

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (CIVIL) NOS.1505-1506/2017

IN

SPECIAL LEAVE PETITION (CIVIL) NOS.10375-10376 OF 2017

SANT LAL GUPTA & ORS.

...Petitioner(s)

VERSUS

UMESH KUMAR JAIN & ORS.

...Respondent(s)/
Alleged Contemnor(s)

WITH

MA NO.1260/2018 IN C.A. NO.9439 OF 2003

MA NO.1261/2018 IN C.A. NO.9439 OF 2003

MA NO.1262/2018 IN C.A. NO.9439 OF 2003

MA NO.1263/2018 IN C.A. NO.9439 OF 2003

J U D G M E N T

Uday Umesh Lalit, J.

1. This Contempt Petition *inter alia* seeks enforcement of the order dated 31.03.2017 passed by this Court in SLP(C).....CC No.6319 of 2017 and prays for direction that the contempt petitioners be put in possession of

12 apartments indicated in the Contempt Petition. The order dated 31.03.2017 passed by this Court was to the following effect:

“Taken on board.

Application for exemption from filing certified as well as plain copy of the impugned order and permission to file SLP(s) without certified copy as well as plain copy of impugned order are allowed.

We do not see any reason to interfere with the impugned order(s) of the High Court. The special leave petitions are dismissed.

Learned Counsel for the petitioners requests that the petitioners be given some reasonable time to vacate the disputed premises in question.

Having regard to the facts and circumstances and the history of the case, we deem it appropriate to grant three months’ time to the petitioners to vacate the premises in question subject to the condition that the petitioners shall file an undertaking before this Court that they would so vacate. Such an undertaking be filed by the petitioners within a period of two weeks from today.”

2. The facts leading to the filing of this Contempt Petition, in brief, are as under:

a) The Modern Cooperative Group Housing Society Limited having an approved strength of 211 members passed a Resolution dated 27.12.1987 in a General Body Meeting expelling 27 members including the present contempt petitioners. It appears that there were certain resignations after such expulsion and 15 new members

including the alleged contemnors herein were inducted against the vacancies.

b) The expulsion of those 27 members was subject matter of challenge and finally by judgment and order dated 18.10.2010 passed by this Court in Civil Appeal No.9439 of 2003, the claim of those

who were expelled, was accepted and following direction was passed:

“31. Be that as it may, we have been informed by learned counsel for the parties that the Society has been taken over by the Administrator and a large number of flats remained un-allotted. The appellants have filed the information sought by them under the Right to Information Act, 2005 on 23.04.2008 which makes it clear that 15 flats bearing Nos.14, 23, 217, 324, 325, 327, 418, 421, 426, 513, 516, 619, 623 and 726 category – ‘B’ and 737 category – ‘A’ remained unallotted. In order to meet the ends of justice it is required that appellants be adjusted against the said un-allotted flats. However, the Society shall put a demand, if any, and the appellants are directed to make the payment with interest in accordance with law.”

c) The newly inducted members including the alleged contemnors then approached this Court by way of IA No.6-7 of 2011 which were

disposed of by this Court on 03.03.2011, recording as under:

“The applicants are permitted to move the Administrator/Registrar, Cooperative Societies, Delhi to vindicate their grievance and it is for them to substantiate and establish their rights. It is made clear that the applications shall be disposed of after hearing the parties as well as Society.”

d) The second round of litigation then began with the newly inducted members approaching Registrar Cooperative Societies submitting *inter alia* that relevant facts were concealed from this

Court and it was not disclosed to this Court that pursuant to the draw of lots held on 20.10.2002, the newly enrolled members were put in physical occupation of said apartments. The matter was considered by the Registrar Cooperative Societies and following order was passed on 24.02.2012:

