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

+ **W.P.(C) 12780/2019 & CM APPL. 52229/2019**

SMT. LATA CHHIBER

..... Petitioner

Through: **Mr. Rohit K. Modi, Advocate**

versus

REGISTRAR, CO-OPERATIVE SOCIETIES & ORS.

..... Respondents

Through: **Mr. Divyam Nandrajog, Panel
Counsel, GNCTD with Mr. Jatin Dua,
Advocate for R1**

**Mr. Tarun Kumar Agarwal, Advocate
for R-2**

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Date of Decision: 01st April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India seeking to set aside the award dated 21st July, 2018 ('impugned award') passed by Respondent No. 5, Arbitrator ('Arbitrator') and order dated 15th July, 2019 ('impugned order') passed by Delhi Co-operative Tribunal ('Tribunal') upholding the said award and a declaration that the Petitioner is entitled to allotment of category Type 'A' i.e. four-bedroom flat.

2. The facts of the case to the extent relevant for the present petition are



that Respondent No.2, Society had introduced a scheme on 26th April, 2004 for two categories of flats i.e. Type 'A' which includes four-bedroom unit and Type 'B' which includes three-bedroom unit. It is pleaded that Petitioner herein became a member of Respondent No. 2, Society on 26th June, 2004, and initially made payment towards land and construction money for a Type 'A' flat, as per the demand letters received from Respondent No.2, Society in 2005-06.

3. It is stated that *vide* demand letter dated 26th April, 2006 Respondent No.2, Society arbitrarily changed the entitlement of the Petitioner from the category of flat Type 'A' to Type 'B', without any prior notice or providing any option for changing the same. It is stated that the Petitioner made payments as per the demand letters towards Type-B flat to preserve the allotment, *albeit* under protest. It is stated that the Petitioner on 28th December, 2010 preferred a claim under section 70 of the Delhi Co-operative Societies Act, 2003 ('Act of 2003') seeking reference to arbitration, which was admitted by the learned Registrar and matter was referred to the Arbitrator. It is stated that the said Arbitrator dismissed the claim by an award dated 15th May, 2012 on the ground of case being of '*No evidence*'. It is stated that aggrieved by the award dated 15th May, 2012, Petitioner preferred an appeal bearing no. 135/2012 which was disposed of by the Tribunal on 05th March, 2018 by referring the matter back to the Arbitrator.

4. Accordingly, the matter was heard afresh by the present Arbitrator and impugned award dated 21st July, 2018 was passed, whereby the claim of the Petitioner was rejected once again since the Petitioner failed to prove that she ever opted for Type 'A' flat after her enrolment as a member.



Subsequently, the Petitioner filed an appeal bearing no. 189 of 2018 before the Tribunal assailing the said impugned award; and *vide* impugned order dated 15th July, 2019, the Tribunal found no merits in the appeal and upheld the impugned award passed by Arbitrator.

5. The present petition has been filed impugning the order of the Tribunal and the arbitral award.

6. We have heard the learned counsel for the parties and perused the record.

7. The Arbitrator after perusing the record has returned a finding *vide* impugned award that the Petitioner herein was unable to prove her contention that she had ever given her option for Type-A category of Flat in the Society either at the time of her enrolment as a member or any time thereafter.

7.1. The Arbitrator held that the factum of issuance of the initial demand letters dated 26th May, 2005, 08th August, 2005, 07th November, 2005 and 10th January, 2006 with the “Subject” pertaining to payment for land and construction money for Type-A Flat, by itself cannot become the sole basis entitling the Petitioner for allotment of Type-A Flat. The Arbitrator noted that w.e.f. 26th April, 2006, the Society raised subsequent demands for land and construction money on the Petitioner on the basis of Type-B Flat, which demands were duly paid by the Petitioner, though it is her stand that the same were paid under protest and to avoid being declared defaulter.

7.2. After evaluating the evidence led by the Petitioner and the Respondent Society, the Arbitrator returned a finding that the Petitioner had failed to prove that she ever opted for Type-A Flat in the Society.

