

2023 SCeJ 0158 = (2023-1)209 PLR 719 (SC)

Geeta and Others v. Financial Commissioner Govt. of NCT Delhi

SUPREME COURT OF INDIA

Present: Justice Rajesh Bindal and Justice Aravind Kumar.

GEETA and Others – Appellant(s);

Versus

FINANCIAL COMMISSIONER GOVT. OF NCT DELHI and Others – Respondent(s).

Civil Appeal No. 1362 of 2011

29.03.2023

Co-operative Society – Expulsion of member on account of non payment of dues – Upheld – Delhi Cooperative Society Rules, 1973, Rule 36(2)

The JUDGMENT of the Court was delivered by

Rajesh Bindal, J. – (20.03.2023) –Having failed at all stages of the proceedings, the Appellants are before this Court impugning the order passed by the Division Bench of Delhi High Court whereby writ petition was filed challenging the order dated 15.12.1994 passed by the Financial Commissioner, Delhi was dismissed. The High Court upheld the order dated 23.3.1993 passed by the Joint Registrar (II), Cooperative Societies, Delhi whereby the membership of late husband of the appellant no. 1 was expelled. It was on account of non-payment of dues for construction of flats and allotment thereof by the Nav Jagriti Cooperative Group Housing Society Limited.

2. Learned counsel for the appellants submitted that there is a procedure prescribed in Rule 36 of the Delhi Cooperative Society Rules, 1973 for cancellation of membership of the society, which has not been followed in the case in hand. The amount shown to be recoverable from the late husband of appellant no. 1 as Rs. 1,72,990/-, was not due as there was some enhancement of the cost of the flats, which was not proper. The late husband of the appellant no. 1 never refused to pay the amount due. Learned counsel referred to a meeting notice dated 4.3.1992 of the society in which a sum of Rs. 1,33,920/- was shown to be due against the late husband of appellant no. 1. He further submitted that the notice issued by the society to late husband of appellant no. 1 dated 9.2.1993 shows that he had already paid Rs. 1,40,500/- up to 31.1.1993 and in fact, there was nothing due.

3. On the other hand, learned counsel for the respondents submitted that there are concurrent findings of facts recorded by all the authorities under the Act. The orders were upheld by the Division Bench of the High Court recording the default of the appellants in paying the dues of the society. No interference is called for in the present appeal. He further submitted that an offer was made to late husband of appellant no. 1 at the

appellate stage for payment of the balance dues so that issue could be resolved. However, that opportunity was not availed of as late husband of appellant no. 1 wanted to contest the litigation. He further submitted that a meeting of the society was held on 31.1.1995 and against the vacancy, new member was added. 40 flats were constructed against which 40 members are on roll, hence, at this stage, it is not possible to offer any flat to the appellants as she had failed to avail of the opportunity at the appropriate stage.

4. Heard learned counsel for the parties and perused the material of record.

5. From the material on record, it is evident that society had issued notice to the late husband of appellant no. 1 on 4.11.1991 for expulsion of his membership on account of default in payment of dues of the society. A notice for holding Annual General Meeting on 22.03.1992 of the society was issued on 4.3.1992 specifically for considering expulsion of members of the society who were persistent defaulters. The name of late husband of appellant no. 1 was one of them. A sum of Rs. 1,33,920/- was shown to be due against him. On 22.3.1992, a resolution was passed in the aforesaid meeting expelling the membership of number of persons, including the late husband of the appellant, on account of default in payment. The matter was referred to Registrar, Cooperative Societies, Delhi for necessary action. Joint Registrar (II), Cooperative Societies, Delhi, vide his order dated 23.3.1993 granted time to the expelled members to deposit dues by 30.04.1993 and in default the resolution of the society was approved.

6. Late husband of appellant no. 1 preferred appeal under Section 76 of the Delhi Cooperative Societies Act, 1972 challenging the order dated 23.3.1993 passed by the Joint Registrar (II), before the Financial Commissioner, Delhi, who dismissed the appeal vide order dated 15.12.1994. The order passed by the Financial Commissioner, Delhi specifically records that late husband of appellant no. 1 deposited a sum of Rs. 1,46,000/- and a balance of more than Rs. 2,00,000/- was due from him. The amount was being disputed by him claiming that the cost of construction has not been properly calculated. The offer was given to him to pay the dues with interest within certain reasonable period, however, he did not avail the same. The relevant part of the order passed by the Financial Commissioner, Delhi is extracted below:—

"3. However, on ascertaining the facts from the parties, it was found that undisputedly the appellant has paid a sum of Rs. 1,46,000/- and that he has still to pay more than Rs. 2,00,000/-. This has been objected to by Shri Gupta by arguing that the cost of construction has not properly been calculated and that the appellant has always been challenging the said cost of construction. On this ground, the learned Counsel has disputed the liability of the appellant. The learned Counsel also declined the offer given by this court to square up the dues by the appellant alongwith upto date interest within a reasonable period, for the same reason that the appellant is not accepting the cost of construction.

4. I find that no such plea was taken by the appellant before the learned Joint Registrar. All that has been recorded in the impugned order is that the members, including the applicant, wanted some more time to make the payment, their request was accepted and that they were allowed time upto 30.4.93 to make the payment of the amount by the appellant by

the extended date and eh has preferred to approach this court through the appeal In view of the above facts, it now does not lie with the appellant to take any other ground. The opportunity to make the payment given to the appellant during the argument by this court has also been declined on behalf of the appellant. Instead the learned counsel has attempted to rake up matters, not connected with the present case. In view of these facts, there is no extenuating factor in favour of the appellant and I hold that the impugned order does not suffer from any infirmity."

7. Still not satisfied, late husband of appellant no. 1 filed a writ petition before the High Court of Delhi one year and ten months after passing of the order passed by the Financial Commissioner, Delhi. The order dated October 7, 1996 passed by the High Court at the time of issuance of notice records the statement of late husband of the appellant no. 1 that he is ready and willing to deposit the entire amount along with interest. However, the fact remains that the late husband of appellant no. 1 had not deposited any amount till the writ petition was decided by the High Court on July 5, 2010 and no such stand was taken. Even before this Court the position is same. The High Court, in the impugned order, had recorded that the late husband of appellant no. 1 is raising dispute regarding cost of construction. Meaning thereby the default of late husband of appellant no. 1 in payment of amount to the society goes un rebutted, on the basis of which the membership of late husband of appellant no. 1 was expelled.

8. The argument now raised, which had not been raised before any of the authorities including the High Court, is that there is violation of Rule 36(2) of the Delhi Cooperative Society Rules, 1973 and the prescribed procedure for expulsion of a society member has not been followed. We are not impressed with the argument. Procedural law is subservient to justice.

9. In the case in hand the only issue is regarding default of payment of dues of the society for construction of flats, which the late husband of appellant no. 1 was not ready and willing to pay at any stage, despite opportunities given. Firstly by the Society, secondly by the Joint Registrar (II), Cooperative Societies, Delhi and thereafter by the Financial Commissioner, Delhi. Even before the High Court, at the time of issuance of notice, the statement of late husband of appellant no. 1 was that he is ready and willing to deposit the amount due with interest but still nothing was paid.

10. For the reasons mentioned above, we do not find any error in the order passed by the High Court. The appeal is, accordingly, dismissed. No order as to costs.