“08. Meetings with Administrator were held on a number of occasions to discuss the issue of allotment in the light of the Apex Court orders dated 18.10.2010 and dated 04.03.2011 and as a consequence of those meetings, the Administrator in continuation of his letter dated 31.10.2011 sent another letter dated 11.01.2012 informing that in view of the direction of this office which were sent on 01.04.2011 for complying the orders of Hon’ble Supreme Court dated 18.10.2010, the demand letters were sent to the 14 members who were ordered to be admitted by the RCS vide his order dated 26.08.1997. Thirteen persons have deposited the amount demanded from them, however, one person, namely Shri Naurang Ram (Membership No.160) has not deposited the demanded amount. The Administrator was also called in this office, who had apprised the undersigned about the possession of society flats and the matter of occupancy of flat and other related issues were discussed thereafter in the light of subsequent order of Hon’ble Supreme Court on 04.03.2011. In consequence thereof, the Administrator met the persons occupying the 15 flats which were allotted to them in an unauthorized draw, on 01.10.2011 and 10.10.2011. On 20.10.2011 those members have also submitted documents in their possession to the Administrator in support of their claims of being the bonafide members of the society. All these documents have been forwarded by the Administrator to this office apart from forwarding the details of cheques deposited, by the 13 members. These documents were examined and thereafter, as per the direction of the Hon’ble Supreme Court, 15 unauthorized occupants of the flats in the society were called for personal hearing by the undersigned on 14.02.2012. The Administrator of the society Shri D.K. Mishra, IAS was also called to represent the society. All 15 persons or their representatives as also the Administrator were present during the hearing on 14.02.2012. The applicants re-iterated that they were allotted flats and living in the society since 2002. There

are 06 persons who are still occupying flats and 09 have sold those after getting possession on 20.10.2002.

09. On the basis of the records available in this office, orders passed by the various courts as well as the Apex Court, report of the Administrator and submissions made by the appellants and the unauthorized occupants of the flats in I.A.No.6-7 of 2011, I am of the considered opinion that the self draw held on 20.10.2002 was illegal and this was never organized or regularized by this office. The Hon'ble Supreme Court of India vide its order dated 18.10.2010 upheld the order dated 26.08.1997 of the RCS. The operative part of the order dated, 26.08.1987 of the then RCS in this regard is given below:-

“in the circumstances the proposed expulsions are rejected against 14 persons. The society is directed to readmit the 14 persons whose names are given below:

- | | |
|-----------------------|----------------------------|
| 1. Sh. Mithlesh Jain | 2. Sh. Sant Lal Gupta |
| 2. Sh. Naurang Ram | 4. Sh. Virender Kumar Jain |
| 5. Sh. Raghbir Singh | 6. Sh. Om Prakash Gupta |
| 7. Sh. Rakesh Grover | 8. Sh. Vijay Grover |
| 9. Sh. Narender Kumar | 10. Sh. Ram Saran |
| 11. Sh. Vinod Kumar | 12. Sh. Shyam Lal |
| 13. Sh. Kashmiri Lal | 14. Sh. Shiv Prasad |

10. In view of the aforesaid order of the Hon'ble Supreme Court, I direct the Society to readmit the above 14 persons as members of the Society. They should be issued share certificate by the Administrator of the society immediately. With respect to the flats being occupied by the applicants, who had filed I.A. Nos.6-7 of 2011 in Civil Appeal No.5439 of 2003, these persons were admitted as members by the Society in utter violation of the provisions of law since there was no clear vacancies at that moment. Accordingly, their admission as members and consequently allotment of flats to them, cannot be recognized and same is therefore set aside.”

e) The aforesaid order directing those 14 persons to be re-admitted, was confirmed by the Financial Commissioner in Revision Petition Nos.119 of 2012 and 151 of 2012. The matter reached the High Court by way of Writ Petition (Civil) No.4202 of 2014 at the

instance of the newly inducted members. The challenge was rejected and the following order was passed by the High Court on 31.01.2017.

“16. We, therefore, dispose of the writ petitions with the direction to the RCS to draw out a seniority list of members after consultation with the Administrator. The members lower in the seniority will have to surrender and vacate the flats in their occupation in favour of the Rakesh Grover Group (14 members). We are given to understand that the members lowest in the seniority list are in occupation of flats mentioned and recorded by the Supreme Court in paragraph 31 of their order dated 18th October, 2010. This is apparently correct and this is the reason why they have filed W.P. (C)No.8553 of 2014. They would have to vacate and handover the possession of the flats to Rakesh Grover Group (14 Members).”

17. The RCS will complete the aforesaid exercise within a period of two months from the date a copy of this order is received. With the aforesaid directions, the writ petitions are disposed of. All pending applications are also disposed of. No costs.”

