

\$~02

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 4360/2017**

Date of decision: 02nd July, 2018

K.D. SEHGAL & ORS.

..... Petitioner

Through Mr. Rajeev Saxena, Mr. Ajay Talesara,
Mr. Rachin Sahney, Ms. Namrata Chauhan and
Mr. Manish, Advocates.

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ANR. Respondents

Through Mr. Jitendra Kumar Singh, Assistant
Registrar, for R-1.

Mr. R.K. Gupta, Advocate for R-2.

Mr. Naushad Ahmed Khan, Additional Standing
Counsel (Civil), GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Writ petitioners, 31 in number, have impugned order dated 23rd December, 2016, passed by the Financial Commissioner in revision petition under Section 116 of the Delhi Cooperative Societies Act, 2003 (Act, for short). The impugned order affirms the order passed by the Registrar, Cooperative Societies dated 20th September, 2013, rejecting the objections/application of the petitioners.

2. Petitioners had earlier filed W.P. (C) No. 8328/2010, which was disposed of by a Division Bench of this Court vide a short order dated 14th

December, 2010, directing the Registrar, Cooperative Societies to decide objections of the petitioners within a period of two months and on the basis of the scrutiny, forward the names of eligible members to the Delhi Development Authority for holding draw of lots which would be held within one month thereafter. The second direction given pertained to occupation of flats by members, statedly without draw of lots. Such occupation it was observed, would be completely illegal and Registrar, Cooperative Societies would take immediate steps to ensure that no member would remain in occupation of a flat without draw of lots. Necessary action for sealing of such flats would take place with the assistance of the police.

3. On appeal by IDC Cooperative Group Housing Society Ltd. (Cooperative Society, for short), Supreme Court in Civil Appeal Nos.7537-7538 of 2012 accepted the contention of the Cooperative Society that they were not served with the notice in the writ petition and given opportunity of being heard before the impugned order dated 14th December, 2010 was passed, albeit an order of remand to the High Court was not passed, as Registrar, Cooperative Societies and the Cooperative Society were unable to show any order on the objections filed by the petitioners regarding their membership. Final and operative portion of the order of the Supreme Court dated 16th October, 2012 reads:-

“In the result we allow this appeal but only to the extent that the flats occupied by members whose membership is eventually found to be illegal along shall be got vacated. It follows that the use and occupation of any flat which has been allotted by the society on the basis of the ‘self draw’ shall not be interfered with on the basis of direction of the High Court unless for any reason that self draw is itself found to be illegal or improper in any way by a competent court or authority. We make it clear that we

have not expressed any opinion about the legality of the self draw which is a matter left to be determined in appropriate proceedings before the High Court.

Since the period of two months granted by the High Court to the Registrar of Co-operative Society has already expired. We extend the same by three months from the date a copy of this order is received by them. Appropriate action based on the said determination in accordance with law can be taken by all concerned. The appeals are disposed of with the above observations leaving the parties to bear their own costs.”

4. As per aforesaid directions, members who had occupied flats on the basis of self draw of lots, which had been regularized by the Lieutenant Governor, would not be removed from the flats occupied, except in cases where membership was found to be illegal, or if the self draw of lots was found to be illegal or improper by a competent court or authority.
5. It is accepted and admitted by the petitioners that membership of those who have been allotted flats on the basis of self draw of lots has not been found to be illegal. Draw of lots has also not been found to be improper and illegal by a court or competent authority.
6. Registrar, Cooperative Societies had highlighted that five of the present petitioners, namely, D.N. Rajguru, B. Krishnamurthy, V. Govindam, A.S. Menon and Gurdeep Kaur had resigned as members as per minutes the Managing Committee meeting held on 8th March, 1984 and 15th May, 1989. Pertinently, the Cooperative Society was declared to be defunct and wound up on 31st June, 1992. Thereafter, the Cooperative Society was revived in the year 2000 and thereupon, the land was allotted in the year 2002. Construction was started in the year 2002-03 and completed in the year

2005. Other petitioners' as per the cooperative society had resigned between 2000-2002.

7. Counsel for the petitioners submits that resignation letters of the petitioners were forged and fabricated. Resignation of twenty six petitioners was erroneously approved by the Registrar, Cooperative Societies on 10th March, 2003.

