

SUPREME COURT OF INDIA

Nisha Singla

Vs.

Adarsh Colony Cooperative House Building Society Ltd.

C.A.No.3963-3965 of 2019

(Dr.D.Y.Chandrachud and Hemant Gupta,JJ.,)

16.04.2019

JUDGMENT

S.L.P(C)No.29157-29159 of 2011

1. Leave granted.
2. Challenge in the present appeals is to an order passed on 16.05.2011 in the review application filed by the appellant and the order dated 09.12.2002 passed in Writ Petition No. 19358 of 2002 by the High Court of Punjab and Haryana.
3. The case has a chequered history. The appellant is one of the founder members of the Society established to provide residential plots to its members. The Appellant deposited some amounts between 12.05.1975 to 15.01.1982 for the purpose of allotment of a residential plot. The credit balance as on 15.01.1982 is said to be Rs. 11,475/-. The Society made a request to the Chairman of Improvement Trust, Ludhiana for development of the land. The Improvement Trust later framed a Scheme of the acquisition of land. The Society apprehended that in execution of the Scheme framed, the Society was likely to be deprived of the land. The Society filed a Writ Petition No. 1625/1981 before the High Court raising a grievance that Society has purchased some land and formed a Cooperative Society for building of houses for its members and that the Scheme of the Improvement Trust will jeopardise the desires of the members of the Society to own a plot for their residences. The High Court passed an order on 26.11.1981 directing that the State Government should find a way either by amending rules or by issuing instructions under the existing laws for accommodating the Society.
4. It appears that the Punjab Government accepted the request of the Society but put a condition that the plots will be allotted to those who were the members of the Society till 1982. Such fact is asserted in the counter-affidavit filed on behalf of Respondent No. 1. In pursuance of such decision, 281 plots in Bhai Randhir Singh Nagar, Ludhiana became available to the Society for allotment to its members in the year 1983.
5. Shri C.L. Azad, Inspector House Building Board Society, Ludhiana was appointed as

Administrator of the Society on 22.11.1983 on the expiry of term of the Managing Committee of the Society for the purpose of arranging the elections for the new Managing Committee and to run the affairs of the Society under Section 26(1-D) of the Punjab Cooperative Societies Act 1961.

6. However, it appears that Shri C. L. Azad allotted 281 plots to the members of the Society without framing any criterion. Such allotments became subject matter of challenge on behalf of the appellant before Deputy Registrar Cooperative Societies, Ludhiana in a reference of dispute under Sections 55 and 56 of the Act.

7. The Deputy Registrar, Ludhiana cancelled the allotments made by Shri C. L. Azad on 17.07.1984. The relevant extracts from the order passed for allotment of land to the members of the Society is as under:-

"As it was a common dispute for the cancellation of the allotment made by the Administrator, I summoned all the parties on 17.7.1984 at 10.00 a.m. in my office for producing their version. On 17.7.1984, the case was heard jointly and about 100 members came present. Sh. C.L. Jindal, Ex-Secy of the society and Sh. Chaman Lal Azad, the Administrator also came present. The members who had attended the hearing told that the Administrator did not adopt any criteria for the allotment of the plots.

2. No justice has been done with those members who were members of the society at the time of acquisition of the land and most of the members were not allotted the plots.

3. The letter which was written to Sh. K.K. Chadha by the Administrator through Sh. D.N. Kapoor on 24.3.1984 a copy of which has been attached. The above members were asked to deposit the balance amount and for allotment of the plots by draw of lots. But at the time of making the allotment of plots, it was not done, rather the Administrator allotted the plots in an arbitrary manner.

4. The Administrator while making the allotment, did not keep in view the provisions of section 27(3) of the Act, under which the approval of the Registrar is necessary, but the administrator did not obtain any approval. I have inquired into all these points raised by the members and the written statement of Sh. Chaman Lal Azad dated 18.6.84 and made inquiries from Sh. C.L. Jindal, Ex-Secretary.

After hearing the arguments of the members and of the Administrator of the society, I have come to the conclusion that the allotment was not made in a proper manner because the Administrator did not constitute any allotment sub-committee.

2. No criteria was adopted for allotment.

3. The allotment has not been made in the presence of the members & it was also not done by draw of lots.

4. The Administrator also did not obtain the approval of the Registrar, Cooperative Societies about the allotment of plots.

5. The allotment has been made by enrolling new members whereas the old members who were members of the society at the time of acquisition of land, have not been allotted the plots. Keeping in view the above facts, I cancel the allotment made by Sh. Chaman Lal Azad, Administrator of the society. Sh. Chaman Lal Azad informed the court that the election to the managing committee of the society has been fixed for 8.8.84, therefore, no allotment should be made till then. The Managing Committee should make out some criteria for the allotment of the plots. While framing the criteria, interest of the members who were members at the time of acquisition of land, should also be kept in view and the approval should be obtained from the general body."

