

Avtar Vinayak Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Aug-21-2008

Reported in : 152(2008)DLT486; 2008(106)DRJ440

Judge : Manmohan Sarin and; Veena Birbal, JJ.

Acts : [Delhi Cooperative Societies Act, 1972](#) - Sections 55 and 59(2); Delhi Cooperative Societies Rules - Rule 25

Appeal No. : WP(C) No. 6160/2007

Appellant : Avtar Vinayak

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Rajiv Bansal, Adv. for respondent No. 1, ; D.K. Pandey and ;

Advocate for Pet/Ap. : Prashant Bhushan and; Dushyant Sisodiya, Advs

Disposition : Petition dismissed

Judgement :

Manmohan Sarin, J.

1. Petitioner, a former Secretary and President of the Society (respondent No. 3 herein), has filed the present petition seeking cancellation of the allotment of flats No. A-2 to A-5 to respondents No. 4 to 7. Petitioner contends that the flats were

constructed unauthorizedly without sanction and the allotment had been made illegally and fraudulently in favour of respondents No. 4 to 7. Petitioner seeks demolition of these flats which, he alleges, were constructed at the place designated and approved for parking.

2. Petitioner additionally seeks cancellation of the allotment of a shop made in favour of respondent No. 8, who at the relevant time, was the President of the Society as being contrary to the provisions of the Delhi Cooperative Societies Act, Rules and Bye-laws of the Society. Petitioner seeks a restraint on respondents 4 to 8 from participating in the Managing Committee of respondent No. 3-society.

3. Petitioner alleges several illegalities frauds, forgeries and manipulations in the construction, allotment and handing over of the flats and the shop mentioned above on the part of the respondents No. 4 to 8 in collusion with the officers of respondents No. 1 and 2. Petitioner complains of continuous harassment at the hands of the respondents No. 4 to 7 and respondents No. 8 and 9, who have refused to hand over the possession of the flat duly allotted to him by the DDA as an original member of respondent No. 3 Society. He submits that the management of respondent No. 3 Society is being controlled by the former architect of the Society Shri P.D.Sharma i.e respondent No. 9, who, he claims, has been running the Society as his fiefdom, through his nominees and employees.

4. Writ petition has been opposed by the respondents nos.3 to 8 who have questioned the locus of the petitioner. Besides the petition is dubbed as a malafide and actuated with ulterior motives and filed by way of counterblast to settle scores with the Society. The allotment of flat to petitioner had been cancelled due to non-payment followed by expulsion of petitioner from the membership of the Society. It may be noted that the proposal for expulsion of the petitioner has been rejected by the Joint Registrar of the Cooperative Societies. The Society has preferred a revision petition against the said order and proceedings are pending. Respondents also claim that the construction of the flats was duly sanctioned and regularized and the charges for the same were paid. The requisite increase in the strength of membership and the number of flats has been sanctioned by the Competent Authorities.

5. Considering the acrimony between the petitioner and the respondents and the complaints and counter complaints that were made and with one litigation leading to the other, it was considered appropriate to make an earnest attempt to resolve the differences between the parties. Towards this end, petitioner was directed to produce the details of payments made by him, his bank statement showing debit of the amounts allegedly paid and receipts issued by the society. The Society was also asked to keep the statement of account ready and available on the next date of hearing so that further directions could be given and the question of alleged default by petitioner and his resultant expulsion and other disputes could be resolved.

6. On 18th July, 2008, petitioner filed his written synopsis and gave a statement giving details of payments made, out of which, significantly, three payments were claimed to be made in cash on 6.5.1999, 9.6.1999 and 15.7.1999 of Rs. 1 lac, each for which he claimed that receipt was promised to be issued but was not issued. Of course, the above submission prima facie appears incredible since petitioner himself had been the President and Secretary, would surely not pay cash thrice that too of a substantial amount without taking a receipt.

7. Be that as it may, the matter was adjourned to 30th July, 2008 to enable the respondents, counsel to file its synopsis. At this stage, Mr. Prashant Bhushan, Advocate appeared on behalf of the petitioner and submitted that as per his instructions petitioner does not wish to agitate the issue of allotment and handing over of possession of flat to him in this writ petition. Learned Counsel submitted that petitioner would confine himself to the prayers made in the writ petition. In other words, this spelt the end of an attempt to resolve the differences between the petitioner and other members of the Society inter se and with the Society.

