

2023 SCC OnLine P&H 478

In the High Court of Punjab and Haryana at Chandigarh
(BEFORE JAISHREE THAKUR, J.)

Maninder Pal ... Petitioner;

Versus

Chandigarh Sector 16 Co-operative House Building
Society Ltd. and Others ... Respondents.

CWP No. 11685 of 2009 (O&M)

Decided on May 17, 2023, [Reserved on : March 10, 2023]

Advocates who appeared in this case:

Mr. Arvind Sethi, Advocate for the petitioner.

Mr. Raj Kaushik, Advocate, for respondent No. 1.

Mr. M.K. Dogra, Additional Standing Counsel for UT, Chandigarh—
respondent No. 2.

The Judgment of the Court was delivered by

JAISHREE THAKUR, J.:— The present writ petition has been filed under Articles 226/227 of the Constitution of India praying for the issuance of a writ in the nature of Mandamus directing the respondents to allow the petitioner to continue to be a member of the respondent No. 1—Society, especially in view of the fact that she has deposited Rs. 7,96,000/-; with a further prayer of issuance of a writ in the nature of Certiorari to quash the resolution/order passed by respondent No. 1—Society dated 20.11.2006 and 17.02.2007 (Annexures P-14 & P-14A respectively), terminating her membership, order dated 19.11.2008 passed by the Appellate Authority (Annexure P-16) as well as the order dated 18.03.2009 passed by the Advisor to the Administrator, U.T., Chandigarh, upholding the termination.

2. In brief, the facts of the case as stated, are that the petitioner was the original member of the respondent No. 1 Society namely, the *Chandigarh Sector 16 Cooperative House Building Society Limited* (for short "the Society"), registered under the provisions of the Punjab Cooperative Societies Act, 1961, as applicable to Union Territory, Chandigarh, having Share Certificate No. 75 dated 28.02.2002 (Annexure P-4). She deposited a total amount to the tune of Rs. 7,96,000/- with the Society towards the payment of cost of land and construction for category "B" flat. She approached the Society a number of times to know the status of the flat and balance amount, if any, payable by her, but she was not entertained. A legal notice dated 07.08.2007 was served on the Society through Regd. A.D., which was

followed by a reminder dated 27.08.2007 but the petitioner heard nothing from the Society. The husband of the petitioner also visited the office of the respondent on 06.09.2007 after knowing that Society would start handing over the possession of flats from 05.09.2007 onwards, but that too met the same fate. Thereafter, she filed a petition, dated 10.09.2007 (Annexure P-10), under Sections 55/56 of the Punjab Cooperative Societies Act, 1961 before the Additional Registrar, Cooperative Societies, U.T. Chandigarh, for adjudication of the dispute regarding possession of the Category "B" flat to the petitioner, which was ultimately dismissed vide order dated 03.02.2009 (Annexure P-17) by the Joint Registrar, Cooperative Societies, Chandigarh. It was during the course of these proceedings before the Additional Registrar, Cooperative Societies Chandigarh, that the petitioner came to know about her expulsion from the membership of the Society on 20.11.2006 on account of non-payment of dues. On 08.01.2008, in the proceedings pending before the Additional Registrar, Cooperative Societies, the Society supplied a copy of resolution dated 20.11.2006 without bearing any number nor the date of its attestation. After the dismissal of the petition under Sections 55/56 of the Act of 1961, the petitioner filed an appeal under Section 68 of the Act of 1961 against the order of expulsion of the petitioner from the membership of the Society, which was dismissed by the Assistant Registrar vide order dated 19.11.2008. Thereafter, the petitioner preferred a revision petition against the order dated 19.11.2008 (Annexure P/16) regarding expulsion of the petitioner from the membership of the respondent Society, which was also dismissed/rejected by the Advisor to the Administrator, U.T. Chandigarh, vide order dated 18.03.2009. Aggrieved against the cancellation of the membership of the petitioner in the respondent —Society, the present petition has been filed.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner was one of the founder members of the Society and had, in fact, paid the amount of Rs. 7,96,000/- towards the demand raised for allotment of a B-Category flat in the Society. The petitioner was holding a membership with Folio No. 106 and Share Certificate No. 75. The flat was not allotted to the petitioner despite several visits having been made to the office of the Society. Ultimately, the petitioner served a legal notice asking the Society to inform about any outstanding dues so that the same could be deposited and a flat is allotted. Since the same was not done, the petitioner had no option but to approach the Registrar, Cooperative Societies under Sections 55/56 of the Punjab Cooperative Societies Act, 1961 and it was only in those proceedings the petitioner came to know that the very membership of the petitioner stood cancelled. It is argued that before cancellation of the membership, no notice was issued, which is against the rules and

