

SUPREME COURT OF INDIA

Shivkishan

Vs.

Sujata Tarachand Makhija

C.A.No.7652-7653 of 2019

(Uday U.Lalit and Vinay Saran,JJ.,)

27.09.2019

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Civil)No.29516-29517 of 2016

1. Leave granted.
2. These appeals challenge the decisions of the High Court¹, namely, (i) Judgment and Final Order dated 21.09.2015 passed in Writ Petition No.1460 of 2006 and; (ii) Final Order dated 01.08.2016 passed in Miscellaneous Civil Application No.206 of 2016 in Writ Petition No. 1460 of 2006(D).
3. The facts leading to the filing of Dispute No.136 of 1989 under the provisions of Section 91 of the Maharashtra Cooperative Societies Act, High Court of Judicature at Bombay, Nagpur Bench, Nagpur 1960 ('the Act' for short) from which present appeal has arisen, as culled out from the decision of the Cooperative Court are as under:-

“The opponent No.1 is a duly registered Cooperative Housing Society having its registered office at Sneha Nagar, Nagpur. The opponent No.2 is the then Secretary of the opponent No.1 Society. The disputant is an employee of Life Insurance Corporation India and is working at Nagpur. The employees of the Life Insurance Corporation are admittedly the members of the opponent No.1 Society and have a preferential claims over other members who are not working in the L.I.C. It is alleged that opponent No.2 being a Secretary has indulged himself in illegal activities including misappropriation of funds of the Society for his own use. It is also alleged that the opponent No.2 has used to take the amounts from the members of the Society in cash and used to misappropriate the same as alleged in para - 1 & 2 of the dispute. It is further stated that as per policy of the Society, the senior members shall have preferential claim in the matter of allotment of plots of the Society. The disputant with an intention to get the allotment of plot in the Society, paid certain amounts on dated 5-11-1981 vide receipt No.334 on dated 9-9-1983;

and accordingly, the Society assured the disputant that he shall be allotted the plot admeasuring 3000 Sq. Ft. in the Layout in Kh. No.152/3 of Mouja Sornalwada on dated 18-12-1988, disputant submitted her application for the membership /allotment of shares with the Form - 'E' & 'I' to the Secretary of the society. In the: said meeting, she was allowed to give her choice for allotment of plot to her, as per the seniority list, then prepared on dated 15-12-1988, wherein her name appears at Sr. No.5. On the same day, the disputant also deposited an amount of Rs.105/- as per demand of the society. But neither receipt of the said amount was issued to her nor society has communicated any decision within 3 months from the date of receipt of her application for membership, and hence, she deemed to be a member of the opponent No.1 Society; and as such, she is entitled to claim a plot in dispute. It is further alleged that the plot No 2 has been wrongly allotted to the opponent No. 3, who claims to be a member of opponent No.1 Society. It is also stated that disputant is a senior member to the opponent No.3. However, the society has illegally executed the sale deed of the said plot on dt. 25-10-1989 in favour of opponent No.3, who is not eligible to claim the said plot. In view of this, it is stated that the allotment of plot in dispute to the opponent No.3 by society vide Resolution No.5 passed in A.G.M. in dated 25-3-1990, is illegal and required to be quashed and set aside, as alleged in Para 5 (a) & (b) of the dispute. It is also stated that the disputant deposited the amount of Rs.3,000/- on dt. 5-11-1981, vide receipt No.334, Rs.4,750/- as per letter of the society dt. 9-9-1983 by cheque No.105998, dt. 19-8-83; Rs.2500/- as per letter of opponent No.2 dt. 16-10-1987; Rs.3000/- by self cheque No.503079, dt. 17-9-87; Rs.5000/- as per letter dt. 14-10-88 Rs.105/- or on dt.18-12-88. Thus, it is stated that the disputant has paid in all total amount of Rs.18,355/- to the opponent No.1 society from time to time as alleged and sated in para - 5[c] of the dispute. It is further alleged that in the meeting dt. 18-12-1988, the Secretary has allotted the plots according to his own choice to various members of the society excluding plot Nos.1 & 2 along with other plots. It is further stated that the disputant, being a senior member is entitled to claim plot No plot No plot 2 in the said layout. In spite of this, the opponent Society illegally not allotted the said plot to her and hence, she issued a notice through Advocate on dt. 23-12-1988 to the opponents calling upon them to allot the plot No.2 and execute the sale deed for the same. However, till filing of the dispute, the disputant did nether receive any reply to the said notice nor any positive action by the society as alleged in para 6 to 10 of the dispute and hence, disputant constrained to file this dispute.”

