

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 25, 2017

1. CWP No.5230 of 2014

Bal Raj Krishan Vachher

...Petitioner

Versus

Registrar, Cooperative Societies, Haryana, Panchkula & others

...Respondents

2. CWP No.8597 of 2014

S.C.Katyal

...Petitioner

Versus

Registrar, Cooperative Societies, Haryana, Panchkula & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Rakesh Dhiman, Advocate,
for the petitioners in both the petitions.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

Mr.D.D.Gupta, Advocate,
for respondent No.4 in both the petitions.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Civil Writ Petitions bearing No.5230 of 2014 and 8597 of 2014 as the common questions of fact and law are involved. The facts are being taken from CWP No.5230 of 2014.

The petitioner seeks the indulgence of this Court for issuance

of a writ in the nature of mandamus directing the respondents to immediately get execute the conveyance deed in favour of the petitioner of plot No.1225 measuring 250 sq.yards, situated in Part II of Phase 1, allotted by the society, i.e., The Saraswati Kunj Cooperative House Building Society Limited, Wazirabad, Gurgaon-respondent No.4.

Mr.Rakesh Dhiman, learned counsel representing the petitioner has submitted that as per the bye-laws of the Society, the petitioner being eligible applied for membership to the respondent-Society in respect of a plot measuring 250 sq.yards by depositing the membership fees on 20.11.1988. In pursuance to the deposit of the aforementioned amount, the petitioner was issued a share certificate in the sum of Rs.100/- and ultimately allotted the membership No.1779 and thereafter he kept on depositing the payments as demanded by the Society and ultimately allotted plot No.1225. The petitioner had been perpetually making the requests to the respondents to execute the conveyance deed, but later on realised that the Managing Committee of the Society had committed fraud with the people and Plot No.1225 had been allotted to two others members. Since the respondent-Society did not take any measures, much less paid any heed to the request of the petitioner, he was constrained to file Civil Writ Petition No.24573 of 2012, which was disposed of alongwith CWP No.24583 of 2012 by this Court with a direction to the Registrar Cooperative Societies, Haryana to depute suitable officer not less than the rank of Assistant Registrar to scrutiny the claim of the members/petitioner and similarly situated persons and in case it is found to be genuine, he will ensure that the Society shall take action in accordance with law. Copy of the order dated 20.12.2012 is Annexure P-1 Colly.

He has further submitted that in pursuance to the aforementioned order, the petitioner also submitted a representation dated 28.1.2013 to respondent Nos.2 and 3 and was called upon by respondent No.4 to appear on 20.3.2013 alongwith the original documents and ultimately the Manager of the Saraswati Kunj Coop.Housing Board Society Ltd., Wazirabad Gurgaon informed the petitioner that no doubt the plot bearing No.1225 had been allotted to two others members, i.e., Anil Anand and Hemanant Kumar, but the fact remains that the petitioner had deposited the entire amount of Rs.7,56,150/-, including the registration fee of Rs.43,470/- upto 9.6.2014 and, therefore, had been considered a rightful claimant of the plot, being oldest member. In pursuance to the aforementioned recommendation, the Assistant Registrar, Cooperative Societies, Mini Secretariat, Gurgaon accepted the petitioner being true and original member of the Society and directed for execution of the conveyance deed in favour of the petitioner. The aforementioned fact is evident from the letter dated 8.1.2014 (Annexure P-4).

The contention of the learned counsel for the petitioner is that no steps have been taken and, therefore, the petitioner was forced to file the writ petition. He has also drawn the attention of this Court to the written statement filed by the Society-respondent No.4 by referring to Paragraph 3 of the same to submit that the factum of allotment-cum-possession letter in favour of the petitioner had not been denied.

Mr.D.D.Gupta, learned counsel for respondent No.4-Society has relied upon the notification dated 6.6.2016 issued by the Cooperation Department of Haryana Government, whereby the long outstanding issues/disputes pertaining to the membership and assets of the Society had

been referred to a Commission constituted consisting of four officers and, therefore, the matter is required to be adjudicated by the said Commission. This fact has been opposed by the learned counsel for the petitioner on the premise that the constitution of the Commission would only refer to unidentified claims, whereas the instant case, according to him, in view of the orders aforementioned order, leaves no manner of doubt that except execution of the conveyance deed, nothing else has to be done. He has also drawn the attention of this Court to Annexure P-8 annexed alongwith the rejoinder, whereby the request dated 15.9.2014 had been submitted to the Secretary of the Society for correction of the name in the records of the Society as instead of Plot No.1225, Plot No.1566 has been mentioned.