8. Petitioners, it is an accepted position had not paid even a single penny towards the cost of land and construction of the flats of which they seek allotment. The petitioners state and claim that they had paid Rs.100/- and Rs.10/- towards share money and admission fee, respectively on enrollment. As per the Cooperative Society this payment has been refunded. Petitioners' dispute refund of Rs.110/-. Registrar, Cooperative Societies has recorded that the petitioners could not produce the original receipt and the share certificate. Even before the Financial Commissioner, the receipt and share certificate were not produced.

9. Grievance and allegation regarding forged resignation letters was raised for the first time by the petitioners by representation dated 10th September, 2008 and thereafter by moving an application before the Registrar, Cooperative Societies on 10th November, 2008. This was long after land was allotted in 2002 and flats were constructed between 2002 and 2005 from the funds and payments made by the members. The petitioners had filed W.P. (C) No.8328/2010 before this Court, which was disposed of vide order dated 14th December, 2010. This order was modified by the Supreme Court vide order dated 16th October, 2012, in Civil Appeal Nos. 7537-7538 of 2012. Delay and belated challenge would only reflect and indicate that the charge of forgery etc. was an afterthought and incorrect.

10. The contention that the petitioners' were unaware of allotment of land and construction of flats between 2002 and 2005 till 2008, is specious and a feeble argument. Apparently, the petitioners had lost interest and did not make any claim and come forward asserting their right at the time of allotment of land and when construction of flats was going on. Delay and inaction supports the stand of the respondents.

11. At this stage, counsel for the petitioners submits that the petitioners had raised objections before the Registrar, Cooperative Societies vide letter dated 22nd November, 2001. Reference is also made to letter dated 29th November, 2001, followed by another letter dated 25th February, 2002. These letters were written before construction of flats had commenced. Letters written would reflect interest shown by the petitioners at that time. Thereafter there was complete silence on the part of the petitioners for almost six years between 2002 till 2008, which would reflect acceptance. This taciturnity was when the land was allotted, flats were constructed and substantial payments were made by the members.

12. In ***Naresh Kaushik Vs. Bhagwati Co-Operative Group Housing Society Ltd. & Ors.***, W.P. (C) No.11034/2009 decided on 8th April, 2010 this Court had rejected a similar prayer of an erstwhile member, who had professed that his resignation was forged and fabricated, observing that it would not assist and help a person who had slept over his rights. Belated claim, on the pretext of no information and knowledge should be rejected. Very basis of becoming a member was development of land and construction of houses/flats. A member who fails to contribute and pay towards land and cost of construction, jeopardizes the whole project. Defaulting members must be replaced with others who contribute. Similar

observations have been made in the order dated 8th March, 2013 passed in W.P. (C) No.1536/2013, *Shobha Tomar Vs. Vijay Co-operative Group Housing Society Ltd. and Anr.* This order observed that real estate prices had risen over the passage of time and persons, who had not contributed to the cost of land and cost of construction, cannot be allowed to take advantage and benefit of premium and increase in prices.

13. In the present case, the Cooperative Society in its counter affidavit has stated that 107 flats have been constructed, out of which 105 flats have been allotted and are in occupation of members. These allotments are not in doubt and challenge. Petitioners therefore cannot be allocated flats, depriving 32 out of 105 members who had paid money towards cost of land and construction.

14. With regard to two flats, the matter is sub-judice and the Cooperative Society would abide by the court decision. We would only clarify that in case allotment of flats is cancelled and declared illegal in terms of the Supreme Court decision dated 16th October, 2012, the Cooperative Society would proceed with allotment of the flat in question in accordance with law.

15. With the aforesaid observations, the writ petition is dismissed without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 02, 2018
NA/VKR