4. The Disputant namely the first Respondent herein thus alleged that Plot No.2 was illegally allotted to the Opponent No.3 (the Appellant herein) and prayed that the Resolution No.5 dated 25.03.1990 as well as the sale deed dated 25.10.1989 executed in favour of the Appellant be set aside. It was submitted:-

a) The Disputant, an employee of Life Insurance Corporation of India had been paying amounts as stated above to the Society in the capacity of a Member.

b) She had deposited an amount of Rs.18,355/- from time to time till the Lay-out

was approved on 01.12.1988.

c) In the meeting held on 18.12.1988 she had submitted her application for membership/allotment of shares in Forms 'E' & 'I', had deposited a sum of Rs.105/- as demanded by the Society and had opted for said Plot No.2.

d) Though, in terms of seniority, she was entitled to be allotted Plot No.2, the Secretary of the Society had allotted said Plot wrongly and illegally to the Appellant. She claimed following reliefs:-

“(b) direct the opponents to allot Plot No.2 to the disputant in scheme No.2 at Khasra No. 152/3 of Mouza-Somalwada, Nagpur and further execute the sale deed in respect of the said plot in favour of the disputant and hand over the possession of the said plot to the disputant.

(c) prohibit the opponents permanently from allotting Plot No.2 in Scheme No.2 at Khasra No.152/3 of Mouza - Somalwada, Nagpur or dealing with the same in any manner with any other person that the disputant, either themselves or through their servants, agents, attorneys etc.”

5. According to the record, an interim order was passed on 25.04.1989 by the Cooperative Court at Nagpur in said Dispute injuncting the Society from making any allotment in respect of Plot No.2. However, despite such interim order, a registered sale deed was executed by the Society in favour of the Appellant in respect of said Plot on 25.10.1989. Later, in the General Body Meeting of the Society held on 25.03.1990 the allotment of Plot No.2 and the execution of sale deed in favour of the Appellant was confirmed vide Resolution dated 25.03.1990.

6. Thereafter, by way of amendment paragraphs 5(a), (b) and (c) were inserted in the Dispute Application and it was prayed that the Resolution dated 25.03.1990 and the sale deed dated 25.10.1989 be quashed and set aside. Said paragraphs 5(a), (b) and (c) were:-

“5.(a) In the meeting of the Society held on 18-12-1988 at Jagat Restaurant, the disputant submitted her application for membership/allotment of shares with Form “E” and “I” to the Secretary of the Society, thereafter she was allowed to give her choice for allotment of plot to her as per the seniority list then prepared on 18-12-1988 wherein her name appears at Sr. No.5. Disputant also deposited an amount of Rs.105/- on 18-12-1988 as demanded by the Society.

However, no receipt was then issued to her. That the opponent No.1 Society has not communicated any decision to the disputant within three months from the date of receipt of her application for membership submitted by her on 18-12-1988 and as such she has become deemed member of the opponent No.1 Society and as such she is entitled to claim the plot in dispute.

5.(b) Plot No.2 has been wrongly allotted to opponent No.3 who claims to be member of opponent No.1 society by respondent on dt. 25-3-1990 passed by the A.G.M. of the opponent No.1 Society superseding the claim of the disputant for the said plot being senior to him. It is now learnt that the Society has also executed sale deed on 25-10-1989 of the said plot in favour of opponent No.3 who is not eligible to claim the said plot. However, the date on which the said sale deed was executed is not disclosed by the present Secretary and President of opponent No.3 by the opponent No.1 Society vide Resolution No.5 dated 25-03-1990 passed by the Annual General Meeting of the Society, be declared illegal and it be quashed and set aside. Similarly, the sale deed of the said plot, executed on 25-10-1989 by the opponent No.1 Society in favour of the opponent No.3 be also declared illegal and it be quashed and set aside with direction to the opponent No.1 Society to allot the said plot to the disputant and execute proper transfer deed by way of sale deed and/or lease deed in her favour and opponent No.1 and 2 be directed to deliver vacant possession of the said plot to the disputant.

