

(2014) 07 P&H CK 0794

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 7452 of 2011 (O&M)

The Chetna Cooperative Group
Housing Society Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 18, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: H.K. Aurora, Advocate for the Appellant; Sandeep S. Mann, Sr. DAG, Arun Gupta and Dinesh Nagar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Paramjit Singh Patwalia, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 26.02.2007 (Annexure P-22) passed by respondent no. 2 whereby the petitioner-Society has been directed to allot a flat to respondent no. 3 within three months on depositing all the dues and order dated 01.12.2010 (Annexure P-23) passed by respondent no. 1 whereby revision filed by the petitioner-Society has been dismissed.

2. I have heard learned counsel for the parties and perused the record.

3. Respondent no. 3-Col. Sukhjinder Singh Randhawa filed CWP No. 9930 of 2006, titled "Col. Sukhjinder Singh Randhawa vs. RCS and another" and the same was disposed of by a Division Bench of this Court vide order dated 06.07.2006 which reads as under:

During arguments, it has transpired that for the grievance, which the petitioner has raised in this writ petition, he has already moved a representation (Annexure P-14) which is still pending.

Without expressing any opinion on merits, this writ petition is disposed of with a direction to respondent no. 2 to take note of and decide representation of the petitioner, as per law. Order be passed after giving opportunity of hearing to the petitioner. Needful be done within three months from the date of receipt of a copy of this order.

4. Thereafter, respondent no. 3 filed CM No. 15171 of 2006 u/s 151 CPC for modification of order dated 06.07.2006 passed in CWP No. 9930 of 2006 to the extent that such direction be issued to respondent-the Registrar, Cooperative Societies, Haryana instead of respondent no. 2 in that petition. On 15.09.2006, the said application was allowed and following order was passed:

This application has been filed to modify the orders dated 06.07.2006.

By taking note of the averments made in this application, it is allowed and it is directed that in order, referred to above, instead of "respondent no. 2", it be read as "respondent no. 1".

5. After hearing the parties, Registrar, Cooperative Societies, Haryana passed the following order:

8. It is undisputed on record that Col. S.S. Randhawa was inducted as a member of the society and he was issued a membership certificate on 07.07.2000. It is also undisputed that an amount of Rs. 1,90,866/- was also paid by Col. S.S. Chahal towards cost of the land. Despite repeated queries, the President of the society was only able to show photocopies of the letters which are alleged to have been sent to Col. S.S. Randhawa. The President of the Society could not produce any record of the society to show that the same were sent through registered post or the same were ever received by Col. S.S. Randhawa. There is also no record which shows report of the postal authorities or any other report/acknowledgment sent by the post office that the letters sent by the society were ever delivered to Col. S.S. Randhawa. The President of the Society has produced photocopies of letters which were sent to Col. S.S. Randhawa at the address given to the society i.e. c/o Shri Ujjal Singh Bajwa, 446, Sector 35-A, Chandigarh. On the other hand, I have seen letter dated 28.10.2003 sent by Col. S.S. Randhawa to the then President of the Society specifically mentioning that his correspondence address has been changed and in future correspondence be sent to H. No. 2400, Phase 10, Opposite Silvi Park, Mohali, (Punjab) as the address of Shri Ujjal Singh Bajwa was changed. This letter has not been disputed by Sh. Rajinder Verma, President of the Society. I also find something strange in relation to the conduct and functioning of the society, especially when it was dealing with a member of the arms forces. It has been brought to my notice that Col. S.S. Randhawa remained posted at various places from 1988 to 2004. A

society which was floated for the benefit of defence service officers would be very well aware of the fact that defence officers generally in the discharge of their duties are posted at various places. It is totally unimaginable as to how the society did not even care to find about the whereabouts of Col. S.S. Randhawa when his work was very well known to them. I have seen the affidavit of Col. S.S. Chahal who was the initial member and who had sold his share to Col. S.S. Randhawa (he was holding the rank of Major at that time). The society has not been able to show their bona fide in trying to ever contact Col. S.S. Randhawa, it has also come on record that the construction was completed and draw for allotment of flats was held in the year 2005. The society has not able to show any proof of service of sending communication to Col. S.S. Randhawa.

