



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 19th April, 2022
Pronounced on: 20th May, 2022

+ **W.P.(C) 8771/2020**

D S KUNDU
S/O SH DHARAM SINGH
PHILIPS TOWERS SECTOR 23,
PLOT-3, DWARKA,
NEW DELHI 110077

.....Petitioner

Represented by: Petitioner in person.

versus

1 REGISTRAR, COOP SOCIETIES,
DELHI OLD COURT BUILDING,
PARLIAMENT STREET
NEW DELHI-110001

2 J B KAPIL,
ADMINISTRATOR C/O PHILIPS CGHS LTD,
SECTOR-23, PLOT-3, DWARKA,
NEW DELHI-77

..... Respondents

Represented by: Ms.Sanjana Nangia Advocate for Mr.
Sameer Vashisht, Additional Standing
Counsel for GNCTD.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G E M E N T

NEENA BANSAL KRISHNA, J.

1. The petitioner has filed the writ petition under Article 226 of the Constitution of India for issuance of direction or order in the nature of Mandamus to the respondents to not deprive and violate the fundamental right of the petitioner; to live with dignity and mental peace and not to disrupt the supply of basic needs and essential services and for uninterrupted ingress and egress to his residence in the society complex, and further to maintain rule of law.

2. The facts stated in brief are that the petitioner is residing in a Co-operative Group Housing Society, Dwarka, Delhi (*hereinafter referred to as "Society"*) having 120 members. The Society is a corporate body registered under the Delhi Cooperative Societies Act, 2003 (*hereinafter referred to as "DCS Act"*) and has 120 members who have been allotted dwelling apartments. The day-to-day affairs of the Society are managed by respondent No.2. The petitioner claims to be a law-abiding senior citizen who has an abode in the Society and is suffering from constant deprivation and gross infringement of his right to enjoy the property. He has been deprived of basic services and a dedicated car parking inside the Society as part of the Group Housing Scheme under the DCS Act. In 2014, the petitioner approached the appropriate legal forum and an award was passed on 09th February, 2016 directing Respondent no.2 to provide one dedicated earmarked car parking for each member of the Society and also to remove illegal occupants from the parking area under the stilt of the building. The petitioner filed an execution petition and the Executing Court passed the



final order on 22th November, 2016 for execution of the award. However, the directions remained on paper and were never enforced. Consequently, the petitioner approached the High Court of Delhi in November, 2019 for appropriate directions for execution of the order dated 22th November, 2016 of the Executing Court. In compliance of the directions of the High Court of Delhi, respondent No.1 directed respondent No.2 vide its order dated 4th February, 2020 to file a compliance report before the Executing Court. However, on account of the prevailing COVID situation, the process got halted. The respondent No.2 issued a Notice dated 12th September, 2020 for removing of encroachments from stilt parking area and drew a lottery for rotational allocation amongst all members of Society.

3. The petitioner also stated that he exposed serious financial manipulations in the records of respondent No.2 and corruption by persons adversely affected by the order under execution. He also claimed to have sought an inquiry into the financial affairs of respondent No.2 which has made the petitioner another score settling goal post for the purported offenders. According to the petitioner, as a consequence of execution of the Award and initiation of the process of inspection of financial records of respondent No.2, those persons who were adversely affected by the execution of the Award dated 9th February, 2016 and the inspection of the financial records of respondent No.2, threatened the petitioner and his family with dire consequences. It is claimed that the essential services like electricity, sanitation, cleaning, sweeping, collection of garbage, security etc. have been made dysfunctional by the respondent No.2 using coercive methods knowing fully well that it was its mandatory duty to provide uninterrupted essential services to the petitioner. The ingress and egress to



his own residential abode has been obstructed and denied, parking of his car in the dedicated car parking area under his exclusive possession has been obstructed, trespassed, and blocked by respondent No.2 and his agents. Despite representations no action has been taken by the respondents. It is further claimed by the petitioner that his family has been kept illegally confined, restrained and captivated by coercive means to force the petitioner to succumb to the illegal demands of respondent No.2 and his agents to not press for the execution of the court orders and expose the corruption of the Society. He has been harassed and humiliated by the respondents whom he has been approaching for relief and redressal of his grievances. Hence, the present petition has been filed for issuing directions to the respondent to prevent the deprivation and infringement of fundamental rights of the petitioner.