5.(c) That the disputant deposited an amount of Rs.3000/- on 5-11-1981 vide receipt No.334. That the disputant received letter dated 9th Sept., 1983 from the Secretary of opponent No.1 Society asking her to pay Rs.4750/- within 20 days. This amount was termed as balance amount. Accordingly, the disputant paid Rs.4750/- to the opponent No.1 Society by cheque No.105998 dt. 19-9-1983 drawn on Central Bank of India, Kingsway Br. Nagpur, within a stipulated time limit, and the said cheque had been encashed by the society on 6-12-1983. However, no receipt was issued by the Society for the said payment received by it from the disputant. That the disputant received letter dt. 16-10-1987 from Shri N.H. Deshpande, Secretary of opponent No.1 Society, asking her to pay an amount of Rs.2500/- within a week. This payment was specified as dues - 1) N.A taxes, 2) Registration charges, 3) Membership fee and 4) Other miscellaneous expenses. Accordingly, the disputant paid Rs.2500/- in cash to opponent No.2 as Secretary of opponent No.1 society within one week of the receipt of the said amount recovered by him till this dated. The disputant further paid an amount of Rs.3000/- to the opponent No.2 as Secretary of opponent No.1 Society, by self cheque No.503079 dt.17-9-1987 drawn on Central Bank of India, Branch, Nagpur. The said cheque was encashed by opponent No.2 and has received the said amount from the Bank, However, no receipt is issued till this dated for the said payment made by the disputant. Disputant further received letters dated 14-10-1988 followed by letter dated 29-10-1988 from Secretary of the opponent No.1 Society asking her to pay Rs.5000/- as development charges to N.I.T. Disputant paid an amount of Rs.5000/- as opponent No.2 by an intermediary by withdrawing amount of self cheque No.0738632 dt. 26-10-1988 drawn on Canara Bank, Ramdaspath, Nagpur. However, no receipt is issued by opponent No.2 for the said payment received by him. Similarly disputant paid an amount of Rs.105/- to the opponent No.1 Society in the meeting held on 18-12-1988 at Jagat Restaurant, Nagpur. No receipt for this payment was also issued to the disputant has paid an amount of Rs.18355/- to the opponent No.1 society under specified heads, as and when demanded by the society, from time to time, an

amount of Rs.3000/- was refunded by the Secretary by Cheque No.7674 drawn on Nagari Sahakari Bank, Nagpur and cashed on 22-03-1982. Inference drawn in preliminary objection with regard to this refund, by the Secretary on 18-01-1989 in this Court, are neither valid nor correct.”

7. In the written statement dated 03.05.1991 filed on behalf of the Society, it was asserted that the husband of the Disputant was the original depositor; that the Disputant had initially made a deposit of Rs.3,000/- which was withdrawn subsequently and as such, she had ceased to be a depositor; that she had attended the meeting dated 18.12.1988 not in her own capacity but as representative of her husband. It was asserted:-

“As is already submitted by the opponent in the forgoing para, husband of the disputant is the Depositor of the opponent society and as such the disputant was allowed to attend the said meeting as a representative of her husband and not as a member. As such the disputant does not acquire any right in the affairs of the society by virtue of mere attendance in the meeting held on 18-12-1988. It is specifically denied that the disputant submitted an application for membership or allotment of shares with Form-E and I to the then Secretary of the Society the opponent No.2. It is stoutly denied that the disputant deposited an amount of Rs.105/- to the society towards membership. It is further submitted that as on the date of the said meeting the disputant had already ceased to be a member of the society and as such she had no right to give her choice for the allotment of plots. The alleged choice by the disputant was on behalf of her husband who admittedly is the depositor of the society. It is specifically denied that the name of the disputant appears at Serial Number 5 in the seniority list. It is also submitted that having once known that the disputant has ceased to be a member of the society about 6[^] years prior to the meeting that was held on 18-12-1988, the disputant is trying to mislead this Hon’ble Court by claiming that she was readmitted as the member of the society by the principle of deemed membership. At the cost of repetition, it is denied that the disputant deposited an amount of Rs.105/- to the society since the disputant had not applied for membership or rather did not have any right to apply so, the society did not communicate anything to her. The alleged payment by the disputant to the society was on behalf of her husband and as such no right is carved out in favour of the disputant as a member of the society. It is specifically denied that the disputant was sent a letter dated 9th September, 1983 asking to pay Rs.4750/-. It is also denied that the disputant paid an amount of Rs.4750/- on her behalf. It is submitted that the said transaction was between the husband of the disputant and the opponent Society and the disputant has no business with the said transactions. It is further submitted that the accounts of the opponent Society are audited upto dated and all receipts had been passed from time to time which fact is cleared from the audited accounts.”

8. Mr. N.H. Deshpande, the then Secretary of the Society also filed his written statement on 06.10.1994 stating inter alia:-

