2023INSC789

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5380-5382 OF 2015

PURUSHOTTAM BAGH SAHKARI AWAS SAMITI LTD. **...APPELLANT**

VERSUS

SRI SHOBHAN PAL SINGH AND ANR. ETC. **...RESPONDENTS**

J U D G M E N T

PANKAJ MITHAL, J.

1. The challenge in these appeals is to the common judgment and order dated 17.07.2023 passed by the learned Single Judge of the High Court allowing three writ petitions based on similar and identical facts whereunder writ petition no.18933 of 2011 was treated as a leading case and the facts of the same were narrated in the impugned order.

2. In view of the above, as the writ petition was decided on the basis of the facts of one of the writ petitions, we also consider it appropriate to narrate the facts of the same only while

adjudicating upon the correctness of the judgment and order of the writ court.

3. A society with the name Purushottam Bagh (residential) Sahkari Awas Samiti Ltd., Dayal Bagh, Agra, was formed in accordance with the provisions of the U.P. Cooperative Societies Act, 1965. In the said society, late Krishna Pal Singh, the predecessor-in-interest of the present respondents was one of the members. The said society developed a residential colony wherein a plot No. B-1, measuring 933 sq. meters was allotted in favour of Krishna Pal Singh and a sale deed in his favour was executed on 14.07.1983. It may not be out of place to mention here that under the bye-laws of the society, a residential plot could be allotted to a member only if he lives or wishes to live in the area of operation of the society provided he or his family member does not own any building or plot in the area of operation of the society. The 'family' of such a member under the bye-laws means husband, wife and dependent minor children.

4. It appears that Krishna Pal Singh gave an undertaking on an affidavit that he does not possess any building or plot in the

area of operation of the society and probably in light of such an undertaking, the aforesaid plot was allotted to him and the sale deed was executed.

5. After about 26 years, the society vide order dated 19.03.2010 referred the matter to the sole arbitrator, i.e. cooperative officer (resident) Agra with regard to the price of the land sold by sale deed dated 14.07.1983. The society in its plaint alleged that Krishna Pal Singh had a personal house wherein he resided and that he does not require the plot in question and that he has purchased the same from the society in order to sell it to third party on higher rate. This plot of land was obtained by him by furnishing a false affidavit. It was also alleged that Krishna Pal Singh had not constructed a house or the boundary wall of the said plot within the time permitted.

6. It is worth noting that the aforesaid Krishna Pal Singh died in 1992 and was succeeded by his two sons, Lt. Col. Upendra Pal Singh and Shobhan Pal Singh, whose names were duly mutated in the records of the society as the owners of the said plot on the death of their father. The successors of Krishna Pal Singh

contested the arbitration proceedings alleging that the reference to the arbitrator was not maintainable as it does not fall within the ambit of Section 70 of the U.P. Cooperative Societies Act, 1965. Their father had raised a boundary wall on the said plot after the building plan was sanctioned by the society and that they had deposited even the development charges with the society. Their father never had any house or building within the area of operation of the society. Therefore, the allotment and the sale deed of the said plot was not liable to be cancelled.

7. Notwithstanding the maintainability of the reference to the arbitrator or that the sale deed could not have been cancelled by him, an Award was made on 12.08.2010 declaring the sale deed dated 14.07.1983 to be null and void. The arbitrator observed that when Krishna Pal Singh had purchased the said plot, he had given his address of Kamla Nagar where even his successors are residing till date, and that he had not raised any construction over the said plot despite sanction of the building plan.