8. The Tribunal as well after evaluating the evidence led by the parties



concurred with the finding of the Arbitrator *vide* impugned order dated 15th July, 2019 that the Petitioner herein had failed to prove on record that she had applied for Type-A Flat. The Tribunal further noted that the Petitioner has till date made total payments equivalent to the final cost of Type-B Flat amounting to Rs. 22,21,000/- whereas the final cost of the Type-A Flat is Rs. 31,90,000/-. The Tribunal also observed that the Respondent had led evidence by filing affidavits of 16 (sixteen) persons to prove the fact of the final cost of Type-A and Type-B respectively, as well as, to prove that the issuance of the initial four letters of installment under the Subject category Type-A was a bona fide mistake and this mistake occurred while raising demand on several members and not the Petitioner alone.

8.1. The Tribunal noted that since the Petitioner has made payment of Rs. 22,21,000/- which is the final cost of a Type-B Flat; she is admittedly in possession of Flat No. D-801, Type-B, which stands approved and regularized by the RCS *vide* letter dated 09th January 2018.

8.2. In the aforementioned facts, the Tribunal as well concurred with the finding of the Arbitrator that the Petitioner has failed to discharge the onus that she had applied for Type-A Flat.

9. Learned counsel for the Petitioner during the course of arguments has only relied upon receipt of initial demand letters 26th May, 2005, 08th August, 2005, 07th November, 2005 and 10th January, 2006 before this Court to contend that in view of the said letters, the Petitioner is entitled to Type-A Flat. He also relies upon Section 92(5) of the Act of 2003 to contend that the Respondent Society cannot unilaterally change the category of the Flat without the consent of the Petitioner.

10. As noted hereinabove, the Arbitrator and the Tribunal have returned a



concurrent finding of fact that the Petitioner herein has failed to prove that she had applied for Type-A Flat with the Society. In the absence of the proof of the said selection, the reliance placed by the Petitioner on Section 92(5) of Act of 2003 is not attracted.

11. Learned counsel for the Respondent has relied upon the contents of the General Body Meeting ('GBM') dated 27th November, 2005 to contend that the allocation of categories to each of the members was made at the said GBM and the Petitioner herein was allocated category B. He further states that whereas the final cost of Type-A Flat was Rs. 31,90,000/- and the final cost for Type-B Flat was Rs. 22,21,000/-. He states that the Petitioner has paid Rs. 22,21,000/- to the Society and no additional amount has been collected from her as she was aware about the allotment made at the GBM.

12. The aforesaid fact also finds mention in the finding of the Tribunal at paragraph 18 of the impugned order. The Petitioner has not disputed the said facts as regards having made a total payment equal to the final cost of a Type-B Flat. In this view of the matter, the fact that initial four demand letters mentioned the "Subject" as Type-A loses significance, as in the subsequent demand letters Society corrected the "Subject" to read as Type-B and finally collected only a sum equal to the final cost of Type-B Flat. This fact has to be seen in the background of the fact finding that the Petitioner herein has been unable to prove that she had at the time of her enrolment as a member chosen Type-A Flat. In these facts, the concurrent view taken by the Arbitrator and the Tribunal that the initial four demand letters by itself cannot be the basis for holding the Petitioner is entitled to Type-A Flat is a plausible view and does not merit any interference in the writ jurisdiction.

13. In this regard, it would be appropriate to refer to the judgment of



Supreme Court in ***Jai Singh And Ors. v. Municipal Corporation of Delhi And Anr.***¹, wherein at paragraph 16 it has been observed as under:

“16. The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi-judicial tribunals. The power to reappreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”

14. As noted above, the Petitioner has been duly allotted a Type-B Flat and the Society has collected from her payments equal to the cost of the Type-B Flat only; and, therefore we do not find any miscarriage of justice in the facts of this case, which would require us to exercise a discretionary jurisdiction.

15. We accordingly find no merit in the present petition and the same is dismissed along with pending applications. Interim order dated 04th December, 2019 stands vacated.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 1, 2024/hp/ms

¹ (2010) 9 SCC 385