

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 5th January, 2021**

+ **CONT.CAS(C) 645/2018**

PUSHPA JHANJI & ANR **Petitioners**
Through: Mr. Manish Kaushik, Advocate

versus

PAWAN CHOPRA & ORS **Respondents**
Through: Mr. S.K. Jain and Mr. Piyush Jain,
Advocates for respondent No.1
Mr. Aditya Sinha and Ms. Ankita
Panikkar, Advocates for
respondent – Pawan Arora.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE ASHA MENON

CONT.CAS(C) 645/2018 & CM No. 34793/2018 (for impleadment)

1. The present petition has been filed under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India on the ground that the respondents have deliberately and wilfully violated the order of the court dated 28th July, 2010 passed in Review Petition No.14764/2008.

2. The facts as are relevant for the disposal of the petition are as follows: on 3rd November, 2008, a batch of 10 writ petitions including the one filed by the respondent No.2 herein [W.P.(C) 1444/2005], concerning

the affairs of Shivaji Co-operative Group Housing Society, were disposed of vide a common judgment. These writ petitions came to be filed as disputes arose between some original members of the society who had been expelled by the Managing Committee but whose expulsion had been set aside by the Financial Commissioner and those who had been inducted as fresh members in their stead. As a result of the restoration of membership and the induction of new members, the number of flats fell short of the number of the members. The question before the court was whose claim was to get precedence over the others.

3. After noticing the orders passed in previous litigation between the members of the society, and after considering the claims of the restored members and the new members, the court on 3rd November, 2008 issued the following directions:

“(a) The petitioners in WP(C) No. 2338-53/2005 and others namely, 22 persons who were purportedly inducted on 11.04.1999, shall hand over the possession of the flats to the Administrator within four months from today.

(b) These flats shall be allotted to those 22 members who were expelled, subject to the condition that they have paid entire consideration and no further amount is due from them. For this purpose, draw of lots in respect of these 22 flats for the said 22 members shall be held by the Administrator. Thereafter, possession shall be handed over to these members.

(c) In order to accommodate the petitioners and other similarly situated persons (22 in number), the newly inducted members, we issue the following directions:-

(ci) Due to the increase in the FAR there is an increase in the membership from 120 to 138. Therefore, 18 persons can be accommodated by enrolment thereof as new members out of 22 persons. By draw of lots 18 out of these 22 persons shall be selected and the said list shall be forwarded by the society to Registrar, who shall approve their membership. Remaining four persons shall be given refund of the amount paid by them. We are not granting any interest on this amount as during all this period they enjoyed use and occupation of the flats.

(cii) The Administrator shall submit plans for construction of additional flats to MCD/DDA within two weeks from today. These shall be approved within six weeks of their submission, subject to fulfillment of other formalities. Thereafter, the society shall start construction of the new flats and on completion of those flats, possession thereof shall be handed over to the newly recruited members.

(ciii) These 18 persons who were inducted as members on 11.4.1999 had paid the entire consideration in respect of these flats by the end of year 2000 when the draw of lots was held on 31.12.2000. Therefore, they would only pay the additional cost incurred on the construction of these flats meaning thereby from the total construction cost of the new flats, the amount already paid by them shall be adjusted and the balance amount shall be shared by these 18 persons in equal proportion

or in the alternative

In case these 18 persons are not agreeable to the new constructions at their cost in the manner provided above, it would be open to them to seek refund of the amount paid by them. These persons shall exercise their option in this behalf

within two weeks from today to enable the Administrator to proceed further in the matter accordingly. ”

4. Aggrieved by this order, some of the parties, who were required to vacate the flats, approached the Supreme Court by filing Special Leave Petitions Nos.12168-12170/2011 which were, however, dismissed on 3rd May, 2018 with the following observations:

“We are satisfied that the High Court has passed an equitable order in favour of the petitioners in spite of their being inducted as members, subsequently certain directions had been issued for construction of flats and thereafter to hand over to them.

In the facts and circumstances of the case, complete justice has been done by the High Court”.