8. An appeal was preferred against the aforesaid Award and the same too was dismissed vide order dated 24.02.2011.

9. In the background of the aforesaid facts and circumstances, the successors of Krishna Pal Singh, assailed the Award dated 12.08.2010 and the appellate order dated 24.02.2011 declaring the sale deed dated 14.07.1983 to be null and void by invoking the writ jurisdiction of the High Court. The said writ petition after contest was allowed vide judgment and order dated 17.07.2013 with the clear finding that the society had failed to bring on record any material to prove that Krishna Pal Singh at the time of the purchase of the property was residing in his own house or that he was having any residential property in the area of operation of the society. No evidence was brought before the arbitrator about ownership of any other land by the said Krishna Pal Singh or that no construction was raised on the plot in question. Accordingly, the order of the appellate court and the award were both set aside and it was held that the sale deed dated 14.07.1983 cannot be declared to be null and void.

10. It is the aforesaid judgment and order of the writ court which has been assailed by the society in these appeals.

11. The contention of Shri D.S. Naidu, learned Senior Counsel for the society is that Krishna Pal Singh obtained the allotment and the sale deed of the plot in question by submitting a wrong affidavit that he does not own and possess any property in the area of operation of the society which is in violation of clause 5(1) of the bye-laws of the society and that he failed to construct anything on it within a reasonable time.

12. It would be appropriate for this Court to refer to clause 5(1) and clause 3(10) of the bye-laws of the society so as to deal with the submission made by the learned counsel on behalf of the society. Clauses 5(1) and 3(10) of the bye-laws of the society reads as under:

> **"Clause 5 (1)**-
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> **5**. Subject to anything contrary contained in the bye law or the regulations, a person be entitled to become of the member of the Society if he is of sound mind, bears good character and above 18 years of age and who
>
> (**1**) Lives or wishes to live in the area of operation of the society and who himself

> or his family member does not own any building or plot in the area of operation of the society and who is not the member of any other cooperative residential society having its area of operation in the same area. Those persons would also be entitled whose land has been acquired by the Society.
>
> **Clause 3(10)**-
>
> 3(10) Family means husband, wife and dependent/minor children".

13. A simple reading of the aforesaid provision reveals that family of a member of the society means husband, wife and dependent minor children and that no member of the society is entitled to allotment of any plot if he himself or his family member owns any building or plot in the area of the operation of the society. In view of the above, Krishna Pal Singh would not have been entitled for allotment and purchase of any plot under the society if he or his family members had any building or plot in the area of operation of the society.

14. The appellant is alleging violation of the Bye Laws as aforesaid therefore it is upon it to prove the same. In this context, the writ court has returned a specific finding that the society had failed to furnish any evidence before the arbitrator to

substantiate its allegation that the petitioners are having land or a house in Agra and that Krishna Pal Singh or his successors have violated any of the conditions of the sale deed or of the bye-laws of the society.

15. For ready reference, the relevant finding of the writ court is reproduced hereinbelow:

> "The basic dispute raised in all the writ petitions is, that the member has given a false declaration and that the said member owns another land or a residential house in his or her name in the city of Agra. The Court is constrained to observe that the Society has failed to furnish any documentary proof before the Arbitrator with regard to this allegation against the petitioners having a land or a house in his or her name in Agra and has further failed to file any evidence with regard to violation of any of the conditions of the sale-deed or of the bye-laws of the Society".

16. It may also be pertinent to mention here that on perusal of the Award of the arbitrator and the order of the appellate authority, it is evident that the arbitrator had not recorded any finding that Krishna Pal Singh had given a false affidavit or that he owned a house or a plot in the area of operation of the society. The only finding recorded by the arbitrator is that at the time of allotment

he had given his address to be F150 Kamla Nagar, Agra where even now his successors are residing. However, such finding falls short of saying that the address at which he was living was a house which belonged to him or his family members as defined under the bye-laws or that his successors are the owners of the said house in their own capacity. Mere living in a particular house by itself would not mean that the said house is under ownership of the person living therein in his individual capacity or even that it is within the area of operation of the society.

17. In the light of the aforesaid and the finding returned by the writ court, we find no substance in the submission made on behalf of the society and as such, in our opinion, the appeals lack merit and are dismissed with no orders as to costs.

..... J.
(ABHAY S. OKA)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
SEPTEMBER 04, 2023.