

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****M.A. NO. 3082 OF 2018****IN****SPECIAL LEAVE PETITION (C) NO. 6300 OF 2018****SK JALALUDDIN & OTHERS****.....PETITIONERS/
APPLICANTS****VERSUS****THE STATE OF WEST BENGAL AND OTHERS****..... RESPONDENTS****ORDER**

Special Leave Petition (C) No. 6300 of 2018 was filed by six petitioners (applicants herein), who were all members of the respondent No.4 - Khowab Housing Co-operative Society Ltd. (for short "Housing Society"). The same was dismissed on 28.03.2018 by the following order:

"Heard learned counsel for the petitioners and perused the record.

We do not find any ground to interfere with the impugned order.

The outstanding dues may be paid immediately except for Rupees One Lakh, which may be paid within six weeks from today.

The special leave petition is disposed of in above terms. Pending applications, if any, are also stand disposed of.”

2. The six petitioners (applicants herein), then filed this M.A. No. 3082 of 2018 on 26.11.2018 with the following prayers:

“a. Allow the instant application.

b. Direct the Secretary or the concerned officer, Khowab Housing Co-operative Society to accept the outstanding dues paid by Petitioner Nos. 4 & 6 as stated in Para 5 of the instant Application and hand over the possession of the flats;

c. Direct the Secretary or the concerned Officer, Khowab Housing Co-operative Society to issue NOC or confirmation letter for Home Loan to the Bank and grant extension of time for paying outstanding dues;

or

d. Pass such further order(s) as this Hon’ble Court may deem fit and proper in the interest of justice.”

3. Briefly stated, the facts of this case are that all the six petitioners in the Special Leave Petition were members of the respondent No.4-Housing Society, which was formed with the objective to construct 48 flats for its 48 members, at a price of approximately 16-17 lakhs per flat. The Housing Society was allotted a residential flat measuring 2586.24 square meters by the Asansol Durgapur Development Authority (ADDA) on lease for a total consideration of Rs. 67,05,745/-. The 48 members of the Housing Society were required to deposit a sum of Rs. 3.86 lakhs each towards the cost of land etc., which was deposited by all the 48 members (including the six petitioners) and thus a total amount of Rs. 185.28 lakhs was contributed by the members.

4. After the construction of the flats was completed, the total cost of each flat came to Rs. 24 lakhs, and as such all the 48 members were required to deposit the said amount. All the members of the Housing Society, except the six petitioners, were allotted the flats and have deposited the balance amount. The six

petitioners had deposited only the initial amount of Rs. 3.86 lakhs each, and nothing more.

5. The Housing Society sent several communications to the petitioners to pay the balance amount for allotment of flat and on 24.8.2014, the Society unequivocally intimated the petitioners that any member, who continues to default in payment of his dues towards allotment of flat to him by the Society for more than six months without a break, may be expelled from the Society. The petitioners failed to make the deposit and thus on 4.5.2015, the Housing Society gave one last opportunity to the defaulting members (petitioners/applicants herein) to clear the dues, failing which they would be expelled from the Society. Since the petitioners failed to deposit the required amount within the specified time, in terms of Rule 133(1) of the West Bengal Co-operative Societies Rules, 2011, the Board of Directors of the Housing Society, by resolution dated 27.05.2015, expelled the petitioners from its membership. The decision to expel the petitioners from the membership of the Housing Society was duly communicated to them. The said decision was also

communicated to the Registrar, Co-operative Societies, West Bengal on 07.07.2015. The Registrar, Co-operative Societies, after giving opportunity of hearing to the petitioners, directed the Housing Society to prepare up-to-date demand of each of the defaulting members and the petitioners were granted time up to 27.10.2016 to pay the balance amount, failing which the decision of the Board of Directors of the Housing Society for expulsion of the petitioners from the Housing Society would come into effect.

6. Challenging the said order of Registrar, Co-operative Societies, the petitioners filed a Revision before the Government of West Bengal. The Principal Secretary to the Government of West Bengal, after giving opportunity of hearing to the petitioners, dismissed the Revision vide its order dated 20.01.2017, and directed the Housing Society to raise up-to-date demand from all the six petitioners by 30.01.2017 and the petitioners were directed to make payment by 28.02.2017, failing which the decision of the Board of Directors, expelling the petitioners, would come into effect.