8. The said order was challenged in an appeal. The Joint Registrar, Cooperative Societies, Patiala allowed the appeal on 02.01.1985, but the Commissioner (Appeals), Jalandhar Division on 09.06.1988 set aside the order passed by the Joint Registrar. Thus, the order passed by the Deputy Registrar on 17.07.1984 attained finality and continuous to be valid and operative order.

9. In pursuance of the order passed by the Deputy Registrar as affirmed by the Commissioner (Appeals) in Revision, a General Body meeting of the Society was held on 27.09.1992. In such meeting, it was resolved to allot plots to the members. The price was fixed at Rs. 100 per sq. yard for the plot size up to 300 sq. yards and Rs. 300 per sq. yard for the plot size more than 300 sq. yards. In pursuance of such decision, the appellant gave her acceptance on 30.07.1993 by filing an affidavit but still reserving her right for allotment of 500 sq. yards plot. The appellant said to the following effect:

"Please find enclosed herewith Affidavit in original as desired by the society but reserve my right for 500 yards plot. I undertake to pay all the amount due from me or called by the society for the cost of plot including cost of enhancement, interest if any, or any other dues called by the managing committee towards of differing lawful expenses when called for. That I would reimburse/pay to the society if any amount drawn by me any time. I undertake to pay all expenses/dues/enhancement/interest etc. etc. provided it is lawful or as per Rules."

10. The appellant again raised dispute under Sections 55 and 56 of the Act. The matter was considered by Additional Registrar (Credit) Cooperative Society, Punjab, wherein, the appellant sought allotment of 500 sq. yards plot instead of plot of 250 sq. yards. The Additional Registrar held that the appellant does not have any preferential right as such right is alien to the concept of cooperative but in respect of the allotment of 250 sq. yard's plot, it was said to the following effect:

"Issue No. 2:- The petitioner by her conduct of accepting the allotment of plot of 250 sq. yards, has in fact admitted the legality of allotment of plots hence is barred

to agitate this fact now. She was given the chance to accept the allotment which she has already availed. She never surrendered the plot allotted to her. So she is barred to put her claim as per the principle of estoppel, as she has already accepted plot allotted to her. I have heard the counsels at length and come to conclusion that in view of discussion held above, there is no force in the contention of the petitioner, hence the petition is dismissed."

11. Aggrieved against the order passed by the Additional Registrar, the appellant filed an appeal as contemplated under Section 68 of the Act before the Registrar, Cooperative Societies, wherein again, a finding was returned that the appellant had already been allotted a plot of 250 sq. yards. Thus, there is no proof that the appellant has deposited any earnest money for a bigger plot. Thus, there is no dispute regarding her claim as made in the Petition. The Registrar held to the following effect:

" The petitioner had already been allotted a plot of 250 sq. yards, which she preferred to retain. She had deposited earnest money for the same. She did not deposit earnest money for a bigger plot and thus, there was no dispute regarding her claim as made in the present petition and earlier reference under Section 55/56 before the Additional Registrar (C) Cooperative Societies. The petitioner never surrendered or offered to surrender the plot already in her possession. In these circumstances, I find there is no merit in the averments made by the petitioner and, therefore, the petition is dismissed."

12. The appellant still aggrieved against the order invoked a Revisional Jurisdiction to the State Government under Section 69 of the Act. The Revision was dismissed by holding as under:

"I have carefully considered the arguments put forth by the Id. counsel for the parties, perused the written statement filed by the respondent no. 3 and gone through the record brought before me. I find that the petitioner had deposited Rs.25000/- and she was allotted a plot of 250 sq. yards. Later on the petitioner started making a claim for 500 sq. yards plot but did not deposit any amount with the society and therefore her claim for allotment of 500 sq. yards plot is not tenable at this belated stage especially when as per the counsel for the society at present there is no vacant 500 sq. yards plot with the society. Moreover, most of the members have constructed their houses on the plots allotted to them. I also do not find any legal infirmities in the impugned orders, therefore, the revision petition is dismissed."

13. Aggrieved by the above order, the appellant filed Writ Petition No. 17742 of 2001 which was withdrawn on 23.08.2002 with liberty to file a fresh petition after giving material facts. The fresh Writ Petition filed by the appellant, was dismissed on 09.12.2002. The appellant filed Civil Appeal No. 2068 of 2006 before this Court against such order passed by the High Court. The Civil Appeal was dismissed on 25.01.2011 giving liberty to the appellant to seek review of the order. In pursuance of such liberty, the appellant filed Review Petition, which Review Petition was dismissed vide order dated

16.05.2011.

