

GOVT. OF NATIONAL CAPITAL TERRITORY DELHI
IN THE COURT OF THE REGISTRAR COOPERATIVE SOCIETIES
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-
110001

F.47/465/GH/SEC-7/2020/5978 - 82

Dated: 14/9/23

In the matter of:-

SH. RAKESH MITTAL

.....COMPLAINANT

VERSUS

SUVIDHA CGHS LTD.

(Through President/Secretary)

.....RESPONDENTS

ORDER

This order shall dispose of the proceedings initiated vide Show Cause Notice dated 12.09.2019 issued under Rule 137 of DCS Rules, 2007.

Whereas, a petition under section 137 of Delhi Cooperative Societies Rules, 2007 was filed by the Petitioner Sh. Rakesh Mittal for setting aside the certificate of sale dated 22.12.2012 of the Flat No. A-29 and B-22 in the Suvidha Cooperative Group Housing Society Ltd.

Whereas, the brief facts of the case as submitted by the Applicant/Petitioner are that the Society failed to pay the installment of the loan to the DCHFC. Therefore, the DCHFC filed arbitration case against the Society for the recovery of its loan wherein an award dated 12.02.2002 was passed against the Society for recovery of Rs. 1,40,00,000/- (One Crore forty lakh rupees only). Thereafter the DCHFC initiated the recovery proceedings for the execution of the said award. As the Society was in default of Rs.1,40,00,000/- towards the DCHFC the Society called a General Body Meeting on 10.01.2010, in which the Society passed resolution for construction of two new flats at the vacant space on the ground floor and the sale consideration of the new flats was to be utilized for the repayment of the loan amount of the DCHC and for well being of the Society. Thereafter, the society constructed two flats in the parking area, without getting the approval from the MCD/ other government sanctioning authorities.

The petitioner further submitted that, in the proceedings for execution case, on 26.04.2012, the Society submitted an affidavit stating that there were two additional old construction un-allotted vacant HIG flats, A-29 in A-Block and B-22 in B-Block. After due formalities by the Assistant Collector appointed by the DCHFC including

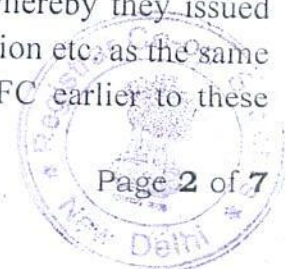


the inspection report of the flats on 26.05.2012. Later a public notice/ attachment order was passed by the said Assistant Collector for the attachment of Flat No. A-29, and B-22 constructed in the stilt common area of the Society. On 22.06.2012, the Society submitted a valuation report in respect of the two flats before Assistant Collector, and accordingly on 16.07.2012, a proclamation of sale under order XX1 rule 66 of Code of Civil Procedure was issued by the Assistant Collector, for the sale of the two flats. Accordingly, on 20.07.2012, an auction notice was issued by the Assistant Collector, which was duly published in the newspapers on 22.07.2012.

The Petitioner further submitted that he had participated in the said auction through his attorney and was declared the successful bidder of both of the above said flats. Subsequently on 21.08.2012, Assistant Collector, DCHFC passed an order in which it was mentioned that the Petitioner became the highest bidder in auction among the 31 bidders. The Petitioner bid for flat No. B-22 was of 1.66 crores and for another flat was of Rs.1.62 crores. Accordingly, the Petitioner deposited the amount with the Assistant Collector, however as the Petitioner was requesting for the documents from the Society and just to satisfy the Petitioner, on 01.12.2012, the Society called Special General Body Meeting, whereby the President/ Secretary was authorized to execute / sign the Memorandum of Understanding with the Petitioner and on 05.12.2012 a Memorandum of Understanding was executed between the Petitioner and the Society.

The Petitioner further stated that on 20.12.2012 the Society Management submitted the copy of the resolution passed in the Special General Body Meeting of the Society along with Memorandum of Understanding executed between the Petitioner and Society and also the letter to Assistant Collector requesting for issuance of NOC and sale certificate in respect of both the flats. Accordingly the Assistant collector issued the certificate of sale dated 22.12.2012 under section 95 of the Punjab land Revenue act, 1887 confirming the sale of the Flats No. B-22 and A-29 and vide order dated 22.12.2012 Assistant collector directed the Society to handover the possession of the flats to the Petitioner as the decree of the DCHFC stands satisfied. The Society thereafter issued the allotment letter and possession letters of the Flats No. B-22 and A-29 and also the physical possession of the flats were handed over to the Petitioner.

