

# SUPREME COURT OF INDIA

Delhi Development Authority

Vs.

Bankmens Co-operative Group Housing Society Ltd.

C.A.No.6805 of 2013

(Pinaki Chandra Ghose and Deepak Gupta,JJ.,)

17.04.2017

## JUDGMENT

**Deepak Gupta,J.,**

1. These appeals are being disposed of by a common judgment since common issues of fact and law are involved.

2. We may first refer to the facts of Civil Appeal No. 6805 of 2013 relating to Bankmens Co-operative Group Housing Society (hereinafter referred to as the 'Bankmens CGHS' ). Some employees of the State Bank of India resolved to form a Co-operative Group Housing Society, namely Bankmens CGHS Ltd., on 06.10.1983 under the Chairmanship of one Deepak Khanna. The Society was registered with one Shri R.K. Mangla, as its Secretary. The Society had given a list of 74 promoter members. Correspondence was exchanged between the Bankmens CGHS, Registrar of Co-operative Societies (hereinafter referred to as 'RCS5) and the Delhi Development Authority (hereinafter referred to as 'DDA' ). The Bankmens CGHS did not comply with various directions of the RCS and it was placed under liquidation on 30.03.1992. Though Liquidator was appointed, he did not take over the records of the Bankmens CGHS.

3. Some time between 1999-2000, almost after 16-17 years the Bankmens CGHS had been formed, and 7 years after it was placed under liquidation, an application for revival of the Society was filed by one Rajan Chopra. Admittedly he was not one of the original promoters of the Society. Though initially, objections were raised to the revival of the Society, the Society was finally revived on 13.07.2000. On 22.08.2000, a list of 74 members of the Bankmens CGHS was approved for allotment of land and on 02.11.2001, the appellant DDA issued provisional Letter of Allotment of land to the Society. Though the land was allotted yet the same was not handed over to the Society. Aggrieved by this, the Bankmens CGHS filed a Writ Petition No.1521 of 2004 before the Delhi High Court in 2004 and on 31.05.2004, this petition was disposed of with a direction that land be provided to the Bankmens CGHS. Against this, the DDA filed an LPA No. 912 of 2004 which was disposed

of on 08.02.2006, directing that the verification of members be undertaken either by the DDA or by the RCS and, thereafter, possession of land be handed over to the Society within a period of two months subject to making payment as demanded by the DDA.

4. The case of the appellant is that when it requested the RCS to verify the names of the members, the reply given was that all the records of the Bankmens CGHS were with the Central Bureau of Investigation (hereinafter referred to as the 'CBI') pursuant to the directions issued by the High Court of Delhi in Writ Petition No. 10066 of 2004, filed by one Yogi Raj Krishna Bankmens Co-operative Group Housing Society Ltd. & Ors. Thereafter, DDA wrote to the CBI but the CBI did not provide the record and replied that it was the duty of the RCS to verify the names of the members. In the year 2012, the Bankmens CGHS filed another Writ Petition No. 3546 of 2012 praying for directions to the DDA to handover the vacant possession of plot pursuant to the directions in LPA No.912 of 2004 decided on 08.02.2006. The Writ Petition was disposed of on 23.07.2012. The Delhi High Court directed the DDA to process the case of the Bankmens CGHS for possession of plot within a period of one month. This order is under challenge in Civil Appeal No. 6805 of 2013 @ SLP (C) No.18747 of 2013.