the principles of natural justice. Ever since the major amount was deposited by the petitioner in the year 2004-2005, she has been residing at House No. 1439, Sector 20-B, Chandigarh, which was the address given in the legal notices which the petitioner got served on 09.08.2007. It is submitted that there is nothing to establish that the letters were sent to the address where she was residing and that the finding of the Appellate Authority and the Advisor is based on the assumption that the petitioner was given a number of opportunities to deposit the dues of the Society, which she failed to do so. It is argued that even the Appellate Authority and the Advisor have not gone into the record of the case to see whether any due intimation was ever given by the Society to the petitioner asking her to deposit the outstanding due. Furthermore, the quorum in the meeting was not complete, therefore, the resolution which was passed terminating her membership is illegal. It is in this background that the writ petition has been filed with prayer that orders so passed deserve to be set aside and the membership of the petitioner restored and consequent thereof she may be permitted to make the outstanding dues.

4. Per contra, learned counsel appearing on behalf of the respondents would urge that there is no infirmity with the orders so passed and that the Society had no option but to expel the petitioner from the membership of the Society, as she was a defaulter. It is submitted that she was given several opportunities to clear the outstanding dues of the Society which she failed to do. Several notices were issued and despite the said notices asking for demand of the outstanding amount, the petitioner did not respond. A registered letter was sent and the acknowledgment due was received back, which would also establish that the petitioner was made aware of the outstanding dues, clearance of which would entitle her to have her name put in the draw of flats. Accordingly, a public notice was issued on 19.09.2006 in the newspaper making it clear that those members who have not been included in the draw of lots, can still come forward and make payments but despite the public notice, the petitioner did not do so. As such, the petitioner does not deserve any relief.

5. I have heard learned counsel for the parties and have perused the orders so passed by the respondent—Society cancelling the membership of the petitioner herein, the orders of the Additional Registrar/Appellate Authority as well as the order passed by the Advisor, upholding the order of cancellation and find that there is no ground for interference in the present writ petition.

6. A perusal of the record would reflect that several letters were addressed to the petitioner to come forth and make deposit of the outstanding dues against her but she did not do so. Letters dated 24.6.2005, 22.8.2005, 20.5.2006 are available on the record reflecting

that the petitioner was asked to come forward and make the payment towards the payment schedule which she failed to do. Last opportunity was also allowed. One notice dated 24.06.2005 was issued to the petitioner asking her to pay penal interest @ 22% on land cost and 16% on the cost of construction. The said notice was sent through speed post but the same was received back undelivered. As the petitioner did not make payment, another registered letter dated 20.5.2006 was written to the petitioner and the acknowledgment due was received back which would establish that registered letter stood delivered. In the said notice, it was mentioned that an amount of Rs. 9,58,960/- was due and the petitioner was asked to make the payment by 31.05.2006. But despite the said communication, the petitioner did not step forward. Consequently, a General Body meeting was held and a resolution was passed on 30.11.2006 expelling the petitioner and other similar situated persons from membership of the Society. As stated in the written statement, the quorum of the General Body expelling the petitioner was complete and the expulsion is in consonance with the bye-law 11 (a) (ii) of the Society, which reads as under:—

“11 (a) A member may be expelled for one or more the following reasons : -ii) Failure to pay the share money or amounts due from him to the Society.”

7. Public notice too did not elicit any response from the petitioner. The argument as raised by the learned counsel for the petitioner that no notice was served does not have merit since registered A.D. letter was issued raising demand and the same was duly served as the acknowledgment due was received back in the office of the Society. Moreover, the public notice as issued in the newspaper is sufficient proof of notice being served upon the petitioner, calling upon the petitioner and all those members whose names were not mentioned in the draw of lots to come forward and make payment of the outstanding dues. It is only thereafter that a General Body meeting was held and the membership of petitioner along with three other defaulters i.e. Rupinder Deep Kaur, Anup Singh Ghai and Inder Mohan Rishi was terminated. The intimation of the same was sent by the Secretary of the Society to the petitioner and the petitioner was requested to collect the amount, which was paid by her after deductions of the charges incurred by the Society. However, the petitioner did not collect the amount.

8. The authorities on perusal of the record have found that adequate opportunities had been given to the petitioner to make final payments and for some reason the petitioner did not do so. It was held *“In a cooperative society, it is the responsibility and duty of each and every member of the society to contribute his money in time for construction*

of the dwelling unit and without contributing the amount, a project cannot be completed. The appellant has failed to deposit the amount legally due towards her. Thus, the expulsion of the appellant from the society is valid." The argument that no notice was given is not sustainable in the light of the fact that public notice was also issued, which in itself is deemed to be sufficient. Dehors the fact that there was adequate notice, it is unbelievable that a person, who was a founder member of the Society and who has deposited part money towards the construction of a flat, was unaware that balance payments were to be made in installments, was not taking any interest and following up.

9. Consequently, finding no illegality in the orders impugned, the writ petition stands dismissed.

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