8. Petitioner has not prayed for possession of flat or challenged his expulsion and formally prayed only for demolition of four flats and cancellation of allotment of shop to respondent No. 8, the averments in the writ petition, additional affidavit dated 29th August, 2007, written synopsis and the arguments filed by the petitioner inter alia are to the effect that on account of petitioner protesting against illegalities and frauds committed by respondents 4 to 8, possession of flat No. B-

23 has not been handed over to him though being an original member and subjected to several litigations on account of it. These allegations are the foundations of edifice of petitioner's case. In the written synopsis filed, it is further alleged that respondents DDA and RCS have failed to perform their statutory duties despite complaints made by the petitioner. It is alleged that the Managing Committee has acted with vengeance to expel the petitioner from the membership of the society for having raised his voice against the illegalities committed by them. Petitioner claims that expulsion proceedings were proceeded against the petitioner on the basis of fabricated default shown in the payments. Petitioner contends that he has made payment of Rs. 6.88 lacs by cheques and cash as per statement attached. However, the amount was fraudulently and clandestinely reduced to Rs. 3.88 lacs in the audit report for the year 2001-2002. Petitioner claims that the inquiry report had vindicated his position as there were manipulation of accounts with a view to reduce the amount shown as deposited by the petitioner/complainant. Petitioner in the synopsis and arguments filed has made detailed submissions in this regard. However, as noted above, it appears that after the proceedings of 18th July, 2008 when the court enquired about the non production of the three receipts for cash payments of Rs. 1 lac each as claimed and the matter was adjourned to 30th July, 2008 that there was a volte face by the petitioner, who did not desire to end the disputes and confined his reliefs to the prayers made in the writ petition.

9. Respondent No. 1-DDA through Mr. Rajiv Bansal, Advocate has filed summary of correspondence with regard to approval and sanction of construction of four additional flats as also the complaints received and its disposal. Mr. Prashant Bhushan has also filed a brief gist of submissions. Mr. J.N.Gupta has filed written submissions on behalf of respondents 3 and 8.

10. We have accordingly heard Mr. Prashant Bhushan on behalf of the petitioner, Mr. Rajiv Bansal, on behalf of respondent No. 1-DDA, Mr. J.N.Gupta and Mr. Salil Paul on behalf of respondents 3 and 8, Mr. Rakesh Munjal, Sr.Advocate on behalf of respondents 4 to 7, Mr. D.K.Pandey on behalf of respondent No. 2 and Mr. J.C.Kaushik on behalf of respondent No. 9.

11. The first issue arising for consideration is regarding alleged unauthorized construction of flats on the space meant for parking under the stilts. Mr. Prashant Bhushan submitted that these flats A-02 to A-05 were constructed without sanction. Two flats were occupied illegally by Mr. Harmeet Pal Singh and V.D.Bhardwaj even before sanction for construction of flats was accorded. Allotment was in violation of the Directives of the RCS. As per the respondents' own case, sanction was obtained on 7th March, 2002 while possession of flat nos.A-02 A03, A04 and A05 was handed over on 30th November, 2001, 16th November, 2002, 28th September, 2001 and 7th August, 2001 respectively. It was urged that respondent No. 3-Society had suppressed from the DDA the fact that flats were occupied even before the sanction was accorded on 7th March, 2002. Mr. Bhushan relied on following clause of the sanction letter which runs as under:

The construction will be undertaken as per sanctioned plans only and no deviation from the bye-laws will be permitted without prior sanction. Any deviation done against the bye-laws is liable to be demolished and the supervising architect engaged on the job will run the risk of having his licence cancelled.

Clause 6 of the sanction letter contain the prohibition which is as under:

The party shall not occupy or permit it to occupy the building or use or permit to be used the building or any part thereof effected by any such work until occupancy certificate is issued by the DDA.

Lastly reliance was placed on Clause 14 which provided that sanction will be void ab initio if any material fact has been suppressed or mis-represented or the auxiliary conditions mentioned above are not complied.