5. The facts of Safdarjung Co-operative Group Housing Society (hereinafter referred to as 'Safdarjung CGHS'), are similar. The Safdarjung CGHS was registered with the RCS on 18.11.1983. One Shri Sudarshan Tandon moved an application on 09.08.1983 for registration of the Safdarjung CGHS showing that it had 83 promoter members. The Society wanted to change the names of its members but this action was not approved by the RCS and finally on 06.11.1990 an order was passed for liquidating the Safdarjung CGHS. Some of the records of the Safdarjung CGHS came into possession of one Mahanand Sharma who was not even a member of the Safdarjung CGHS. On 01.12.1998, an application was moved by Mahanand Sharma for revival of the Safdarjung CGHS. Thereafter the Safdarjung CGHS was revived on 26.04.1999. On 24.11.1999 the Office of the RCS recommended the name of Safdarjung CGHS for allotment of land. After the Society was revived, like in the case of Bankmens CGHS, a plot of land was provisionally allotted to Safdarjung CGHS. Thereafter, Safdarjung CGHS filed a Writ Petition No.1990 of 2004, which was disposed of along with the case of Bankmens CGHS (WP No. 1521 of 2004). Aggrieved by this order, an LPA No.904 of 2004 was filed by the DDA in this case also and identical order was passed for verification of the members. Thereafter, similar correspondence took place between the DDA, Office of the RCS and the CBI.

6. On 03.03.2011, Safdarjung CGHS filed a Writ Petition (C) No. 13298 of 2009 in the High Court of Delhi claiming that though it had paid the amount demanded to the DDA, the plot of land in Dhirpur had not been handed over on account of the CBI case pending against the office bearers of the Society. The High Court directed that the RCS should initiate fresh enquiry into the list of members submitted by the Safdarjung CGHS and it may also rely upon the investigation undertaken by the CBI. On 14.09.2011 enquiry report was submitted and it was found that the list of members was not authentic. Thereafter, the RCS on

10.01.2012 passed an order that the names of the members of the respondent Safdarjung CGHS cannot be recommended to the DDA for allotment of land.

7. Aggrieved by the aforesaid order of the RCS on 28.01.2012, Safdarjung CGHS filed Writ Petition (C) No. 1168 of 2012 claiming that the Society was a genuine Society and the Writ Petition was disposed of on 27.02.2012 on the ground that the case of the Safdarjung CGHS was identical to the case of Lords Cooperative Group Housing Society Vs. Registrar, Cooperative Societies and Ors., which was disposed of on 23.05.2011. The RCS was directed to take fresh decision in the matter. Thereafter, on 02.05.2012, the RCS recommended the names of the members of Safdarjung CGHS to the DDA. After the decision of the High Court in Bankmens CGHS s case on 23.07.2012, the Safdarjung CGHS filed Writ Petition (C) No. 5109 of 2012 claiming relief of physical possession of the allotted plot. The High Court disposed of the petition upon the statement of the counsel for DDA that the plot would be handed over to the Society within a period 15 days. It is not disputed that possession of this plot was actually handed over to the Safdarjung CGHS pursuant to this order. Both the order dated 27.02.2012 passed in W.P.(C) No.1168 of 2012 and order dated 22.08.2012 passed in W.P.(C) No.5109 of 2012 have been challenged in C.A. Nos. 6803-6804 of 2013 @ SLP (C) Nos. 3268-3269 of 2013.

8. Another important fact which is relevant for decision of these cases is that the DDA had fixed a cut-off date of 31.10.2003 for allotment of land to the short-listed societies. One Yogi Raj Krishna CGHS filed a Writ Petition No. 10066 of 2004 alleging that a large number of bogus societies which were either non-existent or defunct, or otherwise were not eligible for allotment of land had been included in the list of societies after the cut-off date. In this Writ Petition a Division Bench of the Delhi High Court in its order dated 25.08.2008 observed as follows :-

“3. During the pendency of proceedings and on consideration of the material on record, it was felt that the matter required further probe and consideration on account of ‘Builders’ having taken over Cooperative Societies. It was observed in order dated 22.11.2004, that societies were being sold and bought by builders in Delhi. Court expressed its deep concern over the matter and called for Vice Chairman, DDA and Registrar of Cooperative Societies to be present in person in court. Pursuant to said order Mr. M. Gupta, Vice Chairman, DDA and Mr. S. Gopal Sharma, Registrar Cooperative Societies, appeared in person in court and they informed that authorities were aware that after allotment of land to Cooperative Housing Societies in certain cases, the society as a whole is purchased by Builders and thereafter members are changed on the basis of en masse resignations, expulsions and new members inducted by charging premium at market rates, taking advantage of loopholes in the Rules and Regulations. The Court observed the need for formulation of a comprehensive policy with regard to allotment of land to Cooperative Societies taking into account the above factors. Union of India was also issued notice and has filed its affidavit. Learned Additional Solicitor General pointed out that an earnest attempt was being

made to see that land allotted to societies was not hijacked by the builder mafia in Delhi and certain suggestions were placed on record.