4. The respondent No.1 Registrar, Co-operative Societies, in its counter affidavit has asserted that a false, frivolous, illegal and concocted allegations have been made by the petitioner in his petition. Once an Award is made by respondent No.1 under the DCS Act, 2003, it is the responsibility of the Administrator of the Society to give effect to the Award. The writ petition against the answering respondent is not maintainable as the petitioner is required to follow the procedure under DCS Act, 2003 for execution of the Award.

5. It is further submitted that in June, 2020, Mr. Jitender Kumar Singh, was appointed as Administrator-cum-Returning Officer of respondent No.1, but he submitted his resignation on 19th October, 2020. However, before resigning, he submitted his report stating that there are two parties in the Society who are not willing to come to a common ground and create all sorts



of problems and nuisance on day-to-day basis and being posted at far of place, he was not in a position to visit the Society daily. Consequently, he resigned which is in the knowledge of the petitioner. Mr. Mukesh Rajora, SDM Kapashera was thereafter appointed as Administrator-cum-RO vide Order dated 20th October, 2020, but on his request he was also relieved from the post.

6. It is further stated that the Award dated 9th February, 2016 was received by the Administrator of the Society vide letter dated 15th December, 2017 for the purpose of implementation. An interim compliance report was submitted by Mr. J.B. Kapil Administrator-cum-Returning Officer wherein he informed that the affirmative action has been initiated in full earnest for which Notice has been issued to all the affected residents of the Society to remove their illegally parked vehicle in the car parking. In compliance to the Notice and the Order, the illegal occupants were asked by the Administrator to vacate the illegally encroached car parking on their own by 23rd September, 2020. However, on the said day as many as 80 men, women and children surrounded respondent No.2 and forced him to stop the work of removal of illegally parked cars. Such was the commotion that it ultimately led to the calling of the police. The petitioner and his son were also present at that time. The respondent No.2 was charged upon by 35 members who had illegally encroached the parking area and the respondent No.2 was advised by the police to withhold the implementation of Award for that day. The respondent No.2 submitted his interim compliance report that he can implement the Award only with the help of the SDM and police authorities of the area. Sh. Sumer Singh, Assistant Commissioner of Police (Retired) was then appointed as Administrator-cum-Returning Officer vide



Order dated 06th January, 2021. It is the responsibility of the present Administrator to implement the Award or to ensure compliance of any of the Orders made by the court in adjudication of the present petition. It is claimed that no legitimate case has been made out against the respondent No.1 and the petition is liable to be dismissed.

7. The Respondent No.2, Mr. J.B. Kapil, Administrator in his affidavit stated that he was posted as Administrative Officer of Delhi Fire Service since August, 2017 and after the onset of COVID-19 Pandemic, he was actively engaged in COVID duties as Nodal Officer (Home Quarantine) from April, 2020 to November, 2020. He was appointed as Administrator of the Society on 19th June, 2020 by Registrar of the Societies, Delhi and he remained the Administrator till 19th October, 2020 when he tendered his resignation due to his occupation with COVID patients. It is explained by him that during his short tenure as Administrator it came to his knowledge that there are internal conflicts among the members of the Society with the petitioner. One of the reasons was non-payment of dues and funds by the petitioner for which other members had time and again objected to the utilization of the services of the Society by the petitioner. It is further stated that the petitioner came to the office premises of the Society on 23rd September, 2020 and created a ruckus and the police had to be called. Many a times the petitioner has been called exclusively to the office of the Society to settle the issues based on the books of accounts of the Society. It is further submitted that during his tenure as Administrator he attempted to complete the election process despite his COVID duty, but the process could not be completed. Moreover, the petitioner has not shown any inclination to resolve the issues with the other members and has also not paid his dues.



Furthermore, on the complaints of the petitioner against the gate keepers and sanitation contractors, he had taken immediate action against them and show cause notices were issued, though they remained unanswered till 19th October, 2020 when he tendered his resignation. He also made an endeavor to resolve the stilt parking issue in terms of the Order of the learned Arbitrator.

