

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 96/2011

**Revision Petition under
Section 116 of Delhi Co-
operative Society Act, 2003**

IN THE MATTER OF

Shri N.K. Sareen
S/o Sh. Madhusudan Lal,
195 Samachar Apartments,
Mayur Vihar, Phase-1 Extension,
Delhi-110091.

...Petitioner

Versus

1. The President/Secretary,
Samachar Cooperative Group Housing Society Ltd.
Mayur Vihar Phase-1 Extension,
Delhi-110091.

2. The Registrar Cooperative Societies,
GNCT of Delhi,
Old Court Building,
Parliament Street,
New Delhi-110001.

...Respondents

(D.M. SPOLIA, FINANCIAL COMMISSIONER)

Order dated July 10, 2014

1. This order will dispose of the revision petition filed by the petitioner namely Sh. N.K. Sareen under section 116 of Delhi Co-operative Societies Act, 2003, against the impugned order dated March 24, 2011vide which the Assistant Registrar(East), as an interim order directed the petitioner to deposit 50% of the amount mentioned in demand letter dated July 02, 2010.

2. Petitioner has submitted that on March 26, 1993, Ld. Arbitrator passed an award, inter-alia, directing to measure the payable area of the petitioner's flat. Vide this order, award was Rs. 50475.66 with the following directions:

- a. Claimant society is directed to get payable area recalculated category wise, separately both for "A" and "A Duplex" and overcharging resultant there from may be adjusted against the outstanding dues of Rs. 50475.66.
- b. Claimant society is also directed to adjust difference between the interest of Rs. 4333.29 and Rs. 3739.09 as on December 31, 1991.
- c. Respondent (petitioner herein) is directed to pay rest of the dues immediately and in case of default of payment he will be liable to be charged penal interest.

3. Society made an appeal against the above said award before the Delhi Co-operative Tribunal (hereinafter referred to as "The Tribunal"). The Tribunal vide its order dated October 12, 1993 directed that the respondent (petitioner herein) cannot be charged for an area more than actual possession and upheld the order of Ld. Arbitrator and dismissed the appeal of the Samachar CGHS. But society did not implement the directions of the Ld. Arbitrator.

4. In fact in 1995, the Samachar CGHS raised and filed another claim petition for Rs. 1.02 lakh before the Ld. Arbitrator. Vide award dated January 31, 1997, Arbitrator passed an award asking the Petitioner to pay a sum of Rs. 1,41,865.27.

5. Petitioner made an appeal before the Tribunal, and the Tribunal vide its order dated September 29, 1997 quashed the award on grounds of *res-judicata*.

6. Society filed a writ petition Civil No. 982/1998 before the Hon'ble High Court of Delhi against the order of the Tribunal. Vide its order dated

August 23, 2002, Hon'ble High Court set aside the order of Tribunal dated September 29, 1997 and observed that the principle of *res-judicata* is not applicable in the matter. Court remanded back the matter to the Tribunal with directions that the appeal case no. 33/97 (i.e. appeal filed by the petitioner before the Tribunal against the award dated January 31, 1997) shall revive and be considered afresh and disposed of on merits after hearing the parties.

7. In pursuance of the above said order of the Hon'ble High Court, the Tribunal vide its order dated December 17, 2002 quashed the demand for a sum of Rs. 1,41,865.27 and directed the following:

- a. Petitioner is liable to pay his share of loan with interest taken by the society from DCHFC.
- b. His share to be decided as per award dated March 26, 1993.
- c. Any demand against the petitioner will be sustainable on this account only after the said exercise is done.
- d. Petitioner is liable to pay maintenance/service charge etc. like other members similarly placed.

8. Assistant Registrar(East) vide order dated August 06, 2003 cancelled the recovery certificate for Rs. 1,41,865.27 and further directed that the award passed by Sh. M.P. Bhatnagar dated March 26, 1993 may be implemented.

9. Against the above said order of Assistant Registrar (East), society filed a Civil Writ Petition No. 1520/2007 before the Hon'ble High Court of Delhi.

10. The Hon'ble High Court DB vide order dated May 06, 2010 quashed the order dated August 06, 2003 with the direction that a fresh recovery certificate, based on a calculation of up to date dues of the society, as per

the award and the report of the architect, be issued, in case any dues are still pending.

