

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

115

2022:PHHC:173584-DB

LPA No.876 of 2022 (O&M)

Date of Decision: October 10th, 2022

Smt. Vijay Bansal (since deceased) through her legal heirs

....Appellants

Versus

Additional Secretary Cooperation Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Ajay Mahajan, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.2106-LPA-2022

Prayer in this application is for exemption from filing true typed copies of Civil Writ Petition with Annexures P-1 to P-16, written statements with all annexures and replications.

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

LPA No.876 of 2022

This Letters Patent Appeal has been preferred by the petitioner in the writ petition, which has been dismissed by the learned Single Judge vide order dated 05.08.2022, wherein prayer for issuance of writ of certiorari for quashing the order dated 27.08.2012 (Annexure P-14) passed by the Revisional Authority as also the order dated 03.05.2010 (Annexure P-13) passed by the Joint Registrar, Cooperative Societies, Patiala-respondent No.2 was made. Prayer had also been made for restoring the order dated 29.09.2009 (Annexure P-10) passed by the Deputy Registrar, Cooperative Societies, Ludhiana-respondent No.3 upholding the award dated 12.03.2009 (Annexure P-7) passed by the Assistant Registrar,

Cooperative Societies, Ludhiana (East)-respondent No.4.

2. It is the contention of learned counsel for the appellants that the learned Single Judge has failed to appreciate that the principles of natural justice, which mandate hearing, have not been complied with as no adequate notice was given to the appellant/petitioner for deposit of the additional sum on account of development charges nor was demand notice served to deposit the difference in the share money, failing which to face exclusion from the membership of the society as also show cause notice for cancellation of the plot allotted to the appellant. He contends that these aspects with regard to non-service upon the appellant by respondent No.5-The Sutlej Cooperative Housing Building Society Limited, Ludhiana, had been duly considered on a challenge posed by the appellant leading to the award being passed by the Assistant Registrar, Cooperative Societies, Ludhiana (East)-respondent No.4, which award has been upheld by the Deputy Registrar, Cooperative Societies, Ludhiana. The findings so recorded should not have been interfered with by the Joint Registrar, Cooperative Societies, Patiala, while exercising its revisional powers nor could the Additional Secretary, Cooperation, Punjab uphold the said order when put to test at the behest of the appellant. He contends that the *mala fides* at the hands of the office bearers of the Society is apparent as after the cancellation of plot within a period of two months, the plot has been allotted to Shri Tilak Ratra from whom respondent No.6 Ashok Kumar had purchased the same. He on this basis contends that the action of the respondent-Society cannot sustain and deserves to be set aside.

3. Having considered the submissions made by the counsel for the

appellants, going through the judgment passed by the learned Single Judge as also the pleadings, we do not find any merit in the present appeal calling for interference.

4. Briefly the facts are that the appellant was allotted Plot No.374-B on 15.10.1994. On the entire price of the plot having been paid, possession of the plot was handed over, where the appellant got a boundary wall constructed and erected a gate thereon. According to the appellant, she was not served with any notice and it is on the visit of her husband on 01.08.2008 to the plot that she came to know about the cancellation of the said plot and allotment thereof to some other person. Petition under Section 55/56 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the '1961 Act'), was preferred before the Assistant Registrar, Ludhiana-respondent No.4, who after issuing notice to the respondents and completion of the pleadings, came to a conclusion that the cancellation of the plot due to non-payment of the development charges was not in accordance with law as no opportunity was given to the appellant to deposit the development charges. It was concluded that the notices having not been served upon the appellant, the said cancellation of the membership because of non-deposit of the enhanced share amount as also non-payment of development charges was illegal. Direction was issued by the Assistant Registrar, Cooperative Societies to the Society to accept the amount due from the appellant along with 12% interest and set aside the cancellation of the plot. The amount stood deposited by the appellant.