The Petitioner also submitted that the DCHFC had issued the NOC to the Society on 31.12.2012, confirming that the entire dues of the DCHFC has been paid by the Society and the DCHFC has no objection if the Society issues the NOC for getting free hold from Delhi Development Authority and even the DCHFC also issued a letter dated 31.12.2012, to DDA, MCD, and concerned Sub-registrar whereby they issued their NOC in transactions relating to freehold, sale, purchase, mutation etc. as the same was earlier stopped in consonance to the letters issued by DCHFC earlier to these departments.



The Petitioner further submitted that, he applied for getting the flats freehold from DDA on 28.03.2012 and also deposited the required fee with DDA, however DDA refused to freehold the said flats, as these flats were illegally constructed without any sanction by the DDA as these were not existing in the initial sanctioned plan of Society. Additional two flats were constructed to pay the debts to the DCHFC and in this, the officers as well as the adjudicators have connived to get the mortgage of these two newly constructed executed in favour of the DCHFC.

On getting of the knowledge of fraud being played by the Respondents with the Petitioner, the Petitioner initiated legal action against the Respondents by lodging an FIR bearing No.493/2013 under section 420 IPC, P.S. Prashant Vihar, Delhi against the office bearers of Society and Assistant Collector, DCHFC. Thereafter, the Petitioner had initiated litigations to get the said amount of Rs. 2.2 Crores seized from DCHFC and then to get the same released in favour of the Petitioner. However, the litigation went upto the Hon'ble High Court of Delhi and vide Order dated 24.08.2018, the Hon'ble High Court of Delhi has granted the liberty to Petitioner to initiate appropriate proceedings to challenge the auction and consequently, the Petitioner filed the present petitions before this Hon'ble Court.

Whereas, after filing of the petitions by the Petitioner the show cause notices were issued to the Respondents under Rule 37 of Delhi Cooperative Societies Rules, 2007.

The Respondent society has filed reply to the Show Cause Notice wherein the society submitted that no liberty was granted by the Hon'ble High Court of Delhi vide order dated 24.08.2018 to the petitioner to file the present petition for the very simple reason that mere submissions cannot be treated and converted into order of choice/convenience.

The society further submitted that present petition is time barred as Rule 137 of DCS Rules 2007 categorically provides: "At any time within 30 days from the date of sale of immovable properties, the decree holder or any person entitled to a rateable distribution of the assests or where interest are affected by the said sale, may apply to the Registrar to set aside the sale, on the grounds of material irregularities or mistakes or fraud in publishing or conducting the sale...". The society further submitted that the petitioner till date is enjoying the physical possession of the said flats, without paying the balance consideration of Rs. 1 crore approx. to the society and to the contrary is earning regularly from the said flats, as the same have been given out on rent and he is also not paying regular maintenance/demands raised by the society from time to time.



Whereas, the DCHFC filed reply to the Show Cause Notice wherein it has been submitted that the present petition is barred by limitation as the same has been filed after expiry of approx six years of expiry of limitation period. DCHFC further submitted that the present petition is barred by the principles of Res-Sub Judice u/s 10 CPC as the petitioner has already filed an application u/s 151 CPC for recalling of order dated 21.08.2012 and for setting aside the sale in question.

Whereas, Sh. R.K. Jain, Assistant Collector Grade-1, DCHFC also filed reply to the Show Cause Notice wherein he had submitted that he had been conferred with the powers of Assistant Collector Gr. 1 & Recovery officer vide notification dated 29.02.2012 and in pursuance of the same he executed the recovery matters for the recovery of dues of DCHFC (Decree Holder) from the Defaulter society (Judgement Debtor) Suvidha CGHS Ltd. in the quasi judicial capacity. He further submitted that during the course of recovery proceedings, the said society filed an affidavit submitting therein the availability of two flats No. B-22 and A-29 situated in the said society.