(f) The order passed by the High Court was put in challenge before this Court and the special leave petitions were dismissed by this Court on 31.03.2017. In terms of the liberty granted, the special leave petitioners filed appropriate undertakings to vacate the apartments in their occupation. The undertakings were filed on 13.04.2017 and the relevant averments in that behalf are to be found in para no.15 of the present contempt petition as under:-

“15. That as many as 12 persons have filed undertakings on 13.04.2017 vide Diary No.31470 before this Hon’ble Court. The names of the persons/contemnors, filed the undertaking with flat number are given herein below:-

(i) Dinesh Kumar – Flat No.327

- (ii) Harbinder Kaur Sarna – Flat No.623
- (iii) Ritu Sethi – Flat No.325
- (iv) S. Khurana (Sneh Lata Khurana) – Flat No.513
- (v) Ritu Singh – Flat No.619
- (vi) Anita Goel – Flat No.516
- (vii) Trishala Jain alias S.B. Sharma – Flat No.426
- (viii) Umesh Kr. Jain – Flat No.726
- (ix) Arun Kumar Jain – Flat No.421
- (x) Devender Nath Sharma – Flat No.217
- (xi) Vineet Mittal – Flat No.14
- (xii) Sanjay Kumar – Flat No.418”

3. Alleging that despite such undertakings, the alleged contemnors had failed in vacating the apartments in question and in handing over possession, the present contempt petition was filed. The notice was issued on 04.08.2017 and by further order dated 25.01.2018 status quo was directed to be maintained.

4. It was submitted on behalf of the alleged contemnors that they had been inducted as new members, had paid all the instalments which the society had demanded, and had been in occupation of the apartments for last several years. It was further submitted that the entire construction was undertaken on the strength of deposits made by all the members including the alleged contemnors and it would result in great prejudice, if they were now asked to vacate the apartments after such a length of time. It was also submitted that the land in occupation of the society was sufficient enough where one more building could be constructed and if such possibilities were explored, the interest of the alleged contemnors could also be taken

care of. Finding substance in the submission, following order was passed by this Court on 25.10.2018:-

“We have heard Mr. A.K. Panda, learned senior counsel appearing for the Administrator/Society and all other learned counsel. We direct the Administrator to file an affidavit indicating:

- (1) The extent of land available where a Tower could be constructed;
- (2) The extent of FAR available to the Society as on date;
- (3) How many apartments could be constructed in the open piece of land still available with the society?; and
- (4) The technical details including the timeline and the cost of construction which would be required to complete the project.

All these details shall be supported by technical appraisal by a qualified Architect. The affidavit be filed within four weeks from today.”

5. Thereafter the matter appeared on 29.11.2018, when the following order was passed:-

“Pursuant to our order dated 25.10.2018, an affidavit has been filed by the Administrator of the Modern Cooperative Group Housing Society Ltd. The documents annexed to the affidavit indicate that quotations were called for from the Architects and quotation submitted by the Design Enhance, 310, S.G. Shopping Mall, D.C. Chowk, Sector – 9, Rohini, Delhi-110085 was accepted and work order was also issued on 20.11.2018.

Learned Counsel appearing for the administrator submitted that the architect’s report is expected shortly and that the matter be suitably adjourned to enable the administrator to place on record complete documentation including the cost analysis as well as the number of apartments that could be constructed in the new building.

We accept the submission and adjourn the matter for six weeks, to enable filing of such appropriate affidavit.”

6. The subsequent order dated 10.01.2019 passed by this Court was as under:

“In pursuance of order dated 29.11.2018 passed by this Court, an affidavit has been filed by the Administrator of the Modern Cooperative Group Housing Society Limited on 07.01.2019. The affidavit has enclosed an extract of the report given by the Architect who has opined that within the FAR available for the Society, new tower can be constructed in the existing plot with 18 apartments of the size of 83.46 sq.meters each. It is a matter of record that there are 14 claimants involved in the matter and as such four apartments could be constructed over and above the existing requirement.

At this stage, we deem it appropriate to solicit the response of the Municipal Corporation of Delhi (North), whether such tower can be constructed and whether it would be within the FAR permissible for the society. Let a copy of this petition be served upon the Municipal Corporation of Delhi (North) which shall file its response within three weeks from the receipt of the notice.