“It is submitted that disputant preferred to withdraw her membership of the Society. The Society refunded her membership fees and deposit to the disputant vide Cheque No.7678 for Rs.3,000/- drawn on Nagpur Mahila Nagrik Sahakari Bank. The said cheque was encashed by the disputant on 22.3.1982. As such the disputant ceased to be the member depositor of the opponents society and claim any plot much less to give a preference for it. Contents of this para so far as they relate to the matter of record are not disputed. It is specifically denied that the disputant has preferencial claim to get the plot No.2. It is submitted that the plot No.2 was never allotted to the disputant as she was not the depositor of the society when allotment was made.” It is specifically denied that the disputant submitted an application for membership or allotment of shares with Form-E and I to the then Secretary of the society, the opponent No.2. It is stoutly denied that the disputant deposited, an amount of Rs.105/- to the society towards membership. The alleged choice by the disputant was on behalf of her husband who admittedly is the depositor of the Society. It is denied that the opponent No.1 issued letter on 9.9.1983, asking her to pay Rs.4,750/- within 20 days as alleged. It is denied that the disputant has deposited the alleged amount according to the direction of this answering opponent. It is denied that the opponent No.2 issued a letter on 6.10.1987 to the disputant, asking her to deposit an amount of Rs.2,500/- within a week for the purpose of a(a) N.A. Taxes, (b) Registration charges, (c) Membership fee and other miscellaneous expenses as alleged. It is specifically denied that the disputant has paid Rs.2,500/- in case to Opponent No.2, as Secretary of opponent No.1 Society as alleged.”

9. Said Mr. N.H. Deshpande examined himself as witness and in his examination-in-chief stated as under:-

“As Smt. Makhija, the Plaintiff who had withdrawn her deposit sometime in the year 1982 and hence she did not have any right to remain present in the meeting held on 18.12.1988, as a depositor member. However, the Society allowed her to remain present in the meeting as her husband’s representative. All the depositor members had given their options for the plots except Plot Nos.1 and 2. Smt. Makhija, however, gave her option for Plot No.2. At that time, the Society suggested her to give her option for any other plot except Plot Nos.1 and 2 as per the criteria decided earlier. However, she refused to change her option.”

In his cross-examination the witness however stated:-

“It is true that prior to 18.12.1988, I and Plaintiff were working together in LIC Office...

...The Plaintiff’s husband was working as a Professor in G.S. Commerce College.

“I had issued a Notice of Meeting to be held on 18.12.1988, under my signature. A copy of the said Notice is kept at Ext.D-1. The entire matter in the said Notice is correct. Now, I have been shown the Ext.D-1. It is a copy of the proceedings of the meeting dated 18.12.1988. It is correct. It is true that only 21 plot depositors were

present for this meeting. It is also true that the Respondent No.3 was not present for this meeting. If it is the contention that nowhere in the Notice at Ext.D-1, it is mentioned that choice for a plot should be given by depositors except Plot Nos.1 and 2, the contention is correct. It is true that the said three forms (Ext. O-2 and O-3) were not given in the said meeting held on 18.12.88 by her husband. If it is the contention that the Respondent No.3 had not paid rs.105/-, vis. Rs.100/- towards cost of shares and Rs.5/- as admission fee during the meeting on 18.12.88, the contention so made is correct. It is true that the petitioner was present for the meeting held at Hotel Jagat on 18.12.88. If it is the contention that the Petitioner had filled in and signed the Share Application Form and Forms 'E' and 'I' during the meeting on 18.12.88, and had headed over the same to me, the contention is correct. Similarly, if it is the contention that the Petitioner had made payment of Rs.105/- to the Society, the said contention is correct.

Question: On which date the allotment of the said Plot Nos.1 and 2 was made and by whom?

Reply: I myself have allotted both these plots. However, I do not remember the date on which the allotment of these two plots was made

If it is the contention that even though the Hon. Court had passed an order on 25.4.89 in respect of allotment of the said Plot No.2 - placed in this suit at Exh. 5, I have allotted the said Plot to the Respondent No.3 on 25.10.89, such contention is correct. Now I have been shown the Exh. D-6 which is a Xerox copy of the letter dated 9.9.83 written by the Society to the Plaintiff. My signature is on the original letter. In the said letter, I have informed the Petitioner to pay an amount of Rs.4,750/- within a period of 20 days which is correct. If it is the contention of the Plaintiff that the same amount was paid to me by a cheque and that as the Witness says the said amount was paid to me for the Society by cheque, the said cheque was deposited in the Society's account which has been cleared, the contention is correct.

I am shown Exh. D-11. It is a copy of the proceedings of the meeting of Plot Depositors held on 18.12.88. If it is the contention that the said proceedings do not clearly mention that the plot depositors should give their choice for allotment of plots other than Plot Nos.1 and 2, it is correct.”

10. After considering the record, the Cooperative Court found that the Disputant had proved that she had paid a sum of Rs.4,750/- to the Secretary of the Society; that she had handed over the membership application Forms 'E' & 'I' and requisite fees to the then Secretary of the Society in the meeting dated 18.12.1988 but the Disputant could not claim to be the Member or deemed Member of the Society and that she was not entitled to any relief as prayed for. However, the Cooperative Court observed that her husband was entitled to get sale deed executed in respect of Plot No.26 after getting all the formalities completed. The Dispute Application was thus disposed of on 31.01.2004.