I have heard the learned counsel for the parties, appraised the paper book and of the view that a direction is required to be issued to the respondents. The contents of the letter, Annexure P-2 read as under:-

“From

*The Manager,
The Saraswati Kunj Coop.H.B.Society Ltd.,
Wazirabad Gurgaon.*

To

*Sh.Bal Raj Krishan Vachher S/o Lt.Sh.T.N.Vachher
R/o E-98, Naraina Vihar,
New Delhi-110028.*

Memo No.948

dated 18.4.13

Subject: Regarding decision of society in CWP No.24573 of 2012 order passed by Hon'ble Punjab and Haryana High Court Chandigarh, Plot No.1225 membership No.1779.

On the above referred subject you have given representation dated 28.01.2013 for implementation of order of Hon'ble High Court, in compliance of the court order the society has written a letter to you on 13.02.2013 to come present in the society with original document of your plot within a week of receiving this letter. In response to our letter

dated 13.02.2013, you came present on 20.03.2013 alongwith original documents. You have mentioned Plot No.1225 in your CWP and the Court has also ordered to take decision regarding registration of conveyance deed of the plot No.1225. On verification of original record with societies available record we came to know that the plot No.1225 is also allotted to two other members the detail of which is as under:

- 1. Sh.Anil Anand S/o Sh.H.C.Anand M.no.6854*
- 2. Sh.Hemanant Kumar S/o
Lt.Sh.Krishan Kumar M.no.1958*

Here it is to be mentioned that as per membership register name of Sh.Bal Raj Krishan Vachher S/o Lt.Sh.T.N.Vachher is shown at S.no.1779 so as per membership register Sh.Bal Raj Krishan Vachher S/o Lt.Sh.T.N.Vachher is considered as original member of 21.11.1988 and deposited Rs.756170/- including registration fees 43470/- upto 09.06.2004. Whereas Sh.Hemant Kumar S/o Lt.Sh.Krishan Kumar has also been shown allotted plot no.1225 but as per membership register name of Sh.Mohinder Kumar Jain S/o Sh.S.P.Jain is shown at S.no.1958. So as per member register he cannot be considered as original member and he has deposited Rs.756200/- towards the cost of plot. As per share certificate lying in the claim file his date of registration as member is 30.03.2004. Secondly Sh.Anil Anand S/o Sh.H.C.Anand was also allotted plot no.1225 and his name is also shown at S.no.6854 dated 30.03.1995 and he has deposited Rs.193950/- towards the cost of plot. He is considered as original member as per membership register. After going through the whole record of all the three claimants of plot no.1225 we came to conclusion that Sh.Bal Raj Krishan Vachher S/o Lt.Sh.T.N.Vachher membership no.1779 is considered as rightful claimant of the plot no.1225 because he is the oldest member of all the three and deposited full amount along with registration fees.

Sd/-

Manager

*The Saraswati Kunj Co.op.H.B.Society Ltd.
Wazirabad Gurgaon.”*

The operative part of Annexure P-4, which is being reproduced herein below leaves no manner of doubt that the claim of the petitioner has been identified:-

“The applicant Sh.Balraj Krishan Vachher, while keeping in view your report, has requested this office to get execute the conveyance deed of plot No.1225 in his favour. After perusing the record produced by your with regard to the applicant, it has been found that as per the claim file of the applicant, plot No.1225 measuring 250 sq.yds.has been allotted to three persons including the applicant. As per the allotment cum possession letter No.SKCHBS/P-II/2003 dated 13.04.2004, plot No.1225 measuring 250 sq.yards has been allotted the applicant, as per possession letter bearing No.SKCHBS/P-II/2003 dated 26.9.2003, possession of plot No.1225 measuring 250 sq.yards has been allotted to the applicant and as per the audit ledger, the applicant has deposited Rs.756170/- alongwith registration fees of the plot.

Therefore, as per the report produced by you and the concerned produced by the applicant and abovesaid facts, the applicant is true and original member of the society. Thus, keeping in view the seniority of the members, the conveyance deed/registry of plot No.1225 can be got executed in favour of applicant Sh.Balraj Krishan Vachher, as per law.”

Similar is the position in respect of case of S.C.Katyal regarding Plot No.1415. The only thing, which is to be done, is to depute a person for execution of the conveyance deed and nothing beyond that. The objection of Mr.Gupta for referring the matter to the Commission apparently can be inconsonance in view of the aforementioned order. The Commission has been constituted to resolve the issues where the claims of the members

have not been identified. The case of the present petitioner is totally beyond the scope of the Commission.

Resultantly, the writ petitions are allowed and a direction is issued to the respondents to execute the conveyance deed in respect of Plot No.1225 in favour of petitioner Bal Raj Krishan Vachher in CWP No.5230 of 2014 and in respect of Plot No.1415 in favour of petitioner S.C.Katyal in CWP No.8597 of 2014 within a period of two months from the date of receipt of certified copy of this order subject to deposit of usual charges, which the petitioners are liable to pay.

April 25, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No