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“Apart from that, we are constrained to observe that order of the High Court is just and equitable the petitioner has dragged this matter unnecessarily for the last seven years. ”

5. It may be noted that the sixteen members, who were inducted after the expulsion of the original members and had filed the writ petitions, subsequently filed Review Petition No.14764/2008. Three persons who had not approached the court earlier also chose to file Review Petitions, No.15/2009 (Smt. G. Alavadi) & No.17/2009 (jointly by two persons). Additionally, one person filed a separate Writ Petition No.11049/2009. All these were disposed of by the court vide a common judgment dated 28th July, 2010. It is the violation of this judgment that is alleged in the present Contempt Petition.

6. The court dealing with the Review Petitions observed that “*there is hardly any challenge to the findings*” given in the judgment dated 3rd November, 2008 that “*removal/expulsion of respondents from their membership was illegal and the enrolment of 23 persons in their place was improper or illegal*”, and the grievance of the review petitioners related to the directions given to them to hand over the possession of flats to the Administrator. Their prayer was that all members falling in either category should be accommodated by fixing a priority or merit for allotment of the flats.

7. It bears notice that the order dated 28th July, 2010 was a consent order and was based on discussions in which most of the parties had participated and were present in the court when such discussions had taken place. Therefore, there could be no occasion for any confusion in the minds of any of the parties as to what they were required to do. Yet, surprisingly, the present Contempt Petition has been filed, based on interpretations of the judgment dated 28th July, 2010.

8. The two petitioners herein claim that the respondents had evicted them by sealing their flats contrary to the directions contained in the judgment in the Review Petition filed by them and this had been done to wreak vengeance upon them by adopting a pick and choose policy. According to the petitioners, the respondents were bound in law to carry out the instructions contained in the Para 9 Clauses (3) to (7) of the judgment dated 28th July, 2010, which had to be followed in sequence and which, according to them, was that: first membership was to be increased from 120 to 138; then directions were to be given for construction of flats; then a list of priority was to be prepared; whereafter, persons whose

names were mentioned in para number 9 (5) were to be evicted; and as per priority list, the entitled persons were to be accommodated in 12 flats which were to be got vacated as per Para 9 (5) and (6); thereafter, a draw of lots was to be conducted as per Para 9 (7); and if the petitioners were among the 5 drawn from amongst 12 persons, only then could the petitioners been evicted. According to the petitioners, instead of following this sequence, the respondents straightaway sealed their flats in a totally illegal manner.

9. The further grievance of the petitioners is that there is no order passed by any competent authority for the execution of the directions contained in the judgment dated 28th July, 2010 and merely on the basis of a notice, the respondents had sealed the houses of the petitioners which was illegal and unlawful.

10. Thus, the petitioners prayed that this court initiate contempt proceedings against the respondents No.1 to 4 and punish them as per law; quash the notice dated 23rd July, 2018; issue directions to the respondents to de-seal the properties bearing numbers B-6/8, Shivaji Appt., Plot No. 4/1, Sector 14, Rohini, Delhi-110085 and B-3/6, Shivaji Appt., Plot No. 4/1, Sector 14, Rohini, Delhi-110085 and issue directions to the respondents to follow the order dated 28th July, 2010 in R.P. No. 14764/2008 in letter and spirit.

11. The respondent No.1 has filed a Status Report in which it was submitted that notices dated 19th May, 2018 had been served by him to the illegal/non-members including the petitioners for vacation of the flats. These notices were challenged by them in the W.P.(C) Nos.6053/2018, 6355/2018 and 7057/2018. These writ petitions were dismissed by the

Division Bench of this court by the common order dated 10th July, 2018. The SLPs preferred against the said order were also dismissed by the Supreme Court vide order dated 7th September, 2018. It was also submitted on behalf of the respondents that the petitioners were a group of persons who have consistently prevented the original members from reaping the benefit of orders that had been issued in their favour, by stalling allocation of the flats to them and even the Supreme Court criticized their conduct in stymieing the execution of the just and reasonable orders of this court which did complete justice amongst the parties. This was another attempt to thwart the execution of the orders of the court.

