

C.W.P. No. 28630 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 28630 of 2017

DATE OF DECISION:16.01.2018

Rajesh Kumar

.....Petitioner

Versus

Union Territory, Chandigarh and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. M.L. Saggar, Senior Advocate with
Mr. Sunny Saggar, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for quashing of impugned order dated 5.9.2017 (Annexure P-35) upholding order dated 16.1.2009 (Annexure P-2), order dated 25.1.2005 (Annexure P-1) and also the order of allotment dated 1.3.2013 by respondent No.4-Society to respondent No. 6-Ranbir Singh. A further prayer has also been made for issuing directions to the respondents to transfer flat No. 3275, Sector 49-D, Chandigarh in favour of the petitioner in view of notifications dated 7.2.2008, 15.8.2008 and 16.7.2009 issued by respondent No.1.

Briefly, the facts of the case as made out by the petitioner in the present petition are that Swati Cooperative House Building Society Ltd.,

Chandigarh (hereinafter referred to as 'the Society') was registered under the

provisions of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act'). The Chandigarh Administration had framed a scheme known as the Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991 on 28.5.1991, according to which, 25% of the premium of the land was to be paid to the Chandigarh Housing Board by the Societies on behalf of the eligible members. Thereafter, the Chandigarh Administration allotted the land on chunk basis to the Chandigarh Housing Board for further allotment to the eligible Cooperative House Building Societies and accordingly the Chandigarh Housing Board allotted land to respondent-society @ ₹2500/- per square yard, which was later on enhanced to ₹2850/- per square yards, as the land was converted from lease hold to free hold. Raj Kumar Sangwan(respondent No.5) was one of the members of the said society. Some of the members could not deposit the installments well-in-time, due to which construction work of the flats came to an halt. A decision was taken by the Managing Committee of the Society that all defaulter members be issued notices to show cause as to why they should not be expelled from the membership of the society being defaulters. Notice was also issued to respondent No.5-Sh. Raj Kumar Sangwan being defaulter for not depositing the requisite installments. Thereafter another show cause notice was issued but still amount was not deposited. Thereafter, a decision was taken by the society to expell such members from the membership of the society. Said Raj Kumar Sangwan was expelled from the Society vide order dated 25.1.2005.

Aggrieved by said order, respondent No.5-Raj Kumar Sangwan filed an appeal under Section 68 of the Act before Assistant Registrar, Cooperative Societies, U.T., Chandigarh, which was dismissed vide order

dated 16.1.2009. Thereafter, revision petition was filed by respondent No.5-Raj Kumar Sangwan before Adviser to Administrator, U.T., Chandigarh, which was admitted and application for grant of stay was rejected vide order dated 21.4.2009. Said Raj Kumar Sangwan also filed C.W.P. No. 7032 of 2009 before this Court and during pendency of the said writ petition, he transferred all his rights as member in the respondent-Society to the present petitioner by executing General Power of Attorney, Will and Sale agreement, affidavit and indemnity bond by virtue of which, present petitioner had become deemed member of the respondent-Society. As per case of the petitioner, he purchased all the rights from Raj Kumar Sangwan and made payment of total amount of ₹28,27,724 through cheques to the society to claim entitlement of the membership and dwelling unit/flat. The defaulter members were allotted flats by rescinding order of expulsion but respondent No.5-Raj Kumar Sangwan or the present petitioner was not allotted any flat inspite of clearing installments. One such member, namely, Smt. Nirmal Dahiya also sold her rights and entitlement to one Smt. Monika, D/o Sh. Puran Chand, who is related to the President of the Society was allotted the flat. The present petitioner approached the society and requested to allot flat in his name on the basis of General Power of Attorney, Will etc. as his case was similar to said Nirmal Dahiya and Monika but the President of the Society refused to transfer the membership and allot flat to the petitioner. The petitioner filed C.W.P. No. 9129 of 2013 before this Court, which was disposed of vide order dated 16.2.2017 with a direction to the Advisor, Chandigarh Housing Board, Administration under the Act to decide the revision petition, if pending within a period of two months from the date of receipt of certified copy of the order. Thereafter

review application filed by respondent No.6 was disposed of by this Court on 8.5.2017. Respondent No. 6 filed LPA No. 1018 of 2017, which was also disposed of by this Court on 3.7.2017. Thereafter, the petitioner, being attorney of Raj Kumar Sangwan, filed an application before the Advisor for amendment of title of revision No. 68 of 2009 but the same was dismissed vide order dated 5.9.2017.

