

R.S. HARDAS

v.

FRIENDS CENTRAL GOVERNMENT EMPLOYEES HOUSE
BUILDING SOCIETY LTD. AND OTHERS

NOVEMBER 21, 1996

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Delhi Cooperative Societies Act, 1972 :

House Building Society—High Court directed Society to send notices to members who were in arrears with Society to file requisite affidavits and pay balance of amount due from them for plots proposed to be allotted to them—Since appellant did not file requisite affidavit he was removed from Society's membership although he was not a defaulter—High Court in another case took the view that where a member was not in default, notice sent to him was misconceived and therefore he would be entitled to the plot and permitted him to file affidavit within one month from date of its order—Held: appellant being also not a defaulter Society ought not to have removed him from its membership—On the date the High Court dismissed appellant's application, allotments were not complete and there was no good ground to deny appellant from producing affidavit—Hence, appellant must be allotted a plot and if required affidavit not yet filed by appellant, the same be filed within one month.

The High Court directed the respondent-Society to send notices to members who were in arrears with the Society asking them to file requisite affidavits and pay the balance of the amount due from them for the plots proposed to be allotted to them. Pursuant to the order of the High Court, the respondent- Society called upon the appellant-member to file the requisite affidavit. As the appellant did not file the affidavit in time, he was removed from the Society's membership and consequently he lost the right of allotment of plot even though he had paid the entire cost of the plot and was not in arrears of any kind on the date when the respondent-Society issued notice calling upon the appellant to sign the affidavit. The High Court dismissed the writ petition filed by the appellant challenging his aforesaid removal from the Society's membership. Hence this appeal.

On behalf to the appellant it was contended that the High Court in

- A** another case took the view that where a member was not in default, notice sent to him was misconceived and therefore, he would be entitled to a plot and was permitted to file an affidavit within one month from the date of its order; that on the date when the High Court dismissed the appellant's petition allotments were not complete; and that similar opportunity ought to have been given to the appellant to do so and the failure by the High Court in not giving the opportunity to the appellant was not legally sustainable.

Allowing the appeal, this Court

- C** **HELD : 1.** The appellant was also not a defaulter and, therefore, the Society ought not to have sent a notice to him and on the appellant's failure to file the affidavit the Society ought not to have removed him from its membership. On the date when the High Court dismissed the application allotments were not complete and there was no good ground to deny the appellant from producing an affidavit. [52-A-B]

- D** **2.** In the circumstances, the denial of the relief to the appellant by the High Court cannot be sustained and the appellant must be allotted a plot and if the required affidavit has not already been filed by the appellant, the same will be filed within one month from the date of this order.

[52-C-D]

- E** **CIVIL APPELLATE JURISDICTION :** Civil Appeal NO. 1780 of 1989.

From the Judgment and Order dated 17.1.89 of the Delhi High Court in C.M. No. 881 of 1983 in Writ Petition No. 661 of 1980.

- F** R. Sunderavardhan and R.N. Keshwani for the Appellant.

A.K. Ganguli and Ghan Shyam Vashit for the Respondents.

- G** Rajnit Kumar, Ramesh Singh and Ms. Bina Gupta for the Intervenor.

The Judgment of the Court was delivered by

- H** **VENKATASWAMI, J.** The office of the second respondent issued a notice on 9.5.1980 to the first respondent Society (hereinafter referred to as "the Society") to show cause within 15 days from the date of receipt of

that notice as to why the Managing Committee (then in office) of the Society should not be removed and an administrator appointed in its place. The said show cause notice signed by the Deputy Registrar (H) pointed out several irregularities committed by the said Managing Committee. Immediately the Society through its then President moved the Delhi High Court by filing C.W. No. 661 of 1980 challenging the said show cause notice., Ultimately that writ petition was disposed of on the basis of settlement arrived at between the parties and the High Court passed an order on 22.5.1981 based on a memo of compromise. The relevant clause in the order is clause (iii) which reads as follows :

"That the society will send notice, by registered post acknowledgement due to all the persons who are in arrears with the society in respect of an amount exceeding Rs. 500. By this notice, these persons will pay the balance of the amount due from them as shown in column 9 of the Annexure P/32 for the plots proposed to be allotted to them, which amount includes interest at the rate of 15% per annum from 1st January 1979 upto 30th April, 1981 or an earlier date till which they were in default. The requisite affidavits and the crossed bank drafts in favour of the petitioner society for the amounts demanded in the notices (as shown in column 9 of the Annexure P/32) must reach the society within one month from the date of despatch of the said notice. The failure to submit the requisite affidavits or to make payment within the time shall finally disentitle the person in default from participating in the elections as also, from getting the allotment of a plot. No. further relaxation, whatsoever, shall be made and the present relaxation shall not be treated as a precedent.

It is the case of the Society that pursuant to the above extracted clause in the compromise order, the appellant was called upon to file an affidavit (the form of which was enclosed along with notice) within the time prescribed therein. The said notice was served on the father of the appellant as at the relevant time, the appellant was in the United States of America. As the appellant did not file the affidavit in time, he was removed from the Society's membership and consequently he lost the right of allotment of the plot even though admittedly he had paid the entire cost of the plot and was not in arrears of any kind of the date when the first respondent issued a notice calling upon the appellant to sign the affidavit.