11. The Disputant being aggrieved, filed Appeal No.11 of 2004 in the Cooperative Appellate Court, Nagpur, under Section 97 of the Act. The Cooperative Appellate Court considered the rival submissions and observed:-

“(11) Admittedly the meeting of the Depositors dated 8-12-88 is the first meeting after the layout plan was sanctioned by the NIT on 1-12-88. There is no document to show that before 18-12-88 that some plots were reserved for the senior members or for the special category of the members. This being the first meeting of the depositors it was not possible that the plot No.2 was already allotted to some other depositor members. When the disputant had exercised her option for plot No.2 also it cannot be said that nobody was interested for the plot No.2” as mentioned in the minute of the meeting dated 18-12-88 Ex-D-11. I am, therefore, not inclined to accept the case of the respondent society that plot No.2 was not available for allotment in the meeting dated 18-12-88.

(12) It is now to consider whether the disputant was present in the meeting dated 18-12-88 on behalf of her husband. Admittedly according to the disputant she had submitted her application for membership/allotment of shares with form “E” & “I” to the secretary of the society and thereafter she was allowed to give her choice for allotment of the plot as per seniority list then prepared. She has also deposited the amount for Rs.105/- on 18-12-88 required for membership. The then secretary opponent No.2 has deposed at Ex.91 and admitted that the disputant was present in the meeting dated 18-12-88 and she had submitted application for membership for herself with form “E” & “I” and had deposited the amount of Rs.105/- for which no receipt was given to her. He had not given the receipt to any of the depositors who had submitted their forms for membership on that date. Upon this evidence the learned trial court has held that the disputant has proved her case that she submitted her application along with form “I” & “E” and paid the entrance fee Rs.5/- and share amount of Rs.100/- total Rs.105/- on 18-12-88. The findings have not been challenged by the opponents by filing the appeal.”

12. It held that since the application for membership was given by the Disputant on 18.12.1988 and she was not communicated any decision in respect of her application, by virtue of Section 22 of the Act she became deemed Member of the Society after the expiry of three months; and on the other hand, the Appellant and certain other persons were admitted as Members of the Society only in the meeting dated 25.03.1990; and as such, the Disputant was a senior Member of the Society as against the Appellant and was entitled to Plot No.2 opted by her. The Cooperative Appellate Court thus set aside the order dated 31.01.2004 passed by the Cooperative Court and allowed Dispute No.136 of 1989 with following directions: -

“(4) It is declared that the allotment of plot No.2 in favour of opponent No.3 by Resolution No.5 dated 25-3-1990 passed in the Annual General Meeting of the opponent No.1 Society and the sale deed dated 25-10-1989 executed by the opponent No.1 in favour of opponent No.3 in respect of plot No.2 are illegal and

hence those are quashed and set aside.

(5) The opponent No.1 society is directed to allot plot No.2 to the disputant in scheme No.2 Khasra No. 152/3 of mouza-Somalwada, Nagpur and further directed to execute the sale deed in respect of said plot No.2 in favour of disputant on payment of remaining amount of cost of the plot giving credit to the amount deposited by her i.e. Rs.4750/- and handover possession of the said plot to her.”

13. The Appellant being aggrieved, approached the High Court by filing Writ Petition No. 1460 of 2006. While affirming the findings of the Cooperative Appellate Court, the High Court observed as under:-

“8. In the present case, it is undisputed that the society had neither taken any decision nor had communicated any decision to the respondent no.1 rejecting her claim for membership of the society. Therefore, as per the deeming fiction, the respondent No.1 became member of the society after three months from the date of application. The respondent No.1 undisputedly submitted her application for membership on 18th December, 1988 and as the decision was not taken by the society within three months it is to be held that the petitioner became member of the society from 18th March, 1989. The contention of the society that the application of the petitioner came to be rejected in the meeting held on 25th March, 1990 cannot be accepted as the petitioner became member of the society much earlier and therefore, rejection of her application seeking membership, on 25th March, 1990 is inconsequential. It is clear from the pleadings and the evidence on the record that the claim of the respondent No.1 for Plot No.2 has not been considered by the society treating her to be a member of the society w.e.f. 18th March, 1989. Even if the submissions made on behalf of the petitioner that the option given by the respondent No.1 for plot No.2 on 18th December, 1988 cannot be accepted on the ground she was not the member of the society on that date, it goes unexplained as to why the entitlement of the respondent No.1 for plot No.2 has not been considered when it came to be allotted to the petitioner on 25th March, 1990. The respondent No.1 acquired the membership of the society by deeming fiction on 18th March, 1989 i.e. much before 25th March, 1990. In these facts, I find that the allotment of Plot No.2 in favour of the petitioner on 25th March, 1990 without considering the claim of the respondent No.1, is illegal. The finding recorded by the Cooperative Appellate Court in this regard are proper.”