9. The society has come forward with an argument that a member can be expelled from the society u/s 9 of the bye-laws of the society when he becomes a defaulter. u/s 9 of the bye-laws, it has been specifically mentioned that the committee shall give a member 30 days written notice of the proposal to expel him and the member's explanation, if any, shall be placed before the general body meeting for consideration. In the present case, before terminating the membership of Col. Randhawa, no written notice has been issued to him. Neither, the society has been able to produce any such notice which the society may have sent to Col. S.S. Randhawa. Therefore, it is clear that the procedure as contemplated u/s 9 of the bye-laws of the society was not followed while terminating the membership of Col. S.S. Randhawa. Section 9(a) of the bye-laws specifically mentions that a member can be expelled from the society by the general body by not less than three-fourth (3/4) of the members present and voting at a general meeting of the society. The society has not been able to show anything that any meeting of the general body was called for expulsion/cancellation of membership of Col. S.S. Randhawa and that proper quorum of the general body was present and voting in that regard was ever made. Furthermore, if any such decision is taken, it is mandatory to obtain the approval of Registrar. I have gone through the record minutely and have not been able to see that any approval was ever applied or obtained from the Registrar with regard to cancellation/termination of the membership of Col. S.S. Randhawa. It is further borne out from the record that u/s 9(c) of the bye-laws, a member so expelled shall be refunded through transfer the amount received by the society in respect of the shares held by him. It is conceded case of the society that an amount of Rs. 1,90,866/- was deposited by Col. S.S. Chahal, who was the original member and later on sold his share to Col. S.S. Randhawa. The said amount is still lying in the account of the society and they are ready to refund the same to Col. S.S. Randhawa at this stage, when he has agitated the matter. This goes to show that while effecting termination of the membership of Col. S.S. Randhawa, vide resolution dated 30.05.2004, no amount of refund was ever sent to him at any stage.

10. In light of the above mentioned facts and circumstances, I am left with no other option but to hold that the expulsion/cancellation of the membership of Col. S.S.

Randhawa was illegal and was done with some ulterior motive to benefit the officer bearers of the society or some person known to them. Therefore, the resolution dated 30.05.2004, passed by the society, cancelling the membership of Col. S.S. Randhawa from the society, is set aside and his name is ordered to be restored to the original place and seniority in the list of members of the society and Col. S.S. Randhawa shall be deemed to have been considered as member of the society for all intend (sic. intents) and purposes as if he was never expelled from the membership of the society.

11. As a result of setting aside of resolution dated 30.05.2004, I further order and direct Col. S.S. Randhawa to deposit and clear all the dues of the society. On depositing the due amount by Col. S.S. Randhawa, the society shall allot a flat to him within three months thereafter in accordance with his entitlement, as 32 flats have been constructed on the land allotted to the society and it is stated that in the draw of lots held in the year 2005 only 30 flats were included and two flats remains to be allotted.

6. Thereafter, the petitioner preferred a revision before the Financial Commissioner and Principal Secretary to Govt. Haryana, Cooperation Department which was dismissed vide order dated 01.12.2010 and following order was passed:

After hearing and perusing the record of the case, I find that first the society has made up a new case before this Court. If respondent no. 2 was not member of the society then whey the resolution dated 30.05.2004 was passed in regard to the expulsion of the respondent no. 2 It was admitted before the RCS that a member certificate was issued to respondent no. 2 on dated 07.07.2000. It is also admitted fact that as per record of the society, Sh. S.S. Chahal had sold his share to respondent no. 2 and Sh. S.S. Chahal has deposited an amount of Rs. 1,19,866/- with the society and the same is lying balance in the account of the society. The case of the society before RCS was that the membership of respondent no. 2 was terminated vide resolution dated 30.05.2004 for not depositing the due amount. But here the case of the society is totally different which cannot be allowed at this stage.

Keeping in view of all above facts, the appeal filed by the Chetna Cooperative Group Housing Society Limited is hereby dismissed and the order dated 26.02.2007 passed by the RCS, Haryana is upheld with the modification that the Chetna Cooperative Group Housing Society Limited shall calculate the dues payable by the respondent no. 2 Col. Sukhjinder Singh Randhawa at the same terms and conditions as has been done in the cases of original members/allottees; and from the date of issue of this order, communicate the same to Col. Randhawa within a period of two weeks, through registered post. Thereafter, within a period of four weeks, Col. Randhawa shall deposit the said amount with the appellant-society.

7. Now, it is the stand of the petitioner that respondent no. 3 was not the member of the society and no flat was available with the society. Be that as it may, the fact

remains that respondent no. 3 has been held to be a member of the society, but subsequently he was allegedly expelled from the society without assigning any reason.

8. The contention of learned counsel for the petitioner is that there is a fraud committed by respondent no. 3, but no record is available to this effect. Findings of fact have been recorded by both the authorities and in view of the same, this Court cannot re-appreciate the matter under Article 226 of the Constitution of India.

9. In view of above, I do not find any merit in the present petition.

10. Dismissed.

11. No order as to costs.