

In the High Court of Punjab and Haryana, at Chandigarh

Letters Patent Appeal No. 1442 of 2016 (O&M)

Date of Decision: 02.03.2017

Amardeep Singh Bhatia

... Appellant(s)

Versus

Alaknanda Cooperative Group Housing Society Ltd. And Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Mahesh Grover.
Hon'ble Mr. Justice Shekher Dhawan.**

Present: Mr. Arun Monga, Mr. Kanwal Goyal and
Ms. Divya Sharma, Advocate
for the appellant.

Mr. Dharam Vir Sharma, Senior Advocate
with Ms. Akshita Chauhan, Advocate
for respondents No.1 & 2.

Mahesh Grover, J.

The appellant is in appeal against the judgment of learned
Single Judge dated 14.7.2016.

Although the facts have been noticed in detail in the impugned
order, we would still prefer to notice the same so as to make them a part of
the narrative.

The appellant made an application to the respondent No.1-
Alaknanda Cooperative Group Housing Society Limited (hereinafter
referred to as “Society”) in January 2003 seeking his enrollment as a
member to enable him to a dwelling unit which invited the response from
the Society asking for certain documents and a certificate that he is a

resident of “Haryana including Chandigarh”. This communication was followed up by more letters of the Society asking for some information as also deposit of certain amount which eventually was complied with by the appellant. A share certificate was issued to him as was also a dwelling unit, and to avail of it the appellant raised a housing loan. The Society, however, attributes the inclusion of the appellant's name in the draw of lots for allotting a house to circumstances emanating from various orders of the competent authorities before whom the dispute was pending.

The Society then, at a much later stage, attempted to revoke the membership of the appellant on the ground that he does not belong to the State of Haryana and the bye-laws would disentitle him to a membership and consequent residential unit. We may notice hereunder the eligibility conditions, as applicable to the Society:-

“2. Eligibility conditions for societies and members: - The following societies comprising of members who belong to or are residents of or are working in Haryana State including Chandigarh for the last one year are eligible to apply for land under GROUP HOUSING SCHEME 98.

(i) GENERAL: Societies consisting of members who belong to or are residents of Haryana or are working in Haryana State including Chandigarh for the last one year.

(ii) E.W.S.: Societies consisting of such members whose total family income does not exceed Rs.2500/- per month. The member should belong to Haryana, or are residents of or are working in Haryana State or Chandigarh for the last one year;

(iii) HARYANA GOVT. EMPLOYEES: Societies consisting of employees of Haryana Government, its Board & Corporations, retired employees of Haryana Govt., Haryana Universities, employees of Government sponsored coop. organizations such as Hafed, Sugerfed, Coop. Apex Banks and Authorities such as Command Area Development Authority;

(iv) CENTRAL GOVT. EMPLOYEES: Societies consisting of employees of Central Government, its Corporations and undertakings, University employees, Defence Personnel, Bank employees.”

The learned Single Judge concluded that the appellant was an officer of Nagaland cadre and he did not belong to, nor was he a resident of State of Haryana. Similarly, he had never worked in the State of Haryana including Chandigarh. In this manner, this issue was concluded against him while also inferentially drawing a conclusion of a collusion of the appellant with the Manager to deny the claim of the appellant.

Learned counsel for the appellant contends that all the requisite information, as desired by the Society, was indeed given to them, even though at a later stage. Similarly, the entire amount, as demanded by the Society vide Annexure P13, was also deposited. The issue, thus, is only of the eligibility of the appellant hinging on the clause extracted above i.e. whether the appellant belongs to the State of Haryana or was a resident thereof or whether he was working in the State of Haryana including Chandigarh.

It has also been brought to our notice that in the subsequent

scheme, floated by Haryana Urban Development Authority (hereinafter referred to as “HUDA”), this condition has been done away with.

Learned counsel for respondents No.1 & 2, on the other hand, justifies the exclusion of the appellant on the ground of eligibility centering around his being a resident of the State of Haryana. Apart from that, it has been contended that the Society has not taken a final decision in this regard and infact the appellant had raised a dispute even when the Society was merely contemplating an action as would be evident from Annexures P10 & P14, wherein it has been observed that despite repeated requests and reminders, the appellant had not submitted the proof of his either residing or working in the State of Haryana and, therefore, he was advised to withdraw his amount deposited with the Society towards the cost of land, building and share money.

After hearing learned counsel for the parties, we are of the opinion that it is a case where equity is loaded in favour of the appellant. The collusion, *per se*, as inferred by the learned Single Judge, does not manifest itself for the reason that it is not only the Manager who wrote a communication to the appellant at the initial stage but subsequent communications have been made by the President himself. Therefore, it is difficult to conclude that the appellant was in collusion with some lower functionary. All through, the appellant has been conveyed the intention of the Society to include him as a Member provided he satisfies the ingredients such as furnishing of certain documents including an affirmation that he belongs to the “State of Haryana including Chandigarh”. It is nobody's case that the appellant has misled the Society or has projected wrong information.

Having resided in Chandigarh, he was led to believe by the Society itself of his eligibility and entitlement which was followed up affirmatively by issuing a share certificate and also a dwelling unit. The appellant also took loan for the same and would have suffered immense financial consequences on account thereof. It would be, thus, too harsh to oust him from consideration altogether particularly when he does not seem to be at fault at all. There would be another aspect of the case of the appellant that his wife belongs to Haryana and if that be so, the Society, with permission of the HUDA authorities or any other competent authority could have considered alternatively a change in favour of his wife as well.

We are also of the view that the learned Single Judge was not wrong in his conclusions if a strict interpretation was to be adopted regarding eligibility but the fact remains the appellant was not at fault.

By noticing the aforesaid facts, we would deem it appropriate to interfere and direct that the appellant be considered for membership of the Society particularly when the HUDA itself has dispensed with such condition of eligibility in subsequent schemes implying such a condition to be an unnecessary appendage.

We would, thus, modify the impugned judgment of the learned Single Judge to hold that the appellant be considered for allotment of dwelling unit provided he fulfills all other requisites required of him as per demand of the Society. In case the appellant moves an application for change of the entitlement in his favour or in favour of his wife along with him jointly, the same may also be considered sympathetically and in accordance with law. The Society shall now take a final decision in this

regard.

In view of above, the instant appeal stands disposed of.

(Mahesh Grover)
Judge

(Shekher Dhawan)
Judge

March 02, 2017
“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No