14. The High Court, however, found that the Disputant could not have given option for Plot No.2 on 18.12.1988 as she was not a Member of the Society on that date; that she acquired the membership rights on and after 18.03.1989; that allotment of Plot No.2 to the Appellant was without following proper procedure and was done arbitrarily and that after quashing the allotment it must be left to the Society to follow the procedure in accordance with law for allotting Plot No.2.

15. In the premises, the operative part of the order passed by the High Court was as under:-

“i) the impugned orders are modified.

ii) It is declared that the allotment of Plot No.2 in favour of the petitioner is illegal.

iii) The resolution No.5 passed by the society in its meeting held on 25th March, 1990 regarding the allotment of Plot No.2 in favour of the petitioner and the sale-deed executed by the society in favour of the petitioner on 25th October, 1989 in respect of the Plot No.2 are quashed.

iv) The claim of the respondent No.1 for allotment of Plot No.2 as made in the dispute is rejected.

v)It is left open for the society to consider the allotment of plot No.2 in favour of its member, however, it is clarified that while allotting Plot No.2 the society shall follow the same procedure as was followed by it in the year 1988 while allotting the other plots to its members. The petition is partly allowed in the above terms. In the circumstances, the parties to bear their own costs.”

16. The aforesaid judgment and order passed by the High Court was challenged by the Disputant by filing Special Leave Petition (Civil) No. 136 of 2016 which was dismissed by this Court on 15.01.2016 with following observations2 :-

“We find no ground to interfere. The special leave petition is dismissed. However, it goes without saying that the petitioner may avail the remedy granted by the High Court. In the event, petitioner is aggrieved by the order of the society, she may approach the High Court in accordance with law. In case she approaches the High Court, the matter will be dealt with expeditiously.”

17. In this appeal, we heard Mr. Anupam Lal Das, learned Senior Advocate for the Appellant, Mr. Vinay Navare, learned Senior Advocate for the Disputant and Mr. Gagan Sanghi, learned Advocate for the Society. 2Order dated 15.01.2016 in SLP(C)No. 136 of 2016 - Sujata Tarachand Makhija vs. Shivkishan and Ors.

18. It was submitted by Mr. Lal Das, learned Senior Advocate that in the meeting held on 24.06.1984 all the depositors had submitted that none of them was interested in two big sized plots admeasuring 5000 square feet each and that the society could give those plots to persons other than the depositors. The Resolution to that effect was as under:-

“(10) The depositors told that nobody among them is interested for such big size of Plot and the society should give it to the persons other than us who are interested in it. Resolution to this effect has been passed in the meeting.” It was further submitted that (i) the husband of the Disputant was present in the meeting but no grievance or objection was raised either in said meeting or in subsequent meetings held on 27.08.1985, 28.09.1987 and 16.10.1988; (ii) the Disputant was not a member of the Society and therefore could not have made any choice and opted for Plot no.2; (iii) the Appellant was rightly inducted as

member of the society and allotted Plot No.2; (iv) though the decisions of the Society in accepting the application of the Appellant for membership and allotment of Plot No.2 were ratified in the General Body Meeting dated 25.03.1990, they would relate back to 18.12.1988 and the Appellant would be senior to the Disputant as member of the Society; (v) the application of the Disputant seeking membership of the Society in place of her husband was also rejected in said meeting dated 25.03.1990. Mr. Lal Das, learned Senior Advocate however fairly accepted that the Appellant was not present in the meeting dated 18.2.1988 and that neither was he invited to attend said meeting nor had he submitted application form for membership and deposited requisite fees.

19. Mr. Vinary Navare, learned Senior Advocate for the Disputant submitted that (i) she was the employee of Life Insurance Corporation, not her husband; (ii) the Society was for the employees of Life Insurance Corporation; (iii) as found by the Courts below she had paid a sum of Rs.4750/- to the Secretary of the Society which was accepted by the then Secretary in his deposition though it was stoutly denied in the written statement filed earlier; (iv) she had handed over the membership application Forms 'E' & 'I' along with requisite fees to the then Secretary of the Society in the meeting dated 18.12.1988 which fact was also accepted by the then Secretary; (v) as Depositor of the Society, she was entitled to claim Plot No.2; (vi) in the meeting dated 18.12.1988 nobody else had claimed Plot No.2 and as such she had a better claim to said Plot as against anybody else; (vii) the Appellant was neither a Depositor nor a member of the Society and as such could not be allotted Plot No.2 disregarding the claim of the Disputant.