4. On 05.04.2005, DDA was directed to file an affidavit pertaining to the categorization of societies i.e. list of those societies which underwent liquidation and now were seeking revival and allotment of land and the list of genuine societies which had approved list of members till 31.10.2003, from the office of Registrar Cooperative Societies, with their membership duly verified.

5. Considering the enormous amount of money that had been pumped in and invested by the influential Builder mafia and other vested interests, collusion and complicity of the staff and officers of RCS and others to hijack the societies, Director CBI was directed to constitute a special investigation team headed by an officer not below the rank of DIG with adequate staff to investigate the whole matter. On 31.08.2005, counsel appearing for CBI informed about outcome of preliminary investigation. CBI was directed to file a detailed affidavit in this regard. On 03.10.2005 CBI filed status report wherein it pointed out that out of 135 societies, 19 societies appeared to be genuine, the names of said societies had been given in Annexure A to the report. On the same date the names of those societies were ordered to be deleted from the list of 135 societies which were directed to be scanned by the CBI. Registrar Cooperative Societies was directed to verify the list of members in accordance with law.

6. During the pendency of proceedings, this Court further noted that many societies had been allotted land after the year 2000. It was noted that as the price of the land started soaring in Delhi after the year 2000, this spurt in land prices led to unholy nexus between builders and powerful persons in various authorities. Societies which were hitherto defunct or had lost interest in allotment for one reason or another were sought to be revived by the office of the Registrar of Cooperative Societies and thereafter land was demanded from DDA on the basis of such recommendation. The Court ordered DDA and Registrar of Cooperative Societies to give details of all the societies which were allotted land after the year 2000 and also directed them to produce the relevant files in court along with recommendations of allotment to DDA. CBI was directed to look into those allotments and also with regard to the members who had been allotted land. Mr. K.C. Mittal, Advocate was appointed Amicus Curiae to assist the Court.”

The High Court observed that since the builder mafia was very influential and there was collusion between the builder mafia and officers of the RCS, the investigation should be carried on by the CBI. The Director, CBI submitted his report pointing out that out of the 135 societies only 19 appeared to be genuine. The CBI both in the case of Bankmens CGHS and Safdarjung CGHS filed chargesheet against some of the office bearers of these two Societies and also officials of the RCS and the RCS himself, alleging that the Societies were revived in an illegal manner.