We also direct the Administrator to convene a meeting of the General Body of the Society so that the proposal submitted by the Architect could be discussed in the meeting and response of the General Body could be placed on record before the next date of hearing.

Learned counsel for the alleged-contemnors shall also file individual affidavits of undertaking on behalf of every single alleged-contemnor indicating his/her willingness to deposit a sum of Rupees thirty lakhs into the account of the Society so that appropriate orders can be passed on the next date of hearing. The affidavit of undertaking must also indicate the time-line within which such deposit can be made.”

7. Thereafter, affidavits were filed by all the alleged contemnors indicating their willingness to deposit a sum of Rs.30 lakhs as stated in the order dated 10.01.2019. A General Body meeting was convened on 24.02.2019 which was attended by 73 members including 14 persons who have been litigating and are interested in getting back the possession of the apartments, whereas the alleged contemnors, having lost the status as members, could not vote. 43 members voted against the proposal of having a new building constructed, while 30 members voted in favour of the proposal. Nine Postal ballots received after the meeting showed that all nine members had cast their votes in support of the new construction. Thus, the voting pattern was:- 43 votes against the proposal and 39 votes in favour of the proposal.

8. The matter thereafter came up on 28.02.2019 when following order was passed:-

“In accordance with the direction issued by this Court on 10.01.2019, a General Body Meeting of the Society was held under the Chairmanship of the Administrator on 24.02.2019. Minutes of the Meeting are enclosed in the Affidavit tendered across the bar by the Administrator. The affidavit is taken on record.

Mrs. Kiran Bhardwaj, learned counsel has also filed affidavit on behalf of some of the alleged contemnors pursuant to the directions issued in the order dated 10.01.2019. 11 of the alleged contemnors have thus filed affidavits, which are taken on record. Copies of these affidavits be given to the other side.

Further, pursuant to the direction issued on the last occasion, an affidavit has also been filed on behalf of the North Delhi Municipal Corporation, para 3 whereof reads as under:

“3. That accordingly, on last date of hearing i.e. on 10.01.2019 this Hon’ble Court has directed the Municipal Corporation of Delhi (North), to file its response as to whether such tower can be constructed and whether it would be within the FAR permissible for the society.

In regard to the above order dated 10.01.2019, it is respectfully stated that there is no record pertaining to approved layout that there is no record pertaining to approved layout plan/completion plan of Modern Cooperative Group Housing Society Limited available in the department, so as to ascertain the balance FAR availing for further construction by the society. Further, it is submitted that new tower with 18 dwelling units can be constructed only if balance ground coverage and FAR is available as against permissible ground coverage and permissible FAR prescribed for group housing in MPD-2021 under clause 4.4.3, B-Residential Plot – Group Housing mentioning as below:

1. Maxi, Ground Coverage: 33.3% (in case addition of alteration of existing DUs for availing balance FAR ground coverage upto 40% may be allowed.
2. Maximum FAR: 200
3. Height: NR (Subject to clearance from AAI/Fire Department and other statutory bodies.
4. Parking: 2.0 ECS/100 sqm built up area and 0.5 ECS/100 sqm for EWS/Service Personal Housing.”

Since the Minutes of the General Body Meeting dated 24.02.2019 has taken a particular stand, we direct the Administrator to place on record, for our perusal, complete record with respect to the said meeting including E-mails

and letters received by the Administrator in respect of said meeting.

9. We have heard Mr. S.D. Singh, learned Advocate for the contempt petitioners, Ms. Kiran Bhardwaj, learned Advocate for alleged contemnors, Mr. Praveen Swarup, learned Advocate for the Municipal Corporation of Delhi and all other learned Advocates. Mr. S. D. Singh very fairly submitted that if the contempt petitioners were assured of possession of apartments, they would be having no objection to support the cause of the alleged contemnors in having a new building constructed by the society. Consequently, the voting pattern which effectively was 43 votes against the proposal and 39 votes in favour of the proposal would then drastically change and would be 29 votes against the proposal and 53 votes in favour of the proposal.