Learned senior counsel for the petitioner contends that the petitioner has deposited the amount by issuing two cheques through his account and said amount was duly encashed. Thereafter a representation was also made on 1.12.2011 to issue 'No Objection Certificate' being attorney of respondent No.5-Raj Kumar Sangwan. Learned senior counsel further contends that as per information sought under RTI, similarly situated persons, namely, Nirmal Dahiya and Jasbir Kaur were allotted flats as their orders of expulsion were withdrawn but still claim of the petitioner was not considered. The action of the respondents is not only illegal and unlawful but discriminatory as well. Learned senior counsel also contends that irregularities committed by the earlier Management of the Society, including expulsion of five members, was rectified by the Administrator. The Administrator vide order dated 23.11.2011 directed those five members to deposit the amount due along with interest regarding construction of the flats. Accordingly, the petitioner also deposited the amount due from respondent No.5-Raj Kumar Sangwan from his own pocket being his General Power of Attorney but still 'No Objection Certificate' was not issued. It was the fault of the respondent-society in not depositing the amount with respondent-Board and because of non-issuing of 'No Objection Certificate' the society could not proceed further with the transfer of shares/titles of the

flats. It is also the argument of learned senior counsel that no member could be expelled except by resolution passed by 2/3rd majority in the General Body Meeting and meeting of General Body could be convened by the Secretary of the Society under the directions of the Managing Committee. A member can only be expelled in case there is default in making payment towards share money or amount due to the society. The alleged expulsion of five members had been rectified by the Administrator and they were also asked to deposit amount of construction along with interest but the petitioner has been discriminated. All these pleas were taken before the lower authorities but still the claim of the petitioner has been rejected.

Heard the arguments advanced by learned senior counsel for the petitioner and have also perused the impugned orders as well as the documents available on the file.

The facts of the case are not disputed. The present petition has been filed by raising the argument that order of expulsion of respondent No.5 was illegal and against the principles of natural justice. It is also discriminatory as two different yardsticks have been adopted as flats have been allotted to similarly situated persons. It is not disputed that original allottee Sh. Raj Kumar Sangwan (respondent No.5) was defaulter as he did not deposit the requisite installment. He was issued show cause notice and thereafter the final notice, whereby, he was expelled from the membership of the society vide order dated 25.1.2005. The amount deposited by him was also ordered to be refunded after proper receipt of his application. Said order of expulsion dated 25.1.2005 was challenged in the appeal, which was dismissed vide order dated 16.1.2009 by the Assistant Registrar,

Cooperative Societies, U.T., Chandigarh on the ground that the appellant did not make payment of the amount inspite of giving reasonable opportunities to him to deposit the outstanding amount. Thereafter the revisional authority also dismissed the revision petition vide order dated 5.9.2017. It has been mentioned in the said order that Raj Kumar Sangwan was expelled from the membership as he failed to make payment of the installments and thereafter appeal was dismissed. The relevant portion of order in revision is reproduced as under:-

“As regards, the application filed by Sh. Rajesh Kumar for amending the title of the case, it is submitted that Sh. Raj Kumar Sangwan, who is/was original member of the Society has given power of attorney to Sh. Rajesh Kumar regarding the flat, to be allotted to him, by the Society, which the Society never allotted to him. Since the membership of Sh. Raj Kumar Sangwan has already been cancelled by the Society and no flat had been allotted to him, Sh. Rajesh Kumar does not have any locus standi and thus application moved by him is also dismissed.