8. Mr. Jitender Kumar Singh, Administrator of the Society in his counter affidavit further submitted that the petitioner is not paying the maintenance charges regularly and is erroneously showing the payments made to the Arbitrator as the payments made for the maintenance of the Society. It is explained that the petitioner has paid ₹1,31,000/- as the maintenance charges since 10th June, 2011 to 20th August, 2018 and not ₹1,88,891/- as claimed by him in his petition. Further, ₹57,891/- were paid for other charges. It is claimed that the petitioner has not been paying his maintenance charges since 20th August, 2018 and had also not made payment against maintenance for the year 2007-08, 2008-09, 2009-10, 2010-11, 2019-20, 2020-21. At present the total dues pending against the petitioner are ₹2,44,562/- plus interest till the date of payment.

9. The petitioner in his rejoinder to the counter affidavit of respondent No.1 took the preliminary objection that the same has been filed by Mr. Atul Marwah who on transfer, has assumed the office in November, 2020 much after the cause of action arose in September, 2020 and his affidavit is based on hearsay information and is not tenable. On merits, it is claimed that the present petition has been filed against the non-discharge of the statutory obligations under Rule 102 of the DCS Rules and has got nothing to do with the alleged Award. The respondent No.1 is the designated and



statutory Authority under the DCS Act to supervise, control and regulate co-operative societies under the DCS Act. The allegations regarding differences between two groups of the Society are fabricated, concocted and irrelevant because the entire case of the petitioner is unequivocally admitted by respondent No.2 in his counter affidavit. All the averments made in the counter affidavit are denied and it is claimed that the directions by way of writ of mandamus be issued in favor of the petitioner.

10. The petitioner in his rejoinder to the counter affidavit of respondent No.2 has taken a preliminary objection that he is an individual and private party and has filed his counter affidavit in his personal capacity. His acts, deeds and conduct were beyond jurisdiction and authority and have caused social and mental injury to the petitioner and his family members. On merits, it is submitted that respondent No.2 has not controverted any of the averments of the petition and annexures and admitted the assertions of the petition in regard to deprivation of essential and basic services for human life and resultant violation caused by representatives. It is claimed that respondent No.2 has misled the court by claiming to have taken action against the delinquent gate keepers and sanitation contractors of the Society by stopping their payment unless they restored their services. It is claimed that he owed statutory obligation under Rule 102 of DCS Rules to maintain uninterrupted supply of codified essential services for human life, but he in collusion with the representatives and agents, deprived the petitioner and his family from their fundamental rights by misusing his position and power as Administrator of the Society. It is further claimed that he did not resign due to his occupation with the COVID patients but was asked to resign due to his uncalled for role in the mismanagement of the Society's affairs. He



acted beyond his jurisdiction and maliciously deprived the petitioner and his family members of their basic needs for leading a dignified human life.

11. Submissions heard.

12. The grievances of the petitioner essentially are that his fundamental right to live with dignity and in peace is being violated by depriving him of all the basic needs and essential services the other statutory rights and also obstruction of his free ingress and egress to the Society essentially because as a whistle blower he had exposed the corruption and malpractice in the management of the Society.

13. One grievance of the petitioner is that his demarcated car parking has been occupied by the unauthorized occupants and despite the Award, the earmarked car parking is not being restored to him. However, it is his own assertion that he had applied for execution of the Award in which necessary directions have been issued. This Court cannot assume the duties of the Administrator or the Executive Committee to address the day to day grievances of the petitioner.

14. It is further claimed by him that he is not getting a free access to the lift and enjoyment of the common facilities and amenities. The allegations made are general, vague and lack any specific details. It has come in the affidavit of the respondents that the maintenance is not being paid by the petitioner since 2018 and there exist arrears for previous period as well which the petitioner is not inclined to clear. Disputed facts have been raised which cannot be a subject matter in a writ petition. Moreover, his grievances are general and essentially about deficiency of services which has to be agitated by the petitioner within the mechanism as provided under DCS Act. The petitioner is at liberty to avail his remedies under the Act. No directions



to the respondents are warranted in view of the general allegations and averments about deprivation of his right to live with dignity made by the petitioner, especially when disputed facts are involved.

15. There is no merit in the present petition which is hereby dismissed with liberty to take remedies as available in law.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 20th, 2022

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