



2026:DHC:894-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8371/2024 & CM APPLs. 34484-34486/2024**

R K TOLANI

..... Petitioner

Through: **Mr. Amit Sharma and Mr. Sanjay
Kumar Mishra, Advocates**

versus

**ESIC FRIENDS CO-OPERATIVE GROUP HOUSING SOCIETY
LIMITED & ORS.**

..... Respondent

Through: **Mr. Sandeep Kumar, Advocate
(through VC) with Mr. Vinod
Sharma, Advocate (in person) for R-1
Mr. Sameer Vashisht, ASC(C),
GNCTD for R-2 (through VC)
Ms. Manika Tripathy, Standing
Counsel, DDA with Mr. Dishant
Bhati and Mr. Rony John, Advocates
for R-3**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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01.06.2024

CM APPL. 34486/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 8371/2024 & CM APPLs. 34484-34485/2024

1. Present petition has been filed seeking issuance of directions to Respondent No.1-society to hand over possession of the flat to the Petitioner by allotting the remaining flat to the Petitioner. The Petitioner challenges notices dated 26th July, 2023, 18th October, 2023 and 30th December, 2023



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issued by Respondent No.1. The Petitioner further seeks issuance of directions to Respondent No.2 to compensate the Petitioner through interest @ 24% on the amount of Rs. 2 lakhs deposited by the Petitioner w.e.f. the respective date of deposit till the date of allotment with possession of flat, and / or compensate the Petitioner by paying average annual rent of flat since May, 2010 till its actual allotment with possession of flat.

2. Learned counsel for the Petitioner states that the Petitioner is the founder member of the Respondent No.1-society since 1981 having membership No. 58. He states that the Petitioner was re-issued the Share Certificate No. 12185 dated 24th November, 1997 of Respondent No.1-society. He states that in 2007, there were illegal demands from the members of Respondent No.1-society despite the fact that initially the cost of the Flat was Rs. 1.20 Lakhs in 1981 which was later increased to Rs. 3.60 lakhs and then to Rs. 4.95 lakhs and thereafter to Rs. 6.85 lakhs.

3. He states that an amount of Rs. 5,85,860 /- was paid by the Petitioner to Respondent No.1-Society till the filing of his claim in 2007. He states that in 2007, the Petitioner filed arbitration proceedings under Section 70 of the Delhi Cooperative Societies Act, ('the DCS Act, 2003') for adjudication of allotment of the flat as per section 77 of the DCS Act, 2003 whereby an award dated 25th March, 2008 was passed in favour of the Petitioner. He states that the Appeal (No. 99 /2008) against the award was rejected by the DCT vide order dated 06th January, 2009. He states that Respondent No.1-society filed a Writ Petition bearing No. 8998/2009 before this Court whereby vide order dated 10th February, 2010, this Court directed Respondent No.1-society to allot the flat to the Petitioner and hand over possession subject to payment of Rs. 2 Lakhs in the form of Fixed Deposit



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(FD) before the Registrar.

4. He states that pursuant to the aforementioned directions, the Petitioner deposited Rs. 2,00,000/- vide pay order bearing no. 648681 dated 09th March, 2010 and also complied with the directions at serial no. (ii) of the order dated 10th February, 2010. He states that consequently the Petitioner paid a sum of an amount of Rs. 5,85,860/- plus Rs. 2 Lakhs totaling to Rs. 7,85,860/- against the final cost of the flat being Rs. 7,17,000/-.

5. He states that aggrieved by the inaction and deliberate violation of orders of this Court, the Petitioner filed contempt proceeding against the contemnors vide Cont. Case (CJ No. 221/2013) whereby Respondent No. 1 in their Counter Affidavit stated that the Petitioner was not granted possession of the flat as the original record of Petitioner's membership is not traceable by the Respondent No.2 in view of not handing over of the original records by the then Management Committee of Respondent No.1-society to Respondent No.2. He states that the contempt case was withdrawn vide order dated 31st October, 2014 as it was filed after a lapse of one year.

6. He states that Respondent No. 1 has issued notices to the Petitioner dated 26th July, 2023 and 18th October, 2023, whereby a demand was raised for an amount of Rs. 13,89,925. He states that watch and ward charges and maintenance charges and penal interest thereon cannot be demanded from the Petitioner without handing over the possession of the flat. He states that further, a show cause notice dated 30th December, 2023 was issued by Respondent No.1-society for expulsion of his membership from Respondent No. 1 society on the ground of non-payment of the amount to the society.

7. Issue notice. Mr. Sandeep Kumar, learned counsel accepts notice on behalf of Respondent No.1. Mr. Sameer Vashisht, learned Additional



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Standing Counsel (Civil), GNCTD accepts notice on behalf of Respondent No.2 and Ms. Manika Tripathy, learned Standing Counsel for Delhi Development Authority (DDA) accepts notice on behalf of Respondent No. 3. They pray for and are permitted to file their counter affidavits within four weeks. Rejoinder affidavits, if any, be filed before the next date of hearing.

8. Till further orders, the Respondents shall not cancel either the petitioner's membership or his allotment.

9. The Secretary and the President of the Respondent No.1-society shall be personally present in Court on the next date of hearing.

10. List on 07th October, 2024.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JUNE 1, 2024/msh