11. The society vide letter dated July 02, 2010 raised yet another demand, to the petitioner. The amount claimed had increased from Rs. 1,41,865.27 to Rs. 14,18,845.19. A copy of the letter was sent to the Registrar of Cooperative Societies, New Delhi. The Assistant Registrar(East), vide order dated March 24, 2011 directed that the petitioner should pay 50% of the amount to the society or in his office. The petitioner has prayed to quash the impugned order dated March 24, 2011 vide which the Assistant Registrar(East), as an interim order, directed the petitioner to deposit 50% of the amount mentioned in demand letter dated July 02, 2010.

12. The respondent(society) has stated in its written submissions that the petitioner is a wilful defaulter. Further, the petitioner is seeking equity without doing equity. The law is very well settled by the Hon'ble Supreme Court of India on this issue that he who seeks equity must do equity first. The petitioner refuses to discharge his liability while insisting upon the society doing the same. The petitioner has attempted to misguide this Hon'ble Court by concealing vital information and placing incorrect and irrelevant documents on record.

13. The society has also submitted that :

- i. the decision to provide lifts in two blocks having 'A' category flats was decided in the GBM held on May 27, 1989 and the petitioner never applied for a flat with lift facility;

- ii. Petitioner is misleading the court by stating that cost of a category flat is Rs. 2,20,658/-, whereas it was finalized at Rs. 2,48,695/-;
- iii. The actual loan sanctioned by the DCHFC to petitioner was for Rs. 1,00,000/-;
- iv. As directed by the Delhi High Court on May 06, 2010 cost of flat was worked out to be Rs. 2,47,599/-;
- v. The award dated March 26, 1993 is related to the cost of the flat and had nothing to do with the loan;
- vi. That there is no outstanding DCHFC loan against the society because the society has repaid the loan including the share of the petitioner;

The petitioner has also filed a statement before the Court on June 20, 2014 vide which it was stated that a sum of Rs. 3,97,393/- is due against him and paid it vide cheque No. 246029 drawn on State Bank of India, Sansad Marg, New Delhi.

14. Petitioner submitted details of payments made during the period September 1993 to March 2014 totalling Rs. 69,349/- on account of maintenance/service/parking charges etc.

15. Society filed a statement signed by the Secretary of the society for dues of Rs. 2,99,747.23/- and Rs. 17,29,000/- pending against the petitioner on account of DCHFC loan, maintenance charges etc. and interest thereon.

16. After considering the above facts and statements, it is observed that, in the instant case, the bone of contention between the parties is that

initially the cost of the flats could not be finalized in an exact manner and the petitioner did not pay any amount against him on the ground that the society first of all ought to adjust the difference of cost between the flats óA type without lift ô and óA type with lift ô, and thereafter settle the issue of the net amount payable against the petitioner.

17. On the other side society raised its claim on account of accumulating interest, maintenance charge and loan amount.

18. The petitioner's liability was related to the type of flats given to the members. In the instant case the first Arbitrator, vide award dated March 26, 1993 directed the society to get the payable area calculated category-wise and adjusting of the outstanding dues. The position regarding determination of the amount due on this account is uncertain. The society without apparently complying with the directions of the first award, which had become final, cannot proceed to raise another claim on this account. The appeal of the society was dismissed by the Tribunal on October 12, 1993. While dismissing the appeal of the society the Tribunal specifically observed that:

".....As against this, it has rightly been pleaded by the respondents that they cannot be charged for more area than in their actual possession, which has been ordered to be ascertained through measurements by the learned Arbitrator....."

Therefore, the society needs to satisfy the competent authority that the cost of the flat has been finalized after taking into account the difference in area.

19. Clearly there are several issues relating to various components constituting the due amount. These require detailed understanding and resolution to determine what could be considered legitimately recoverable from the petitioner. Accordingly, the matter is remanded back to the

Registrar of Co-operative Societies with the direction that the disputed amount be settled after calculating the dues, as per the directions in the award dated March 26, 1993, orders of the High Court of Delhi dated August 23, 2002 and May 06, 2010.

20. The impugned order dated March 24, 2011 vide of the Assistant Registrar (East) directing the Petitioner to deposit 50% of the amount mentioned in demand letter dated July 02, 2010, is set-aside.

21. The Registrar of Co-operative Society will give adequate opportunity to both the parties to be heard and dispose of the matter preferably within four months through a speaking order.

22. Announced in the open Court.

(D.M. SPOLIA)
FINANCIAL COMMISSIONER: DELHI
JULY 10, 2014