12. Petitioner contend that respondent nos.4 to 7 except respondent No. 5 are the members of the Managing Committee. Further the election of office bearers having been set aside by Competent Authority, they are permitted to manage day to day affairs. Rest of the portion of the gist of submissions by the petitioner is devoted to the petitioner's response to the attempt made by the respondent-society of fraudulently declaring petitioner as a defaulting member with a view to expel him and cancel the allotment of his flat. Petitioner also relies on the gist of the inquiry

conducted by Mr. V.K.Beniwal, Joint Commissioner regarding the irregularities and illegalities in the accounts maintained by the society. Petitioner refers to the reduction of deposited amount to his credit from Rs. 6.8 lacs to Rs. 3.88 lacs as being the result of conspiracy against him and the manipulation of accounts. Learned Counsel also laid considerable emphasis on the alleged manipulation of records depicting that allotment of these flats to respondents 4 to 8 was by way of draw of lots, while no draw of lots was actually held. Counsel further submits that their enrolment as members was itself vitiated inasmuch as in two cases namely Dr.Harmeet Pal Singh and Mrs.Krishna Anand, the dates of the share certificates issued to them are prior to the resolution of the Managing Committee and even the date of application. He also submitted that allotment was done without following the due process. Permission for construction was subsequently obtained with suppression and concealment of facts of construction having already been done.

13. Petitioner next adverted to the allotment of the shop to respondent No. 8 who was the President of the Society. It is stated that no draw of lots was held for the same. It is stated that shop could not be allotted to respondent No. 8, who at the relevant time was the President of the Society as the same is prohibited under the Cooperative Society Rules and the Bye-laws.

14. Respondent No. 3-society in its response has averred that writ petition has been filed with ulterior motives and out of personal vendetta. It is a malicious attempt to bring disrepute to the management of the respondent-society as the petitioner himself, it is alleged, had been controlling the affairs of the society in his capacity as Secretary and President since 1995 to 2001. Petitioner has no locus to file the writ petition which raises disputed questions of fact. Petitioner has efficacious remedy under the Delhi Cooperative Societies Act, 2003, which has not been resorted to. It is alleged that petitioner during the year 1999-2000, manipulated the records of the society and has shown bogus receipts to the extent of Rs. 3 lacs against his name in order to qualify for inclusion of his name in the draw of lots. It is stated that qualifying amount for draw of lot was Rs. 6,88,000/- while the petitioner had paid only Rs. 3.88 lacs but got the same inflated to Rs. 6,88,000/- by showing the false entries of payments. It is claimed that subsequent investigation revealed that payments to the extent of inflated amounts received as

interest for the period of default from other members were shown against the name of the petitioner and this was done in collusion with the auditors who had failed to discharge their duties. When the petitioner's fraud came to the notice of the successor managing committee, entries in books of accounts got made by the petitioner during the period 1999-2000 were rectified, keeping in view the factual position. It is alleged that petitioner has been making baseless complaints against the respondents. Support is sought to be drawn from the inspection report of one Shri D.Bhattacharya in this regard. It is alleged that petitioner's wife has also purchased flat No. 30B, Shalimar Bagh from Smt.Charanjit Kaur and thus the petitioner violated Rule 25 of the DCS Rules and his membership was liable to be cancelled on this count also.

15. Respondent contends that petition is highly belated and barred by delay and laches inasmuch as petitioner did not raise any objection while being the Secretary/President from 1995-2001 and it is only in 2007 that this petition has been filed belatedly.

16. In short, the present writ petition is described as one actuated by personal vendetta and filed out of personal malice and as a counter blast to cover up the petitioner's own defaults. It is stated that proceedings are pending before the concerned Authorities and the present petition was thus misconceived.

17. Regarding construction of flats, the stand of respondent-society as also that of respondents 4 to 7 is that respondent-society had applied for increase in strength of membership from 66 to 70. The said increase was fully in accordance with F.A.R norms. Respondent nos.1 and 2, namely, DDA and RCS duly approved the same. It was only when the strength of membership from 66 to 70 was increased with the approval of Competent Authority then dwelling units were constructed. It is further averred that the society applied for increase in strength from 66 to 70 only when the F.A.R limit was increased by the Government/DDA. Application for increase in membership was submitted on 2nd June, 2000 and approval was given on 22nd May, 2001. The additional flats constructed are fully in accordance with revised FAR norms. The proposal for increase in strength and changed lay out Plan was duly approved. Regarding handing over of flats on 7th August, 2001

and October, 2001, it is averred that provisional possession letter was given to respondents 4 to 7 for the purpose of obtaining electricity connections. Regarding draw of lots, it is submitted that each of the four flats was of a different category and the four applicants had applied for a flat of the said particular category and as such draw of lots was not necessary. Approval of DDA and RCS was given on 22nd and 21st May, 2001 respectively.