9. As far as Bankmens CGHS is concerned the charges are that the revival application was filed by one Rajan Chopra by hatching a criminal conspiracy along with officials of RCS and Shri R.K. Srivastava, Registrar of the RCS, to fabricate and manufacture false documents to revive the Bankmens CGHS. The address of the Society was changed. It is also alleged that Rajan Chopra submitted a forged 'No Objection Certificate' dated 29.12.1999 purported to have been issued by Shri Vipin Gandotra, Proprietor of M/s VG & Co., in this regard. Initially, when the official of the RCS went to the address he found that no such Society was existing at the address and, therefore, he recommended that the Society should not be revived. However, another Dealing Assistant prepared a false note which was forwarded by other officials of the RCS at the instance of the then RCS R.K. Srivastava and the Society was revived. The case of the CBI is that though a fresh list of 74 members was given, not even one of these members was from the original list of 74 members when the Society was incorporated in the year 1983. The case of the CBI further is that 35% of the cost of the land had to be paid by the Society to the appellant DDA. This money, according to the CBI was not paid by the enrolled members of the Society but a group of builders comprising of accused S.P. Saxena and Sandeep Sahni who had taken over control of the Society and paid a sum of Rs. 67,38,800/- from their joint S.B. Account No. 18699 with the Central Bank of India, South Extension, Part-II, New Delhi Branch. Thus the case of the CBI is that this Society was illegally revived. It would be pertinent to mention here that after the filing of SLP (C)...CC No. 2696 of 2013 (CA No. 6805 of 2013 @ SLP (C) No. 18747/2013), this Court passed an order on 29.01.2013 directing the appellant DDA to file an additional affidavit. In this affidavit it has been mentioned that the Bankmens CGHS was registered at 21, Inder Enclave, Rohtak Road, New Delhi, with 65 promoter members but on 31.07.1985, Shri R.K. Mangla, requested the RCS to approve a list of 74 members. Some issues were raised by the RCS but the Bankmens CGHS did not respond to the letter of the RCS and, thereafter, the Society was placed under liquidation. When the accused Rajan Chopra filed an application for revival of the Society on 11.11.1999 the address of the Society was changed to 44/7-B, Regal Building, Connaught Place, New Delhi. The allegation is that the Society was revived fraudulently and that the names of the members of the Bankmens Society as in 1993 were never forwarded to the RCS at the time of revival of the Society and fresh members were inducted. Even the list of members pertaining to the year 1999 is totally different from the list of members as on 31.03.2003 and this list has been changed substantially on 31.03.2011. There were many resignations and new additions of new members. None of the original members of the Society whose names were listed in the list that was forwarded to the DDA on 22.08.2000, feature in the list of members of the Bankmens Society as on 31.03.2011. The entire membership list is totally different. Even out of the list of 74 members as given on 31.03.2003 there are only 13 members in the list of members as on 31.03.2011 and the other 61 members were totally new.

10. As far as the membership of Safdarjung CGHS is concerned, the facts are very similar. It would be pertinent to refer to the inquiry report in respect of this Society filed in the High Court of Delhi in W.P.(C) No. 13298 of 2009. In the enquiry report it was observed that the Society was initially formed on 18.11.1983 with 83 members. This Society was wound up in the year 1990 and as such there was virtually no society which could be revived. Be that as it

may, the next list of members is of the year 1999. This list was submitted by one Mahanand Sharma. It would be pertinent to mention that Mahanand Sharma was not a member of the Society in 1983. According to this report as also as per the charge-sheet submitted by the CBI Mahanand Sharma has, in fact, forged the signatures of original members and has also forged the signatures of many members. During the inquiry by the CBI it was found that those members who were shown to have resigned from the Safdarjung CGHS had denied their signatures on the resignation letters. Therefore, the list pertaining to the year 1999 itself was a forged and a fake list.

11. In this case there is another list of members of the year 2009. This list came to the knowledge of the authorities only when it was filed along with W.P.(C) No. 13298 of 2009 and this list was not validated by the RCS at any point of time. This list is not only different from the list of 1983 but also very different from the list of 1999. New members could have been enrolled only after the resignation of old members but intimation of resignation of a member has to be sent to the Office of RCS. The case of the CBI is that the resignations of most of the members are forged. As pointed out above none of the members of the 1983 list are shown as members in the year 1999. In this case also the address of the Society was changed from SDA Shopping Complex to Jagriti Enclave. In this case when the Secretary of the so-called Safdarjung CGHS moved the RCS for approval of the new list of members on 16.12.1999, a noting was made that the Secretary of the Society be asked to give all the records relating to the resignations and enrollments. It was also noted that the address of the Society was changed more than twice in a year. No response was received from the Society and hence, according to this report the membership list was totally fraudulent. Even with regard to the members shown in the list of 2009, the report found various anomalies in the same. Therefore, the Registrar refused to accept the list of 2009 and refused to recommend the name of the Safdarjung CGHS for allotment of land. This order was challenged by the Safdarjung CGHS by way of a writ petition and the High Court while disposing of the writ petition held that this case was similar to the Writ Petition (C) No. 2441 of 2011, Lords Cooperative Group Housing Society vs. Registrar, Cooperative Society and Ors. decided on 23.05.2011. It was argued before the High Court that in the case of Lords CGHS the land had not only been allotted but possession of the land had also been taken, flats had also been constructed and they were ready for allotment. The High Court rejected this plea on the following grounds:-