- A The affidavit required such member of the Society who was entitled to get allotment to state on oath that neither he nor his spouse owns any plot or house in Delhi. It is to be noted at this stage that such a declaration was already signed and filed by the appellant as required under Bye-law (ii) and after getting such declaration he was admitted as a member of the Society.
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- The appellant aggrieved by the action of the Society removing him from its membership moved the Delhi High Court by filing C.M.P. No. 881/1983 in C.W. No. 661/80 in which the High Court earlier passed the order on the basis of the compromise memo giving certain directions to the Society. According to the appellant, the said C.M.P. was to permit him to file the affidavit even though he was not liable to file such an affidavit in terms of clause (iii) of the High Court order. The High Court did not agree with the contention of the appellant that he was not liable to file such an affidavit and he having come to the Court after an inordinate and unexplained delay, he was not entitled to the relief sought for. On that ground the High Court rejected the application. In these circumstances, the present appeal by special leave has been filed by the appellant.
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- Mr. R. Sunderavardhan, learned Senior Counsel appearing for the appellant took us through the show cause notice issued by the second respondent to the first respondent, the compromise order of the High Court passed on 22.5.1981 and also two orders passed by the High Court in similar circumstances dated 25.5.1984 in C.M. No. 164/82 and C. M. No. 363/82. It is the contention of Mr. R. Sunderavardhan that the action of the first respondent Society expelling the appellant from its membership was totally without jurisdiction and contrary to the bye-laws of the Society and also the provisions of the Delhi Co-operative Societies Act and Rules framed thereunder. It is his submission that the Delhi High Court itself has construed clause (iii) of the compromise order in C.M. No. 164/82 in C.W. No. 661/80 to mean that notices issued to persons who were not in arrears must be treated as mis-conceived. That being the position as explained/interpreted by the High Court, the counsel argued that the stand taken by the appellant that the Society ought not to have sent the notice when the admitted position was that he was not in arrears was right. Even assuming that the appellant should have filed an affidavit in the form prescribed by the Society and to be subscribed on a stamp paper, the appellant should have been given time to file such affidavit. Instead the Society removed him
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the list. He also placed heavy reliance on the orders of the High Court passed in C.M. No. 164/82 and C.M. No. 363/82 and submitted similar opportunity ought to have been given to the appellant by the High Court and the failure to do so was not legally sustainable. He also invited our attention to an order dated 1.3.1989 passed by this Court while granting special leave petition in the presence of counsel for the Society directing the Society to keep one plot vacant which will be allotted after the decision of this appeal and permitted plots to be allotted to other eligible members of the Society. According to the learned counsel one plot as per orders of this Court must be available as on date and in the event of success of this appeal, that plot must be allotted to the appellant.

Mr. A.K. Ganguli, learned Senior Counsel appearing for the Society except submitting that the notice was served on the father of the appellant and he having failed to file the affidavit within the prescribed time, cannot now seek the relief of allotment of the plot, has no effective answer to the argument that on the admitted position that the appellant was not in arrears of any kind on the date when the notice was issued, the issuance of notice itself was not right. Mr. Ganguli further submitted that subject to the result of this appeal, the plot reserved as per the orders of this Court has been allotted to the person in the waiting list and in case, the appellant succeeds that plot will have to be allotted to the appellant.

We have gone through the relevant materials placed before us and after considering the rival arguments, we are of the view that the appellant has made out a case.

As pointed out by the learned Senior Counsel for the appellant, the High Court itself had occasion to decide an issue similar to the one under consideration in C.M. Nos. 164/82 and 363/82. The High Court observed therein that 'we are satisfied that the applicant had paid a sum Rs. 15,508 before the date of that notice and this is now accepted by counsel for the Society. It is also accepted by the Society that the amount to be paid for a plot measuring was Rs. 15,500. *It is, thus obvious that the applicant/appellant was not in default and hence the notice sent to him was misconceived. The applicant/appellant is, therefore, entitled to a plot.* (Emphasis supplied)

After observing as above, the High Court directed the Society to allot a plot to the applicant/appellant in that case and permitted the applicant/appellant to file an affidavit within one month from the date of the order. Similar order was also passed in C.M. No. 363/82. When the matter

- A under appeal came up before the High Court a different view was taken presumably overlooking the relevant fact that the appellant was also not a defaulter and, therefore, the Society ought not to have sent a notice as contemplated under clause (iii) of the compromise order. We are also told and it is not disputed that on the date when the High Court dismissed the application of the appellant allotments were not complete and there was
- B no good ground to deny the appellant from producing an affidavit in any event in the form required by the Society.

- In the circumstances, we are of the view that the denial of the relief to the appellant by the High Court cannot be sustained and the appellant must be allotted a plot and if the required affidavit has not already been
- C filed by the appellant, the same will be filed within one month from the date of this order.

- In the result, the appeal is allowed and the order of the High Court is set aside and the prayer of the appellant in C.M.P. No. 881/83 to the extent indicated above is allowed.
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- I.A. No. 1/89 is filed by the individual who was in the waiting list and who has been allotted the plot kept under reserve subject to the result of the appeal. As already stated, the allotment to the applicant in I.A. No. 1/89 must be subject to the result of this appeal. As the appeal is now
- E allowed, the application for intervention is dismissed. This will not, however, prejudice his any other rights against the society.

V.S.S.

Appeal allowed.