12. I have heard the learned counsel for the petitioners, Sh.Manish Kaushik and the learned counsel for the respondent No.1/Administrator, Sh.S.K.Jain and the counsel appearing for respondents in the other cases. Arguments and counter arguments also centered on the roles of the Administrator and the Registrar of Societies, though not a party in this petition, but appearing in other matters relating to the Shivaji Co-operative Group Housing Society. However, it was made clear to all concerned that the issues relating to other litigation were not germane to the present petition and so would not be considered.

13. As noticed hereinabove, the order dated 28th July, 2010 was a consent order. There is no scope for interpreting the order as sought for by the petitioners. In any case, a contempt petition cannot be filed for seeking an interpretation of a court order. Such luxury is not available in law. The petitioners had to show in clear terms how contempt had occurred and what part/s of the directions has/have not been complied

with. They seem to be harping only on following a sequence, which does not appear from the record. Directions were issued to ensure that flats were made readily available for allotment to the true members. It does not prescribe that new construction alone would lead to the vacation of the flats by the non-members. The respondent No. 1 was obligated to comply with the directions issued by this court on 28th July, 2010 and subsequent orders and he has done so by ensuring that flats become available for allocation to the real members.

14. The petitioners also admit that they have been issued notices. So it is not as if, the sealing of the flats took place without adherence to principles of natural justice. In fact, these notices were challenged in the writ petitions aforementioned, which were dismissed by a Division Bench of this court vide order dated 10th July, 2018. Anguished by the manner in which the petitioners before it have ensured that members do not get their flats, the court described these writ petitions challenging the notices as “*a deliberate conceited attempt by the petitioners to start another round of litigation immediately after and on dismissal*” of their Special Leave to Appeal on 3rd May, 2018.

15. In its order dated 10th July, 2018, the Division Bench once again traced the history of the *lis* between the parties and the orders passed at various stages, particularly the order dated 3rd November, 2008 and the order dated 28th July, 2010 which was a consent order. It also noted that soon thereafter another set of applications were filed before the Division Bench which were dismissed vide order dated 21st January, 2011. It also recorded that an application bearing CM No.20419/2010 was moved before the court by an applicant seeking permission to stay in the existing

flat till new flats were constructed. He also claimed that the order dated 28th July, 2010 was not a consent order. Both, the plea as well as the claim, were rejected and the application was dismissed. In other words, the case of the present petitioners that they could not be evicted from the flats in question till after the new flats were constructed, has no legs to stand.

16. It also observed that *“it was lucid and clear”* that the petitioners before it, whose membership enrolment were held illegal and contrary to law, could have only limited rights as flow in terms of the orders dated 3rd November, 2008 and 28th July, 2010 and could claim no further or additional right including that they were valid members of the Society as the Supreme Court had affirmed these two orders. After rejecting all contentions raised by the petitioners and observing that those writ petitions were *“an attempt to stall implementation of the orders passed in 2008-2010”* despite rejection by the Supreme Court of their SLPs, the court directed that it was the duty of the administrator to ensure compliance of the orders passed by the High Court dated 3rd November, 2008 as modified vide order dated 28th July, 2010 and directed that if the eviction notices were not complied with within a period of 21 days, coercive action would have to be taken as per law. It noted that the charges as directed in the order dated 28th July, 2010 had not been paid. We may note that these have not been paid till now. The writ petitions were then dismissed.

17. The present contempt petition is another desperate attempt to prevent the members of the society from getting their flats. The plea of a sequential compliance is frivolous. There is no scope for interpreting a

consent order which is crystal clear to everyone except apparently the petitioners. When their writ petitions against the notices were dismissed on 10th July, 2018 and they were directed by a Division Bench of this court to vacate the premises within 21 days of the order, they have come up with this petition on 23rd August, 2018 alleging contempt of the very same orders that the Administrator was directed to comply with. As the petitioners failed to comply with the directions, the respondents, particularly the respondent No.1 as Administrator, were fully justified in taking coercive action to seal the flats of the petitioners, rather, action for repossession ought to have been taken by them.

18. The present Contempt petition is completely devoid of *bonafides*. The repeated attempts by the petitioners to delay obeying the directions of the court appear to be contumacious. But nothing more is being said at this juncture, in the belief that obedience will follow.

19. The petition deserves to be and is dismissed.

JANUARY 05, 2021

manjeet

(ASHA MENON)
JUDGE