



2024:DHC:6853-DB



\$~A-17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 2172/2023****SHIB DAS SARKAR & ANR.**

.....Petitioners

Through: Ms.Jyoti Dutt Sharma, Advocate with
Mr.Rahul Sharma, Mr.Himanshu
Gautam, Mr. Harsh Rao and
Mr.Ayush Bhatt, Advocates.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ORS.

.....Respondents

Through: Mr.Anupam Srivastava, ASC with
Mr.Vasuh Misra, Advocate for R-1.
Mr.Gaganmeet Singh Sachdeva,
Advocate with Mr.Akshay Pratap
Singh, Advocate for R-2.
Ms.Shreya Sinha, Advocate with
Mr.Amritesh Raj Singh, Advocate for
R-3.

%

Date of Decision: 05th September, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present writ petition has been filed praying for allotment of a vacant flat to the Petitioners in the Respondent No. 3-Society.
2. Learned counsel for the Petitioners states that membership of the Petitioners in the Respondent No. 3-Society has already been confirmed on 29th July, 2003 and upheld vide award dated 14th January, 2011 passed by

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 06.09.2024
18:57:47

W.P.(C) 2172/2023

Page 1 of 3



the Arbitrator in Arbitration Case No.5125/DR/ARV/09-10 and order dated 22nd February, 2019 passed by the Delhi Cooperative Tribunal in Appeal No.39/2011/DCT. She states that the aforesaid orders have been upheld right till the Supreme Court.

3. Learned counsel for the Respondent No. 1-RCS states that the Petitioners' name were not recommended to the Committee under Rule 90 of the DCS Rules for the purpose of conducting draw of lots as the respondent-Society failed to provide the Architect's Certificate and the Completion Certificate which are required as per Clauses 7 and 8 of Schedule VII of the DCS Rules, 2007.

4. Respondent No. 3-Society by way of its counter-affidavit has supported the Petitioners' claim for allotment of a category 'B' flat in the Society. It is averred that vide letters dated 17th August, 2003 and 23rd December, 2019, the Society forwarded the names of the Petitioners to the Respondent No. 1-RCS to expedite the clearance and for allotment of a flat. Furthermore, the Society addressed all the queries/demands raised by the Respondent No. 1-RCS qua the clearance for allotment of a flat.

5. In the affidavit, it has also been stated that the Society has time and again clarified to the Respondent No. 1-RCS that the Architect's Certificate and the Completion Certificate are not traceable by the Society as the construction of the flats was completed in early 2000. According to the respondent society the delay in allotment is solely attributable to the RCS.

6. In rejoinder, learned counsel for the Petitioners emphasises that as the Petitioners' initial allotment is of 2003, the allotment would have to be done in accordance with the Rules prevalent then. In support of her submission, she relies upon the order dated 27th July, 2023 passed by the Registrar of



Cooperative Societies in the case of “*The Sleuth CGHS Ltd. Vs. Sh.Adarsh Malhotra and Ors.*” attached as annexure 2 to the rejoinder affidavit.

7. A perusal of the paper book reveals that the Petitioners were enrolled as joint members of the Respondent No.3-Cooperative Society on 29th July, 2003. The joint membership of the Petitioners was revoked on 15th May, 2007, which was challenged by way of an arbitration proceeding by the Petitioners. By way of an arbitral award dated 14th January, 2011, the joint membership of the Petitioners was restored. The appeal filed by the Respondent No.3-Society was dismissed by DCT on 22nd February, 2019. Consequently, this Court is of the view that the membership of the Petitioners shall relate back to July, 2003 as the Respondents cannot take advantage of their own wrong.

8. It is also pertinent to mention that the Respondent No.3-Cooperative Society is nearly fully occupied as 1,304 out of 1,306 flats are already occupied.

9. Keeping in view the aforesaid, this Court is of the opinion that the Respondent No.1's insistence on production of the Architect's Certificate and Completion Certificate in the present case is contrary to facts and untenable in law.

10. Accordingly, the present writ petition is allowed and DDA is directed to allot one of the vacant flats to the Petitioners within eight (8) weeks.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 5, 2024/TS