14. The appellant in the rejoinder affidavit has attached a letter dated 23.01.1985 communicating a list of members of the Society to the Administrator, Improvement Trust, Ludhiana. The name of the appellant appears at serial no. 28 bearing Membership No. 541 to the effect that plot no. 41-D had been allotted to her.

15. In the counter-affidavit filed by Shri C. L. Jindal - on behalf of the Society (respondent no.1), it is averred that Shri C.L. Azad allotted one plot measuring 250 sq. yards to the appellant out of 281 plots allotted by him as an Administrator of the Society. Thereafter, the General House of the Society in its meeting held on 04.04.1993 finalized the criteria for allotment of plots including the price to be paid by the members of the Society at the rate of Rs. 100 per sq. yard for the plot size up to 300 sq. yards and Rs. 300 per sq. yard for the plot size more than 300 sq. yards. In terms of the criteria adopted, Society allotted same plots to 202 members out of 281. The draw of lots were held on 09.05.1993 for the remaining plots. The appellant preferred to retain the plot which was cancelled by depositing a sum of Rs. 25,000/- at the rate of Rs. 100 per sq. yards. The appellant has not deposited the amount for the bigger plot of 500 sq. yards. In the counter-affidavit, it is also averred that plot no. 41-D re-allotted to the appellant has been illegally allotted in favour of Shri Ashish Gupta son of Shri T. R. Gupta the then Honorary Secretary of the Society and there are more than 40 other cases where plots allotted to the members have been illegally allotted. The relevant assertion in the counter-affidavit of the Society reads as under:

" The present Management filed an appeal before the Financial Commissioner, Cooperation, Punjab challenging the order of bifurcation, etc. The Financial Commissioner, Cooperation, Punjab passed orders dated 17.03.2011 holding that any further allotment of land would not be given to the second society which has been carved out of the present society of non-allottee members. After assuming the office, it was found by the present Management of the Society that the Plot No. 41-D in Bhai Randhir Singh Nagar which was re-allotted to the petitioner Smt. Nisha Singla had been illegally swindled in favour of Shri Ashish Gupta son of Shri T.R. Gupta the then Hony. Secretary. There are more than 40 other cases where plot allotted to the members had been illegally swindled."

16. In this factual background, the argument of the learned counsel for the appellant is that the appellant has not been given possession of plot bearing no. 41-D and that she has been running from pillar to post for the last four decades. Even if, the appellant is not entitled to 500 sq. yards plot, but the entitlement of the appellant for 250 sq. yards is not disputed therefore, the appellant is entitled to possession of the plot so allotted to her earlier by the Administrator and later re-allotted by the Society. Since the possession of the plot has not been handed over, therefore, the entire proceedings have been conducted in a manner which is prejudicial to the appellant as the genuine grievance of the appellant has not been addressed.

17. We have heard learned counsel for the parties and find that the appellant has never raised a grievance that she has not been delivered possession of the plot allotted but, the

facts on record, particularly on the basis of counter-affidavit of the respondents, leaves no manner of doubt that the possession of plot allotted to the appellant who is a founder member since the year 1975 has not been given to the appellant.

18. Thus, we find that the possession of the plot measuring 250 sq. yards has not been handed over to the appellant as projected before this Court. The appellants cannot be deprived of a plot allotted to her merely on the basis that she has not made any grievance in respect of possession of the plot allotted on the basis of technicalities. Therefore, in the absence of any determination of such fact and to do complete justice in terms of Article 142 of the Constitution, we deem it appropriate to direct the Registrar of Cooperative Societies, Punjab to conduct an enquiry either himself or through such officer as he may deem fit to find out; (i) whether the appellant was allotted plot by Shri C. L. Azad, the Administrator, and (ii) that after such allotments having been set aside on 17.07.1984, whether fresh allotment was made to the appellant by the Society.

19. If such allotment is found to be made, the appellant would be entitled to possession of the plot of 250 sq. yards. If it is found that the plot allotted to the appellant is not available, the Registrar or its delegate shall pass such necessary order to redress the grievance of the appellant after giving an opportunity of hearing to the affected persons. In case, there is a suitable plot available, then the Registrar or its delegate shall allot a suitable plot out of the plots allotted to the Society located in Bhai Randhir Singh Nagar.

20. We hope that the necessary exercise shall be completed by giving opportunity of hearing to the affected persons preferably within a period of four months from the date certified copy of the order is produced before the Registrar of Cooperative Society Punjab. With the said directions, the appeals stand disposed of.