“ We, however, find that the ratio of the said judgment is that where such societies had been permitted to be revived, contributions made by the members whether towards land or cost of flat, the matter should not be re-agitated. The verification had to be carried out by the DDA at the time of allotment of land over which there is no dispute. The allotment is still subsisting. The impugned order 10.01.2012 does not even note this judgment delivered by us and proceeds on the basis as if the allotments are yet to be made. In fact the necessary recommendation has to be made to the DDA qua the eligible persons and not that the land allotted to the society itself stand scrapped. The allotment of land is a function of the DDA....”

This judgment is under challenge in W.P.No.13298 of 2009.

12. Shri Ranjit Kumar, learned Solicitor General appearing for the DDA submits that the High Court fell in error in relying upon the judgment rendered in Lords CGHS case (supra). His submission is that the factual situation in that case was entirely different. In Lords CGHS case (supra) not only had the land been allotted, possession of the land had also been handed over to the Society, construction of the building was completed and the flats were ready. It was in these circumstances that the Delhi High Court held that the members of the Society were entitled to get possession of the flats. No doubt, the decision of the Delhi High Court, in Lords CGHS case (supra) was upheld by this Court but while upholding the judgment this Court observed that in view of the fact that construction was complete and flats were ready for allotment, the members of the Society should not be denied possession of the same. Shri Ranjit Kumar has drawn our attention to the various orders passed by this Court in different cases and a bare perusal of these orders show that this Court did not go into the merits as to whether the Society could have been legally revived or not, but either disposed of the SLPs by a non-speaking order or rejected the same on the ground that construction was complete. It is further urged by Shri Ranjit Kumar that the revival of the Societies was a fraudulent act and he submits that fraud vitiates all decisions and in this regard he made reference to the judgment of this Court in *Bhaurao Dagdu Paralkar v. State of Maharashtra*<sup>1</sup>, relevant portions of which read as follows:-

“9. By “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression “fraud” involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

10. A “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage.

11. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to

be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.”

13. We have heard learned counsel for the respondents and they have also filed their written submissions. It would be pertinent to mention that counsel for the respondents have not countered the submission of the learned Solicitor General that the revival of the Societies was illegal and fraudulent. The main submission is that the new members were validly granted membership in the Bankmens CGHS. They are not at fault and hence they should not be made to suffer. It is also urged that the allegation that Rs.67,38,800/- was paid out of the funds of builders is incorrect and, in fact, this amount was paid out of the funds of the Society.

14. In Safdarjung CGHS additional grounds have been taken that the DDA had not, in fact, challenged the orders dated 27.02.2012 and 22.08.2012 but only after the land which was the subject matter of dispute in Bankmens CGHS case was illegally given to some third party, it was felt by officials of the DDA that contempt proceedings may be initiated against them and, therefore, appeal was filed in Safdarjung CGHS case also. Again on merits all that has been stated is that after revival in the year 1999, the membership is genuine and bonafide and that the genuine members cannot be denied what is rightfully due to them.

15. We have carefully considered the arguments of both the sides. As pointed out by the Delhi High Court in Yogi Raj Krishna CGHS’ s case (supra) it is more than apparent that the builder mafia was instrumental in getting the societies revived. The CBI conducted investigation on the directions of the Delhi High Court. After investigation triable cases have been made out against the office bearers of both Bankmens CGHS and Safdarjung CGHS and some officials of the RCS. In Safdarjung CGHS’ s case an inquiry was conducted on the directions given by the Delhi High Court and in that inquiry it was found that the memberships were not genuine. But that report has been brushed aside by the High Court, only on the ground that this case is covered by Lords CGHS’ s case. We are in agreement with the learned Solicitor General that the facts of these cases are totally different from the facts of the Lords CGHS’ s case. In these cases even though provisional allotment was made more than 15 years back, yet the plot of land was never handed over to the Bankmens CGHS, and in the case of Safdarjung CGHS possession of land was handed over only after the intervention of the Delhi High Court in the year 2012 and the construction has not even started. Therefore, these two cases stand on a totally different footing.