18. We may also refer to the short affidavit filed by respondent No. 2- RCS. Respondent No. 2-RCS has averred that it gave on 22nd May, 2001 its concurrence for enrolment of four additional members and the case was recommended for draw of lots. It is reiterated that there was no violation in any manner whatsoever has been done while considering the application for increase in membership strength. Regarding the allegations made by the petitioner, an inquiry under Section 55 of the DCS Act, 1972 had been ordered.

19. Respondent No. 1-DDA in its counter affidavit has urged that disputed questions of fact are sought to be raised in this writ petition. Petitioner has not demonstrated violation of any of his fundamental rights or other statutory rights. Petitioner belatedly is seeking to question the allotment of flats to respondents 4 to 7 which was done in the year 2001 with his knowledge. Petitioner himself was the President and Secretary of the society and has chosen to keep silent all these years and now on account of personal vendetta is seeking to raise these issues after a delay of six years and on account of laches alone, petitioner does not deserve any indulgence. Respondent No. 1-DDA has denied any connivance with the office bearers of the society. It is submitted that increase in strength was as per policy which permitted increase upto 15% at the request of Society. It is stated that respondent-society has not applied for provisional occupancy/completion certificate for these four flats. Respondent No. 1-DDA claims to have issued notice to the society to enquire as to how the said flats were occupied by the members before the confirmation of allotment of said flats by DDA. As per the summary of proceedings filed by DDA and the records produced, it is seen that scheme for 66 Dwelling Units was approved on 31st July, 1996. Notice for unauthorized construction of 4 Dwelling Units in stilt area was issued on 12th February, 1999. Society agreed to rectify unauthorized construction and also produced minutes of

General Body Meeting and plans for regularization of community facility area within permissible limits. Subsequently show cause notice was issued to the Architect for construction of 4 Dwelling Units without sanction. Following the increase in strength, permission for four Dwelling Units was accorded by Group Housing Cell. Respondent no3-society vide letter dated 4th February, 2002 applied for regularization of four flats which is reproduced for facility of reference:

The permission of increasing of four flats and N.O.C was granted by Lease Administration Co.Op.Group Housing Society D.D.A vide letter No. F-7(324)90/GM/DDA dated 22.5.2001. The Society has constructed four flats accordingly within the permissible F.A.R. You are requested to regularize the same. The required documents are enclosed herewith.

This was followed by prescribed form for regularization being submitted along with charges of Rs. 8266/- being deposited on 6th February, 2008.

20. Perusal of the correspondence shows that permission for increase in strength as also regularization of four Dwelling Units construction falling within F.A.R 168.79 has been given. The regularization charges have been paid. Four additional Dwelling Units have been constructed in the stilt area which was initially meant for parking. In the regularization plan, part of the parking area which was initially a part of stilt area and where four Dwelling Units have been constructed, has been shifted elsewhere. Revised Lay out Plan and Building Plans have been regularized. Four Dwelling Units as well as changed parking space were duly regularized. Respondent No. 1-DDA has also explained that sanction accorded on 7th March, 2002 was in the printed form. We, therefore, do not find any merit in the petitioner's contention that the factum of construction had been concealed by the society or there was a misrepresentation while applying for permission. As noted earlier, DDA was aware of construction of flats having issued a notice for unauthorized construction. Moreover, the application dated 4th February, 2002 quoted in the preceding para clearly mentioned the factum of construction of four flats. The inferences sought to be drawn by the petitioner based on the standard format print out of letter dated 7th March, 2002 are misplaced. Regularization charges of Rs. 2,44,617/- already stand paid. The irregularity in raising the

construction prior to sanction thus stands condoned.

21. Coming now to the allegation regarding membership certificate bearing an earlier date than the date of passing of the resolution of the Managing Committee approving membership, learned senior counsel for respondents 4 to 7 Mr. Rakesh Munjal submitted that these were ministerial acts and would not invalidate either the membership or allotment by themselves. Mr. Munjal relies on a judgment of the Division Bench of this Court in *Shri S.K. Gambhir v. Union of India and Ors.* (WP(C) 1116/1984) to urge that the date of payment of application money or issuance of share certificate was a totally irrelevant consideration for the fixing of priority of membership. Further that it is the date of resolution of the committee which determines the date on which a member is admitted.' From the foregoing, Mr. Munjal sought to urge that share certificate being of an earlier date than the date of resolution will be of no avail. Mr. Munjal submitted that in fact there was an impasse in the functioning of the society and these certificates were in fact handed over much later though bearing the earlier dates.

22. Regarding the allotment of shop to respondent No. 8 who is the President of the Society as being contrary to the Rules, learned Counsel for respondent No. 3 and 8 sought to urge that the said shop had been taken by the President as there was no one else willing to take the shop. Further same was done to provide the facility and amenity to the members. Counsel for respondent No. 8, on instructions from respondent No. 8 submitted that respondent No. 8 would surrender the shop and respondent No. 3 would be free to allot shop to any other eligible member or person as desired.

23. We have carefully considered the submissions made, perused the record produced before us and are of the view that writ jurisdiction of this Court has been invoked by the petitioner to settle his personal scores. Petitioner himself had been the President and Secretary of the Society during the years 1996 to 2001 and was well in charge of the affairs. Even if the petitioner states that others were running the show and the petitioner was not responsible for those alleged irregularities and defalcation and mismanagement of the affairs of the society as alleged by him, at least the petitioner cannot disclaim his awareness and knowledge of the same.

The present petition is, therefore, highly belated and hit by laches. As noted earlier, petitioner's own conduct in allegedly claiming that while he had been office bearer, he made three payments of Rs. 1 lac each on 6.5.1999, 9.6.1999 and 15.7.1999 in cash, receipts of the same were not given to him respectively, does not inspire confidence. The Court had attempted to put an end to this quagmire of litigation which had enmeshed the society as also the petitioner, but the petitioner did a volte face, with Mr. Prashant Bhushan submitting on 30th July, 2008 that petitioner was interested only in pressing the reliefs claimed for in the petition.

24. Mr. Prashant Bhushan submitted that the court should confine itself to the reliefs claimed in the writ petition and it would be an abuse of legal process if it dealt with the cancellation of allotment of flat to the petitioner and its expulsion proceedings and the issue of his being a defaulter or not. The above submission is unacceptable. The court in the exercise of writ jurisdiction cannot be so circumscribed and is free to give such directions as are necessary for subserving the ends of justice. It is a different matter that in this petition, we need not decide or pronounce on the allegations made by the petitioner in relation to his cancellation of allotment and his expulsion as the same is not necessary for disposal of this writ petition. However, certain directions to expedite the pending proceedings need to be given.

25. We are of the view that this petition has been filed by the petitioner actuated with desire to settle personal scores. Petition has been filed belatedly and suffers from delays and laches. Petitioner himself chose to remain silent even though being aware and having full knowledge of the alleged irregularities and illegalities perpetrated by respondents 3 to 8 since he himself was the Secretary and President from 1995 to 2001. Petition is the result of personal vendetta as respondent No. 3 has chosen to cancel the allotment of the flat of the petitioner and passed a resolution for expulsion of the petitioner which matter is presently pending before the Financial Commissioner.

26. The freeze strength of the society having been permitted to be increased and permission for construction of four additional flats having been granted and the construction itself having been regularized on payment of penalty and

regularization charges and the flats being within the permissible limit as per F.A.R norms, no useful purpose would be served at this stage by going further into the question as to why respondent No. 3-society had raised the construction initially without permission. Allotment to respondents 4 to 8 and the non holding of the draw of lots in respect of said allotment of four flats on account of these being in different categories and there being one applicant for the said categories has been duly explained. The grievance of the petitioner with regard to allotment of shop to respondent No. 8 stands redressed with respondent No. 8 offering to surrender the same. The respondent No. 8 shall surrender the shop within a month from today. Respondent No. 3 shall be free to allot the same to any eligible person in the best interests of the society. Save the direction as aforesaid there is no other ground made out for entertaining any other relief sought in this writ petition.

In these circumstances, we direct that proceedings pending under Sections 59(2) before the Registrar, Cooperative Societies and/or designated authority be concluded within four months from today. C.R. No. 338/2007 titled Hilansh Cooperative Group Housing Society v. Avtar Vinayak and Anr. pending before the Financial Commissioner be also decided within four months from today. Registrar, Cooperative Societies shall also dispose of any other pending complaint of the petitioner/respondent No. 3 or any other member of the Managing Committee expeditiously.

Writ petition is dismissed with the aforesaid directions.

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