22.01.2008, 28.07.2008 and 24.11.2008 by registered post to the affected parties i.e. private respondents which were duly replied. For the sake of brevity, the findings given by the Registrar, who had dismissed the appeal against the Award dated 09.07.2008, read as under:-

> "*.......I do find from the records that the Arbitrator has examined the statement of account of each of the appellants, and has returned a finding that the society has reflected correct amounts to be paid by the appellant. Detailed reasoning in support of its conclusion have been recorded by the Arbitrator. Even though, I have held that the Arbitrator was bound by the judgment for the Ld. State Consumer Commission, yet there is full material evident that the Arbitrator independently examined the entire matter, as is quite evident in para 16 of its Award.*
>
> *I am in agreement with the conclusion that the Cooperative Society is nothing but a collection of members. If a few members default in the payment of valid dues, then the whole working of the society gets affected and the other members, who have been making payment on time, being so,*

there is no importance whatsoever of the report of Sh. Sangan, in the context. The fact remains that the society has fully proved its case, through documentary evidence about as stand against appellant being bona fide, reasonable and not excessive use of its authority. I have perused the minute books, records of dispatch, publication of newspapers circulating agenda of meetings in advance and the serving of orders dated 22.01.2008, 23.07.2008 and 24.11.2008 by registered post to the appellant. The appellant has even replied thereto. There is no dispute that these documents were duly served upon the appellant. The meeting notice had been published in two local newspapers on 5th November, 2008 of the proposed General House Meeting of the society held on 20.11.2008 in which the approval of the House was given for expulsion of appellant, on account of non-payment, I find no force in the contention of the appellant that the copy of the Resolution was never served upon the appellant, as appellant herself approached the JRCS on 10.12.2008 and obtained a stay on the said resolution, which was later vacated by the Hon'ble High Court. The expulsion of the Appellant however is not subject matter of the present proceedings, and the said issue would be examined in the separate appeals.

Upon overall consideration of the case of the appellant having gone through the records minutely, find no error in the impugned Award dated 09.07.2008, rendered by the Arbitrator and as such I affirm the same, and dismiss the present appeal *without any orders to costs.*

To be communicated to the parties concerned."

For the reasons aforementioned, the orders under challenge dated 21.03.2011 (Annexures P-27 to P-31) and 11.02.2013 (Annexure P-32) are hereby set aside and the writ petitions stand allowed.

Before, I could part with the orders, none of the parties have apprised this Court regarding the encashment of the cheques alleged to have been issued by the private respondents after the period indicated in the Award, as the date of the cheques is 30.10.2010. If such amount has been encashed, the Society is directed to return the amount along with interest @9% per annum.

(AMIT RAWAL)
JUDGE

April 05, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No