Sh. R.K. Jain further submitted that the proclamation of sale was issued for settling the terms and conditions which was confirmed by both the parties i.e. DCHFC and Suvidha Coop. G/H Society Ltd. on 16.07.2012. Accordingly, the auction notice was given / published on 20.07.2012 in the newspaper 'Statesman' for auction of the said flats on 21.08.2012 on "As is where is" basis and in response to the said public notice, 31 bidders participated in the auction proceedings on 21.08.2012 including Shri Rakesh Mittal and Shri Rakesh Mittal (HUF) who had raised the highest bid for the said flats and was declared the successful bidder(s).

Sh. R.K. Jain mentioned that the auction purchaser Shri Rakesh Mittal moved an application dated 06.01.2014 U/s 151 CPC praying therein that the order dated 21.08.2012 regarding sale of above said two flats may be recalled and decree holder and judgment debtor society may be directed to repay the money along with interest paid by the auction purchaser. Thereafter, Show Cause Notices dated 06.01.2014 and 13.01 2014 were issued to which the decree holder DCHFC moved an application challenging therein the maintainability of the application filed on behalf of Shri Rakesh Mittal u/s 151 of CPC for recalling the order dated 21.08.2012. All the parties were heard on 24.01.2014 and an order dated 31.01 2014 was passed to refer the case file to the Registrar Co-operative Societies, Delhi for decision. That thereafter, he had submitted the complete recovery case file No.617/2002-2003 to this office vide letter dated 31.01.2014 along with a brief history of the case for appropriate action. He further submitted that instead of approaching the RCS for the decision as per the provisions of DCS Act and Rules, the auction purchaser filed an alleged FIR with the Police Station u/s 420 of CrPC and moved an application for Superdari of the amount





deposited by him. The Learned Metropolitan Magistrate passed a detailed order dated 15.09.2014 wherein, there are references of the auction proceedings under execution of the undersigned being an Assistant Collector Gr.I which are reproduced as under:-

".....an arbitration reference was made and the Ld. Arbitrator passed an award in favor of DCHFC. On failure of the society to satisfy the decree award execution proceedings were initiated before the Assistant Collector Gr.I which is the statutory authority for execution of award. Society/judgment debtor failed to satisfy the award and executing officer was constraint to issue auction notice of two flats in question i.e. A- 29 and B-22 on "As is where is basis."

"... Complainant failed to make the complete payment of sale consideration amount within the stipulated time frame as per the terms and conditions of the auction notice. It is also on record that complainant wrote letters dated 03.09.2012 to the Assistant Collector Gr.I seeking extension of time in making the payment"

"...From the aforesaid discussions, it is amply clear that two flats in question have been auctioned by the Assistant Collector Gr.I in execution proceedings of Arbitration award by way of auction on "as is where is basis." Public notice was issued before auction proceedings. Option for verifying the complete details / other information regarding the property in question from the office of the Assistant Collector Gr.I was also given in the notice. Complainant participated in the bidding and was declared highest bidder. Prime-facie it is clear that auction proceedings were fair and transparent, and no one including the complainant had complained about the same."

"...It will not be out of place to mention that complainant / auction purchaser had already moved an application seeking recall of auction sale proceedings and repayment of money before the Assistant Collector Gr.I and by order dated 31.01.2014, the Assistant Collector Gr.I has ordered the application to be placed before the Registrar, Cooperative Societies, for decision as per Law. "

".....This application by the complainant is nothing but an attempt made to bypass the civil proceedings to set aside the auction."

He further submitted that Hon'ble High Court, in its orders dated 24 08.2018 revived and restored the orders of the Ld. Metropolitan Magistrate. Thus, the above observations of the Ld. Metropolitan Magistrate in the order dated 15.09.2014 with respect to the proceedings conducted by the respondent Assistant Collector Gr.I in execution / auction proceedings have also been confirmed fair and transparent.

Whereas, the Petitioner has also filed the additional written submissions wherein the Petitioner has stated that at time of auction of the flats, the Society was in dues of around Rs. 2.10 crores towards DCHFC and the Petitioner has paid the said entire amount to the DCHFC directly, and also Rs. 10 lakhs was received by the Society. Petitioner further stated that after getting the knowledge of the fraud committed upon



the Petitioner in January 2014, he had moved an application before the Assistant Collector for setting aside the sale certificate, which was subsequently forwarded to the office of Registrar Cooperative Societies by the Assistant Collector on 30.01.2014, hence the petition for setting aside the certificate of sale is pending since 2014 itself.