5. This award was challenged by the Society under Section 68 of the 1961 Act before the Deputy Registrar, Cooperative Societies, Ludhiana, who

dismissed the appeal on 29.09.2009 leading to further challenge by the Society by way of revision petition before the Joint Registrar, Cooperative Societies, Punjab, under Section 69 of the 1961 Act. The revision petition was not only preferred by the Society but by the Ex-President and Committee Members of the Society, who were arrayed as petitioners in the said revision petition. Society withdrew from the petition, however, the revision petition was continued at the behest of the Ex-President and the Committee Members of the Society. This revision petition ultimately came to be accepted on 03.05.2010 (Annexure P-13), which was challenged by way of revision petition by the appellant before the Additional Secretary, Cooperation, Punjab, which was dismissed on 27.08.2012 (Annexure P-14) leading to the filing of the writ petition before this Court, which has been dismissed by the learned Single Judge vide impugned order dated 05.08.2022. The present appeal lays challenge to the order passed by the learned Single Judge.

6. Perusal of the order dated 03.05.2010, as has been passed by the Joint Registrar, Cooperative Societies, Patiala, as upheld by the Additional Secretary, Cooperation, Punjab, on 27.08.2012 (Annexure P-14), which were challenged in the writ petition would show that in fact proper notices were sent by the Society to the appellant. Reference in this regard can be made to the Public Notice issued in two newspapers having wide circulation in the area namely Ludhiana Kesri dated 02.06.2006 and Ludhiana Tribune dated 03.06.2006 calling upon the appellant to deposit the development charges to avoid cancellation of the plot. Demand notice was sent through UPC dated 10.07.1995 (Annexure R-5/2) for enhanced charges

to be deposited failing which the allotment of plot would stand cancelled. Another notice dated 11.09.1995 (Annexure R-5/3) had also been sent to which the appellant herself vide her communication/correspondence dated 23.11.1995 acknowledged receipt of the same and had asked for waiver of the development charges being not applicable to her. The photocopy of the envelope sending letter by registered post showing full address of the appellant, which has been taken into consideration by the Joint Registrar, makes it clear that the Society has taken all steps to ensure that the appellant becomes aware of the fact of a demand for deposit of the enhanced charges. The presumption of service after the registered post having been addressed at the complete address of the appellant can be drawn of proper delivery thereof.

7. As regards the demand for payment of balance of enhanced share price from ₹100/- to ₹500/- is concerned, the same was also sent through registered post. The non-deposit of the enhanced share price led to the ceaser of the membership of the Society of the appellant. Since value of the certificate has been enhanced by the Assistant Registrar, Cooperative Societies and the by-laws stood amended, the appellant could not resort to take a plea that the Managing Committee was not competent to cancel the plot since she ceased to be the member of the Society and further had not deposited the development charges within reasonable time despite she being aware of such a demand in the light of the Public Notice through newspapers and previous notices asking her to deposit the said charges. Correspondence dated 23.11.1995 addressed by the appellant to the Society makes it evidence that she had received the notice dated 11.09.1995 as waiver of the development charges had been sought by her with reference thereto.

Another aspect which has weighed with the learned Single Judge as well as the authorities under the Cooperative Societies Act is non-impleadment of the subsequent allottee/the purchaser-respondent No.6 herein despite being aware of the fact of cancellation of the plot, which was the subject matter of the petition as also the factum of subsequent allotment thereof and purchase and further sale of the same. The said award, therefore, in any case could not be binding upon respondent No.6, the subsequent *bona fide* purchaser.

8. Another aspect as has been pointed out is with regard to the legality of the demand of development charges by the Society, which is traceable to the allotment letter containing terms and conditions, one of which was that the development charges of the land and further amounts, if any, would be paid by the buyer as and when recorded otherwise the allotment shall stand cancelled. From the date of allotment i.e. 15.10.1994 till 01.08.2008 except for constructing a boundary wall along the plot, no visit was made by the appellant as per the stand taken as it is asserted that her husband visited the plot on 01.08.2008 when he came to know about the cancellation of the same. No construction was, therefore, carried out on the plot nor did the appellant make any effort or bothered to contact the Society in the interregnum.

9. In the light of the above factual position as has been found by the Revisional Authority as well as the learned Single Judge, which is based upon documents which are part of the records, no illegality can be said to have been committed in the orders, which were the subject matter of challenge in the writ petition nor is there any ground made out to interfere in the order passed by the learned Single Judge. We, therefore, uphold the order dated 05.08.2022

passed by the learned Single Judge and dismiss the appeal being devoid of merit.

10. In the light of the dismissal of the appeal, CM No.2107-LPA of 2022 stands disposed of as having been rendered infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 10th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: No