In so far as revision petition is concerned, since Raj Kumar Sangwan had filed written statement in C.W.P. No. 9129 of 2013 before Hon'ble High Court and denied that neither he challenged the order dated 25.1.2005 before the Assistant Registrar, Cooperative Societies, U.T., Chandigarh in appeal nor he filed a revision petition before this Court, the present revision petition is dismissed with the directions to the Registrar, Cooperative Societies, U.T., Chandigarh to examine

the issue of impersonation and take decision as per law.:

The said revision petition has been dismissed on the ground that original member was Raj Kumar Sangwan and power of attorney was given to the present petitioner, whereas, said Raj Kumar Sangwan was never allotted any flat. Said Raj Kumar Sangwan was expelled from the membership of the society and no flat was allotted to him. The application moved by the petitioner for amending the title of the case was dismissed on the ground that he was not having any locus standi to move the application. Said Raj Kumar Sangwan also stated in the reply filed by him in C.W.P. No. 9129 of 2013 before this Court that no appeal or revision was filed by him against the order of expulsion. Even a direction was also issued to the Registrar, Cooperative Societies, U.T., Chandigarh to examine the issue of impersonation and take decision as per law.

It was mentioned in the order passed by the Adviser to the Administrator, U.T., Chandigarh that two applicants, namely, Vikram Singh and Ranbir Singh were claiming substitution in place of Raj Kumar Sangwan and they wanted to become party in that revision petition, as they were not party in the original jurisdiction before the Assistant Registrar, Cooperative Societies, U.T., Chandigarh. It was held that no application for impleading could be entertained at that stage. One application was also filed by petitioner-Rajesh Kumar for amending the title of the case by mentioning that Raj Kumar Sangwan was the original member of the society and he had given power of attorney to him regarding the flat to be allotted to him by the society. The revision petition was dismissed on the ground that the flat was never allotted to Raj Kumar Sangwan as his membership was cancelled by the society. The application of the petitioner was also

dismissed by holding that the petitioner was not having any locus standi to file the application. It was also mentioned in the order that Raj Kumar Sangwan had earlier filed written statement in the writ petition before this Court and denied that he challenged order dated 25.1.2005 before the Assistant Registrar, Cooperative Societies, U.T., Chandigarh neither in the appeal nor in the revision. Accordingly, the revision petition was dismissed with the direction to Registrar, Cooperative Societies, U.T., Chandigarh to examine the issue of impersonation and to take action as per law. It is also relevant to mention here that petitioner-Rajesh Kumar also lodged FIR No. 351 dated 22.6.2013 under Sections 420,467,468,471 IPC at Police Station Sector-34, Chandigarh against Sh. Praduman Yadav, the then President of the Society and Ranbir Singh alleging certain allegations regarding forgery of the documents as he in connivance with Ranbir Singh tampered with the records of the society by antedating letters showing Ranbir Singh to be substituted member of the society. It was also alleged in said FIR that flat of Raj Kumar Sangwan was lying vacant and entire amount of land cost and construction along with interest had been paid by the petitioner-Rajesh Kumar, who was GPA of Raj Kumar Sangwan. It was also alleged that no General Body Meeting of the Society was called by the President and no amount was shown to have been deposited by said Rajbir Singh. Petitioner-Rajesh Kumar filed C.W.P. No. 9129 of 2013 being GPA of Raj Kumar Sangwan. His grievance in the said petition was that the expulsion from the membership of the society vide order dated 25.1.2005 was not there in any resolution as there was no meeting or agenda or decision thereon.

In view of the facts as mentioned above, disputed questions of

facts are involved, which cannot be determined/decided by the Writ Court as not only the allegations of impersonation are there but allegations are there of forging of documents of the Society. Disputed questions of facts cannot be decided in the writ petition and as such the petition being devoid of any merit is hereby dismissed.

However, the petitioner is at liberty to avail appropriate remedy.

January 16, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes