

(2011) 03 P&H CK 0828

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 18677 of 2010

Smt. Surinder Kaur

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: March 3, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

Citation: (2011) 163 PLR 449**Hon'ble Judges:** Mehinder Singh Sullar, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Mehinder Singh Sullar, J.

The epitome of facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that initially the house bearing No. 3323-C was allotted to one Sanjeev Bhatnagar by the Chanderlok Cooperative "House Building Society Ltd, Chakarpur, Gurgaon (respondent No. 3) (for brevity "respondent-society), governed by the provisions of The Haryana Co-operative Societies Act, 1984 and rules framed therein (herein after referred to be as "the Act").

2. Petitioner claimed that she purchased the house from the original allottee and paid the entire consideration amount, vide demand draft dated 23.11.2004 (Annexure P2) and receipt dated 27.11.2004 (Annexure P3). The possession of the said flat was also delivered to the petitioner. Consequently, the petitioner moved an application dated 15.11.2004 to the respondent-society for transferring the ownership of the flat in her name, society gave no objection certificate and confirmation letter (Annexure P4), in this regard. She took a loan from the Union Bank of India, Chakarpur, Gurgaon for a sum of Rs. 7.54 lakhs which had already been, paid by her on 02.01.2006, by means of certificate (Annexure P7). The

respondent-society was stated to have issued a letter dated 20.02.2006 (Annexure P8) intimating the petitioner that she has procured the above said loan from the Bank illegally, by way of forging the documents of the Society and stopped the transfer of the said flat. However, after verification, the respondent-society again issued transfer letter in the name of the petitioner on 30.4.2006 (Annexure P9) and also suffered an affidavit of Secretary of the Society (Annexure P10) stating therein that the petitioner has not caused any financial loss to the Society for taking loan from the Bank.

3. The case set up by the petitioner, in brief, insofar as relevant, was that the President, Secretary and other office bearers of the respondent-society, in order to grab the flat, tried to dispossess her and she was compelled to file a civil suit for permanent injunction. Raja Ram (respondent No. 4) and others were stated to have illegally taken the possession of the flat in the garb, and by means of order dated 01.02.2010 (Annexure PII), passed by the Assistant Registrar Co-operative Societies, Gurgaon (respondent No. 2). The order (Annexure PII) was set aside by this Court, by virtue of order 21.07.2010 (Annexure PI2) and respondent No. 2 was directed to decide the matter afresh, by affording effective opportunity of hearing to the petitioner and to pass a speaking order. In pursuance of the above said order of this Court (Annexure PI2), an application for restitution of possession (Annexure PI 3), containing the true facts, was moved by the petitioner but the same was dismissed by respondent No. 2, by means of impugned order dated 16.9.2010 (Annexure P14).

4. The petitioner did not feel satisfied and preferred the instant writ petition, challenging the impugned order (Annexure PI4), invoking the provisions of Article 226/227 of the Constitution of India, inter alia, pleading that the impugned order (Annexure P14) was passed in complete violation of the directions of this Court's order (Annexure P12) and against the statutory provisions of law. The impugned order (Annexure P14) is stated to be non-speaking and non-reasoned order.

5. Leveling a variety of allegations and narrating the sequences of events, in all, according to the petitioner, that impugned order (Annexure P14) is illegal, bad in law, without jurisdiction, non-speaking and against the legal provisions of her fundamental rights. On the basis of aforesaid allegation, the petitioner sought the quashment of impugned order (Annexure PI4), in the manner depicted herein above.

6. The respondents contested the claim of the petitioner and filed their separate written statements, inter alia, pleading certain preliminary objections of maintainability of the writ petition, cause of action and locus standi of the petitioner. They have denied the entitlement of the petitioner to have the flat in question. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations, contained in the writ petition and prayed for its dismissal.

7. Controverting the allegations of the written statements and reiterating the pleadings contained in the writ petition, the petitioner filed the replication.

8. Having heard the learned counsel for the parties, having gone through the record and relevant provisions of the Act, with their valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the present writ petition, in this context.

9. As is evident from the record that this Court vide order (Annexure PI2) directed the Assistant Registrar to decide the matter afresh, by affording effective opportunity of hearing to the petitioner and to pass a speaking order. In pursuance of the order of this Court (Annexure PI2), the petitioner moved an application (Annexure PI3), which was decided by the Assistant Registrar, by way of impugned order (Annexure PI4), the operative part of which is as under:

In view of the above, the following main issues arises from the above enquiry:

- (a) Whether Smt. Surender Kaur has sold the flat in question to Sh. Raja Ram or not?
- (b) Whether the society followed the procedure rightly for transferring the flat in question to Sh. Raja Ram in accordance with law.
- (c) Whether Smt. Surinder Kaur become the member of the society i.e. in year 2004 or 2006.

Therefore, I am of the opinion that the above dispute arises between the members and the society. There is specific provision available in Section 102-103 of the Haryana Cooperative Societies Act 1984 to decide such type of arbitrary dispute by the Arbitrator and it will be proper to decide this dispute under the above provision available in the Act. Moreover Decree/Award passed by the Arbitrator under this section will be executable under the provision of the Act. Hence the parties are directed to file an arbitration dispute u/s 102 of the Haryana Cooperative Societies Act 1984 in the proper form before the competent authority. This order was kept reserved on dated 9.9.2010, which is announced today on 16.9.2010. Parties be informed accordingly.

10. Meaning thereby, the Assistant Registrar directed the petitioner to raise a dispute. Instead of raising a regular dispute under Sections 102 & 103 of the Act, the petitioner has straightway filed the instant writ petition.

11. Ex facie, the argument of learned counsel for the petitioner that since the subject matter of the list is not covered under Sections 102 & 103 of the Act, so the writ petition is maintainable, is neither tenable nor the observation of Hon''ble Apex Court in case [I.R. Hingorani Vs. Pravinchandra Kantilal Shah and Others](#), wherein it was observed that as third person claiming his rights through the member of the Society, therefore, he (third person) was not acting as a member of the Society and the case did not fall within Section 91(1)(b) of the Maharashtra Co-operative

Societies Act (24 of 1961).

12. There is hardly any dispute with regard to the aforesaid observation, but the same would not come to the rescue of the petitioner in the present controversy.

13. As is clear, Section 102 of the Act, inter alia, postulates as under:

Dispute for arbitration:

(1) Notwithstanding anything contained in any law for the time being in force, in any dispute touching the constitution, [- - -] management or the business of a co-operative society [other than a dispute of disciplinary action or dispute relating to service matters in respect of a paid servant of a society] arises.

(a) among members, past members and persons claiming through a member, past member or deceased member; or

(b) between a member, past member or persons claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent or employee of the society; or

(d) between the society and any other society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such disputes shall be referred to the arbitration of the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

Sequally, the method of reference of dispute is provided u/s 103 of the Act.

14. What is not disputed here is, that since the subject matter of the dispute of the petitioner is with the respondent-society, pertaining to flat in question, so, to my mind, the dispute squarely falls within the ambit of Sections 102 & 103 of the Act. Therefore, argument/objection of learned counsel for the contesting respondents that in such circumstances writ petition is not directly maintainable, has considerable force and the contrary arguments of learned counsel for the petitioner "strictu censu" deserve to be and are hereby repelled, in the present set of circumstances.

15. In the light of the aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed as such.

16. Needless to mention here that keeping in view the nature of litigation and the urgency of the matter, the petitioner would be at liberty to raise a regular dispute under Sections 102 & 103 of the Act, which shall be decided by the Arbitrator, as expeditiously as possible." Till then, the allotment/transfer of ownership of the flat

in question is hereby stayed.