10. Some of the salient features in the matter are:-

1. The alleged contemnors have violated the orders passed by this Court and despite having furnished appropriate undertakings, have failed to vacate and hand over possession. But there are certain equities in their favour; in that they were inducted as members not clandestinely but against the resultant vacancies after expulsion of certain members, that they had paid all the instalments in time, that on the basis of such instalments paid by

the members including the alleged contemnors the construction was completed, and that they were put in possession of the apartments soon thereafter.

2. It is only as a result of the expulsion orders of the contempt petitioners getting set aside that the alleged contemnors have to vacate their apartments and make way for the contempt petitioners.

3. The society had raised amounts and was benefited from two sets of persons that is the alleged contemnors as well as the contempt petitioners and the fact of the matter is that the society is presently having funds to the tune of more than Rs.4 crores.

11. Going by the reports made by the Architect a new building can be constructed with 18 apartments, which means that after satisfying the requirements of all the alleged contemnors there will still be some apartments left, from the sale of which money for construction can be garnered.

Furthermore, according to the Architect, within the FAR available to it, the society can construct such new building. The Municipal Corporation of Delhi has also in principle agreed that if FAR is available, the authority would not have any objection to grant permission for construction of a new building.

12. In the circumstances, though we are considering the matter in contempt jurisdiction, in our considered view ends of justice would be met, if following directions are passed:-

a) All the alleged contemnors shall vacate their respective apartments on or before 31.08.2019. The apartments so vacated shall thereafter be allotted to those persons who were directed to be re-admitted as members in terms of para 9 of the order passed by the Registrar, Cooperative Societies on 24.02.2012. The allotment shall be done in the presence of an Official from the Office of the Registrar, Cooperative Societies in a manner known to law.

b) Each of the alleged contemnors, if he or she desires to have a new apartment in the newly erected building, shall deposit a sum of Rs.10 lakhs with the Administrator of the Modern Cooperative Group Housing Society Limited on or before 31.10.2019. Along with such deposit, an appropriate affidavit shall be filed by such person (s) undertaking that in case any further amount (s) are to be deposited towards the cost of construction, he or she shall abide by such requisition scrupulously.

- c) Upon such deposit and furnishing of an affidavit every such person shall be re-admitted in the Society as a Member.
- d) Within one month from the date of this order, the Administrator shall prefer an appropriate application annexing therewith all the required documents including plans and drawings and seek permission to erect a new building with 18 apartments. Such application shall be preferred with the concerned appropriate Authorities including Municipal Corporation of Delhi.
- (e) Municipal Corporation of Delhi which has agreed in principle that the permission for erecting a new building can be granted, shall consider said application and take appropriate decision in the matter within one month from the date when the application is preferred.
- (f) After the construction has begun, the Administrator shall be entitled to initiate the process for having new members admitted who are willing to deposit such sums as are required towards the cost of construction of an individual apartments which could then be allotted to them.

(g) The Administrator shall also be entitled to have a fresh draw of lots in the presence of an Official from the Office of Registrar, Cooperative Societies in respect of the building to be constructed so that each of those 18 apartments could be allotted to the concerned persons including the alleged contemnors herein.

(h) The alleged contemnors shall have to find new or transit accommodation till they are finally put in possession of the apartments so allotted to them after completion of construction. The cost and charges in that behalf shall be borne by the alleged contemnors and they shall not be entitled to have any amount reimbursed either from the society or from any of the members.

(i) Whether the cost of construction must come entirely from the allottees of apartments in the new building to be constructed or whether the society would like to contribute in that behalf, is a matter which ought to be decided by the society. We may only observe that the alleged contemnors had made their contribution and as a matter of fact the society has funds to the tune of more than Rs.4 crores available with it.

13. In our view, the directions as aforesaid would not only ensure that the contempt petitioners are put in possession of the apartments to which

they have been found to be entitled to but will also take care of the interests of the alleged contemnors who are required to vacate the apartments only because of the setting aside of the expulsion of the contempt petitioners. These directions, in our considered view is the only solution in which the interests of all can be sufficiently taken care of.

14. We, therefore, order accordingly. This Contempt Petitions stand disposed of. No costs.

.....J.
(Uday Umesh Lalit)

.....J.
(Sanjay Kishan Kaul)

New Delhi,
May 08, 2019.