The Petitioner further states that he had filed the application under Section 14 of limitation Act and for the reasons stated therein the delay if any is also liable to be condoned. The petitioner has relied upon several judgments on the point of limitation and also regarding mentioning of the wrong provision and vehemently argued that no person can be left remedy-less and the court have the inherent power to do justice and present case being the fit case for the same as the fraud has been committed upon the petitioner by the Respondents.

The Petitioner further submitted that Delhi Cooperative Housing Finance Corporation Limited was calculating the dues towards the Society by calculating the interest @13%+2.5% quarterly compounding and if the Petitioner had not paid the said amount to the DCHFC then the liability of the Society towards the DCHFC would be more than Rs. 10,32,00,000/-, (Rs.10 Crores Thirty Two Lakhs Only) as on 30.06.23 , thus he is entitled for refund of Rs. 10,32,00,000/- from the Respondents.

After thorough perusal of the pleadings, documents, submissions and judgments relied upon by the parties it is noted that the main objection raised by the Respondents is regarding the maintainability of the petition being time barred. Further, The DCHFC and the Assistant Collector have tried to absolve themselves from the illegality committed in auction of the two unauthorized flats built out of the sanctioned lay out plan of the society. However, the record categorically shows that the Society had filed the affidavit before the Assistant Collector in April 2012, during the execution proceedings, stating factually wrong information therein that the Society is having two un-allotted flats i.e. A-29 and B-22 even though the DCHFC was having the knowledge about the total number of Flats in the Society as the entire society was mortgaged with the DCHFC. It is a matter of concern that at that given point of time DCHFC and Assistant Collector who was the officer appointee of DCHFC had closed their eyes upon the fraud being played in getting these illegal flats auctioned to the public which is not a worthy act being a public/ Government institution.

Further it is pertinent to mention that there is no provision for auction of flats in Cooperative Societies as per the DCS Act and Rules for any purpose whatsoever. DCHFC should have consulted this office or in any case must have perused DCS Act and Rules for appropriate course of action to be adopted for recovery of dues from the society rather than resorting to auctioning of the Flat which in itself is an illegal



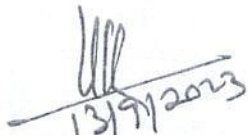
procedure as per essence of this Act. Therefore, Auction conducted by the DCHFC in connivance with the Society in void ab initio.

In view of the above and after hearing the submissions/arguments made by the parties I am of the opinion that objection of the respondents regarding the issue of time barred application cannot be taken into consideration as the petitioner has been pursuing his remedies under criminal court since the knowledge of the fraud. The Hon'ble Supreme Court of India has held in numerous of cases that procedures are handmaid of justice and the aim of the courts are to provide substantial justice to parties. Further it is a fact that the Flats No. A-22 and B-29 which were auctioned to the Petitioner by the Assistant Collector could not have been auctioned as the said flats are illegal being constructed by the society out of the sanction plan.

In view of the observations made above, it is hereby ordered to set aside the auction/certificate of sale dated 22.12.2012, in respect of the Flat No. A-29 and Flat No.B-22, in the Suvidha CGHS Ltd. done by the Assistant Collector in execution proceedings initiated by DCHFC against the Suvidha CGHS Ltd. Further, the Respondents are directed to refund the amount which they have received from the Petitioner, along with the interest @8% per annum (compounded annually) from date of payment till its actual realization. The petitioner is directed to vacate the flat on receipt of payment.

Ordered accordingly




13/9/2023
Krishan Kumar
Registrar Cooperative Societies

Sent to:-

1. The President/Secretary, Suvidha CGHS Ltd., Plot No. 25, Sector-13, Rohini, Delhi-110085.
2. Delhi Cooperative Housing Finance Corporation Limited, 3/6, Siri Fort Institutional Area, August Kranti Marg, New Delhi -110049.
3. Sh. Rakesh Mittal, R/o A-53, Prashant Vihar Delhi-110085.
4. ARCS (Housing Section-7) O/o RCS.
5. In-charge Computer Cell.