7. The petitioners then challenged the said order of the State Government by filing Writ Petition before the High Court, which was dismissed vide order dated 17.01.2018. The High Court, in its detailed judgment, has recorded that in a meeting of the Housing Society held on 01.12.2014, the issue of cost of construction was discussed and the petitioners, who were present in the said meeting, upon perusing the relevant documents of the Society, agreed to pay the balance sum of money. The findings recorded by the authorities below were affirmed by the High Court. It was also noted that the remaining 42 members of the Society had already deposited the entire enhanced amount of Rs. 24 lakhs, while it was only the petitioners, who had not made any deposit beyond the initial deposit of Rs. 3.86 lakhs each, and that there was no objection raised by majority of the members of the Society to the enhanced cost of the flats, and because of the petitioners not depositing the balance amount, the other members of the Society were facing inconvenience. The High Court also recorded that *“counsel for the appellants/writ petitioners*

submitted that his clients were ready to pay the remaining balance amount". While dismissing the Writ Petition, the High Court directed the Housing Society to furnish the outstanding dues of the petitioners within 15 days and as a last opportunity, gave the petitioners further one month's time to deposit the balance amount, failing which, the petitioners would be restored back to the position as it existed prior to the decision of Housing Society expelling them as its members.

8. Challenging the said judgment of the High Court, the petitioners filed Special Leave Petition No. 6300 of 2018 before this Court, which has been dismissed on 28.03.2018 by the order already quoted above.

9. After nearly six months of the dismissal of the Special Leave Petition, this miscellaneous application, with the prayers as quoted above, has been filed on 26.11.2018.

10. The contention of the petitioners in this application is that the cost of the flats was arbitrarily enhanced and that though, after the order of the High Court, some of the petitioners had deposited certain amount (not the demanded amount) directly in

the bank account of the Housing Society, but the same was returned to them. All the petitioners were also refunded Rs. 3.86 lakhs each, initially deposited by them. It was contended on behalf of the petitioners that the Housing Society did not issue no-objection certificate (NOC) for obtaining loans from the bank and hence, the balance amount could not be paid by them.

11. Per Contra, the respondent No. 4- Housing Society has contended that within 15 days of the order dated 28.03.2018 passed by this Court, the petitioners sent a letter dated 04.04.2018 to the Housing Society requesting it to accord permission for bank loan, so as to enable them to pay the balance amount. It was also contended that there was no condition in the order passed by this Court on 28.03.2018 requiring the petitioners to pay the balance amount only after obtaining the bank loans, and as such, since the balance amount was not paid by any of the six petitioners within the time granted by this Court, their right to allotment of flats had been forfeited. It was also submitted that the six flats have already been allotted

to six other members, who all have deposited the requisite amount and have taken possession of their respective flats.

12. From the aforesaid facts, it is clear that besides the initial amount of Rs. 3.86 lakhs, the petitioners did not deposit any further amount and kept disputing the demands raised by the Housing Society. The order expelling the petitioners from the membership of the Society, was passed way back in May, 2015, which order was affirmed by the Registrar, Co-operative Societies, West Bengal as well as the Principal Secretary to the State Government, and the Writ Petition filed by the petitioners was also dismissed. On each occasion, the petitioners were granted time to deposit the balance amount, which they did not comply. They have not even complied with the order passed by this Court on 28.03.2018. After the expiry of time granted by this Court to the petitioners to deposit the balance amount, the order of the Society expelling the petitioners had come into effect and thereafter the six flats have already been allotted to six different persons, who have deposited the requisite amounts.

13. Such being the factual background of this case, we are of the opinion that prayers made in this application, do not deserve to be granted. Accordingly, this Miscellaneous Application is dismissed.

No order as to costs.

.....**J.**
[R.F. NARIMAN]

.....**J.**
[VINEET SARAN]

NEW DELHI;
APRIL 24, 2020.