16. As repeatedly held by this Court when an action is based on fraud the same cannot withstand the scrutiny of law. The revival of these Societies is mired in controversy. When

we talk of revival it would normally mean that the society is being revived by its original members. As far as these two cases are concerned the move for revival was started by persons who were not even members or promoters of the original society. The revival of societies was funded by the builders. The original members have all vanished into thin air. There is no explanation as to how they resigned and who accepted their resignations. There is nothing on record to show how Rajan Chopra, in case of Bankmens CGHS and Mahanand Sharma, in case of Safdarjung CGHS were entitled to file the application for revival. We also cannot lose sight of the fact that both the Societies were put under liquidation because they could not furnish some information to the Office of the RCS. There is not even a plea that when the revival was done the RCS was satisfied that the reasons for which the Societies were liquidated no longer existed. It is also obvious that memberships kept changing and almost all the members of these two Societies are persons who were granted membership after the year 2003, i.e. after the cut-off date referred to in Yogi Raj Krishna CGHS' s case. We are, therefore, clearly of the view that the very revival of the Societies is illegal and that when the foundation falls the edifice which has been developed on the foundation must go.

17. The argument made in Safdarjung CGHS' s case is that the DDA had acquiesced to the orders passed by the Delhi High Court. This argument is without merit. The delay in filing the petition was condoned and now the respondents cannot be allowed to urge that the appeal is not maintainable. We may make it clear that we have not gone into certain arguments of the learned Solicitor General where he had referred to the charge sheets in both the cases because we felt that we should not make any comment that would have bearing on the criminal trial. We further clarify that any observations made herein have been made only with a view to decide these cases and will have no impact on the criminal cases.

18. Another argument raised is that verification of the members is only to be done when the plots are to be allotted and such verification is not required at the time when the land is to be allotted to the Society. We are not at all in agreement with this submission. If this submission is accepted, in every case the DDA will be presented with a *fait accompli* and the situation as prevailing in Lords CGHS' s case would come into play. In a case like the present one where the very revival of the society or the creation thereof is wholly illegal, verification of the members must be done even at the stage before the land is allotted to the society.

19. In view of the above discussion we are clearly of the view that the revival of the Societies was illegal. It was manipulated by persons who had no connection with the Societies. We are *prima facie* of the view that the builder mafia had a big hand in getting the Societies revived. Hence we hold that the very revival of the Societies is illegal and the memberships are not genuine and hence the appeals are allowed. However, there may be some members of the Societies who must have been duped by the promoters. Therefore, we direct the DDA to refund the money deposited to the Societies along with interest @10% p.a with effect from the date when the money was deposited with the DDA. The amount be paid within 2 months from today. The Societies shall in turn ensure that within 4 weeks thereafter the amount deposited by the members is returned to them along with the interest aforesaid. This will alleviate the hardship of genuine members.

20. Accordingly, Civil Appeal Nos. 6805 of 2013 and 6803-6804 of 2013 filed by the DDA are allowed and the judgments/orders of the Delhi High Court 23.07.2012 , 27.02.2012 & 22.08.2012 are set aside and the Writ Petition (C) Nos. 3546, 1168 and 5109 of 2012 filed by Bankmens CGHS and Safdarjung CGHS are dismissed with the aforesaid terms.

21. This appeal is directed against the interim order of the Delhi High Court whereby the High Court directed that the membership of the Society be got verified. In view of what has been discussed above, there can be no ken of doubt that verification of the members must be done to ensure that the members of the society are genuine members. Hence Civil Appeal No. 8627 of 2014 is dismissed.

Judgment Referred.

<sup>1</sup>(2005) 7 SCC 0605