20. Mr. Gagan Sanghi, learned Advocate appearing for the Society placed the relevant record for perusal of the Court and submitted that the amount of Rs.4750/- which the then Secretary had accepted to have been received from the Disputant was credited to the account of the Society.

21. At this stage, the Resolution dated 18.12.1988 passed by the Society needs to be extracted:-

“The meeting of depositors held on 18/12/88 at 9:30 AM at Jagat Hotel Nagpur. The following depositors attended the meeting (1) Shri Kelkar (2) Prayaji (3) Durani (4) Sh Kurve (5) Bhambani (6) L.G. Deshpande (7) Joshi (8) Kashikar (9) Shri Vaidya (10) Bhadagne (11) Patait (12) Sahu, (13) Sonone (14) Jairaman (15) Yawalkar (16) Prayagi (17) Nanoti (18) Arvikar (19) Smt Mishra (20) Smt Makhija on behalf of T D Makhija (21) Pillay

The following Business transacted in meeting:

- (1) Last meeting minutes confirmed.
- (2) Shri Changde old member ex-Secretary presided over the meeting.
- (3) The Secretary briefed the depositors about the developments in new layout. The Secretary requested Shri Changde to proceed further with allotment of plot.
- (4) The choice of allotment has been called for from every body for 1st pref. IInd preference and IIIrd preference.

(5) Accordingly everybody gave the choice and as per criteria decided earlier by depositors the plot Nos. have been allotted to them.

(6) But Smt. Makhija who attended the meeting on behalf of Mr. Makhija was interested in plot No.6 only. She pleaded that even though the criteria is decided, the said plot No.6 must be allotted to Mr. Makhija. All the depositors tried to convince her but in vain. Lastly she gave choice under her signature for plot No.6 (1st preference) and plot No.2 second preference. It was cleared in the meeting that the plots are being allotted as per seniority of depositors hence plot No.6 cannot be allotted to Mr. Makhija. As plot Nos.1 and 2 were already allotted as nobody was interested in them the question of allotment of Plot No.2 does not arise. Finally, Mr. Changde declared the allotment as per criteria and the number of plot before each name have been allotted. The letter of allotment have also been issued to them. For the absentees the plot has been allotted as per the seniority from the available one.

(7) The allottee plot holders were asked to deposit their share of Rs.105/- with Society to finalize their membership.

The meeting ended with vote of thanks & dinner.

Nagpur

18/12/88

Sd/-

Secretary”

22. Before we deal with the rival submissions, an important facet of the matter whether it was the husband or the Disputant herself who was the Depositor of the Society needs to be considered. It is accepted that the Disputant was an employee of Life Insurance Corporation of India and the Society was meant principally for such employees. It was however denied in the pleadings that she was a Depositor and it was submitted that she had withdrawn the amount of Rs.3000/- which she had earlier deposited and had thus lost the status of being a Depositor. The then Secretary of the Society, when confronted with the documents however had to accept that he had received a sum of Rs.4750/- from the Disputant. He also accepted that she had attended the meeting on 18.12.1988, had submitted an application form and deposited the requisite fees. Though it was tried to project that it was her husband who was the Depositor and the Disputant had attended the meeting as a representative of the husband, in the face of the admitted position that she had deposited Rs.4750/- and the findings rendered by the Courts below, it has to be concluded that the Disputant was a Depositor of the Society and like all other Depositors was entitled to and had attended the meeting dated 18.12.1988 in her own right. It is significant to note that at no stage the husband of the Disputant claimed that he was the Depositor in his own right and entitled to allotment of any Plot. Further, it is not the case of the Disputant and her husband that over and above the entitlement of the Disputant, her husband is also entitled to an additional Plot. The submission has always been that there was only one entitlement, in exercise of which the option was given for Plot No.2.

23. If between the husband and wife, the claim has always been only with respect to one entitlement, it really made no difference whether the Disputant attended the relevant meeting in her own right or as a representative of her husband. The fact of the matter is, an option was exercised in favour of Plot No.2 and the issue is whether such option ought to have been allowed and accepted or not. It may be stated here that the communications addressed by the Society were, normally in printed format where the name of the addressee would be written after the printed prefixes "Mr./Mrs." and many such communications were addressed to "Mr./Mrs. Makhija". The record also shows that some meetings were attended by the Disputant while some were attended by her husband. But, considering the facts that the Disputant was an employee of Life Insurance Corporation of India and had deposited Rs.4,750/- as stated above, her status was clearly that of a Depositor.

24. It is a matter of record that the Depositors had collectively raised funds with the help of which, the consideration for purchase of the land over which the layout was to be formed, could be arranged. All the required and incidental expenses thus came from the funds raised by the Depositors and to that extent the Disputant had definitely made her contribution. The money deposited by all the Depositors including the Disputant had thus helped the Society to have the requisite land whereafter the Plots could be carved and allotted to the concerned members. On the other hand, at no stage the Appellant had made any such contribution.

25. It is accepted that the Appellant was neither present in the meeting dated 18.12.1988 nor had he submitted any application along with requisite fees. It is also accepted that he had not deposited anything by way of deposit with the Society before or on 18.12.1988, with the help of which the land could be purchased by the Society. It is true that the tenor of the Resolution passed by the depositors on 24.06.1984 shows that no depositor was willing to take a bigger Plot but that resolution was passed in the year 1984 and it was four years thereafter that the day had arrived for exercise of choices or options. For the employees of Life Insurance Corporation it may be that the Depositors at an earlier stage were not in a position to arrange requisite funds and if the Society had to depend upon funding from an outsider, on the strength of such resolution, the Society could have garnered the requisite finances from an outsider. But the facts on record disclose that no such funding from any outsider was required to arrange the requisite finance towards consideration for purchase of land. If no outsider had contributed in any manner there is no reason why a Plot could be reserved for such an outsider disregarding the claim of a Depositor with the help of whose money the Society had reached the stage where the Plots could be allotted to the concerned. In a situation where none of the other Depositors had even made a claim with respect to Plot No.2 and if the Disputant had exercised such option, the Plot had to be allotted to the Disputant. No outsider could have had a better claim as against any Depositor as regards to that Plot.

26. It is also a matter of record that as on 18.12.1988, the Appellant had not even submitted his application form for membership whereas all the Depositors including the Disputant had submitted such forms along with requisite fees for membership. Even on this count, the claim of the Disputant stands on a better footing as against the Appellant.

27. Further, though the Resolution dated 18.12.1988 records, “As Plot Nos. 1 and 2 were already allotted as nobody was interested in them, the question of allotment of Plot No.2 does not arise”, it was accepted by the then Secretary in his cross-examination that:-

a) the Appellant had not paid any amount towards the cost of shares of the Society and admission fee towards membership of the Society at any time before or on 18.12.1988.

b) the notice calling the meeting dated 18.12.1988 had not mentioned that choice to be exercised by the Depositors was restricted to plots other than Plot Nos. 1 and 2. It was also accepted by the learned counsel for the Appellant that neither any invitation was received by the Appellant to attend the meeting nor did the Appellant attend the meeting and no payment was made by the Appellant before 18.12.1988. No document has been produced or relied upon to say that there was any allotment of Plot Nos.1 and 2 in favour of anybody before the meeting was actually held on 18.12.1988.

28. In the circumstances, it must be held that the assertion so made in the Resolution was completely incorrect and against the record. The then Secretary accepted in his deposition that he himself had allotted these two plots but could not give the date when such allotment was made. In any case, it is accepted by the Appellant that no such allotment was done at any time before 18.12.1988.

29. As on the date when the sale deed was executed on 25.10.1989 by the Society in favour of the Appellant, there was an interim order passed by the Cooperative Court at Nagpur on 25.04.1989 injunctioning the Society from making any allotment of Plot No.2. The then Secretary accepted in his cross-examination that such allotment and execution of sale deed was done in spite of the order of injunction. For persons who had clearly violated the order of injunction, no sympathetic consideration can be extended, nor any equity can be found in favour of such persons. It is also apparent that the execution of the sale deed was even before the Resolution was passed in the meeting held by the Society on 25.03.1990 regarding allotment of Plot No.2 in favour of the Appellant.

30. In the circumstances, the conclusions drawn by the High Court that the allotment of Plot No.2 in favour of the Appellant was illegal and that the Resolution passed by the Society in its meeting dated 25.03.1990 and the sale deed executed by the Society on 25.04.1989 were required to be quashed, are absolutely correct and fully justified.

31. As regards other conclusions drawn by the High Court, we need not say anything as the Petition for Special Leave to Appeal filed by the Disputant was disposed of by this Court on 15.01.2016 with the observations as quoted hereinabove.

32. We, however, do conclude that the Disputant was a Depositor of the Society; that she was entitled to attend the meeting dated 18.12.1988 in her own right; that she had preferred requisite application for membership and had paid requisite fees on 18.12.1988 itself; that

she had opted for Plot No.2 and as on that date there was nobody else apart from the Disputant who opted for said Plot No.2.

33. These aspects of the matter shall be taken into account by the concerned authorities while acting in terms of direction (v) issued by the High Court which are quoted by us in para 15 hereinabove and the allotment shall be restricted to those who had exercised their option as on 18.12.1988 and were not otherwise allotted any plot and had not accepted such allotment.

34. With the aforesaid directions the appeals stand dismissed. No order as to costs.