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

+ **W.P.(C) 6145/2024 & CM APPL. 25561/2024**

DELHI GOVT. OFFICERS CGHS LTD.

..... Petitioner

Through: Mr. Anukul Raj, Mrs. Nikita Raj, Mr.
Tushar Bhalla and Mr. Pratik Sharma,
Advocates

versus

COURT OF FINANCIAL COMMISSIONER

AND ORS.

..... Respondents

Through: Mr. Udit Malik, ASC (Civil),
GNCTD with Mr. Vishal Chanda,
Advocate for R-1 and 2

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Date of Decision: 02nd May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 25561/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 6145/2024

1. Present petition filed under Article 226 of the Constitution of India impugns the order dated 08th February, 2024 passed by the Financial



Commissioner, Delhi ('FC') i.e., Respondent No.1 and the judgment dated 26th April, 2023 passed by the Special Registrar Cooperative Societies ('RCS') i.e., Respondent No.2.

1.1. The RCS vide the impugned judgment dated 26th April, 2023 allowed the appeal filed by Respondent No.3 under Section 91 of the Delhi Co-operative Societies Act, 2003 (DCS Act) assailing the letter dated 06th March, 2023 and previous correspondence issued by Petitioner refusing to transfer membership of the Flat No. A-705, Priyadarshini Apartments ('subject Flat'), in the name of the Respondent No.3. The RCS held that the demand of Rs. 1 lakh raised by Petitioner on account of building maintenance fund as a condition of transfer is contrary to the provisions of Section 79(a) of the DCS Act. The RCS directed the Petitioner Society to transfer the membership within ten (10) days from the receipt of the order.

1.2. The Petitioner herein i.e., the Society filed an appeal under Section 112 of the DCS Act before the FC impugning the judgment of the RCS dated 26th April, 2023, which has been dismissed by the FC vide judgment dated 08th February, 2024. The FC held that the demand of Petitioner Society is illegal and directed the Society to transfer the membership of the Respondent within sixty (60) days.

Brief Facts

2. Sh. Shankaran Das was admittedly granted membership of the Society on 30th January, 2015 and was the owner of the subject flat. Sh. Das entered into an agreement with Respondent No. 3 for sale of the flat.

2.1. Sh. Shankaran Das vide letter dated 09th January, 2019 applied for a 'No Dues Certificate' and the same was duly issued by the Society. The said



certificate was relied upon by Respondent No. 3 for availing a housing loan to finance the purchase.

2.2. The Respondent No.3 thereafter purchased the subject Flat from Sh. Shankaran Das vide a registered sale deed dated 06th February, 2019.

2.3. It is pertinent to mention here that Petitioner contends that said certificate was issued only for the purposes of facilitating personal bank loan for Sh. Das and not for permitting sale of the flat to Respondent No. 3.

2.4. The Respondent No.3 addressed a letter dated 09th March, 2019 to the Society for grant of membership and transfer of share certificate standing in the name of Sh. Das to her name, in light of the registered sale deed dated 06th February, 2019. However, the Society rejected the said request of the Respondent No.3 vide letter dated 17th March, 2019 on the pretext that Sh. Shankaran Das had not obtained prior permission from the Society for the sale in accordance with Section 79 of the DCS Act read with Rule 92 of the Delhi Cooperative Societies Rules, 2007 (Rules of 2007).

2.5. Thereafter, various letters were written by the Respondent No.3 to the Society for grant of membership and transfer of share certificate in her name, but none of the said requests were accepted by the Society. The Respondent No.3 wrote a letter dated 02nd January, 2023 to the Assistant Registrar, RCS requesting direction to the Society to do the needful.

2.6. The Society informed the Respondent No. 3 that Sh. Das ('seller') was liable to pay a sum of Rs. 1 lakh on account of building maintenance fund at the time of the sale of flat and since this payment was not made by him and unless this amount is paid by Respondent No. 3, the Society cannot transfer the membership in favour of Respondent No. 3.



2.7. The Respondent No.3 wrote another letter to the Society dated 11th January, 2023 requesting the Society to provide a copy of General Body meeting (GBM) resolution dated 14th September, 2014. Vide the GBM resolution dated 14th September, 2014 the Society decided that for the period from 1993 to 2014, onetime payment of Rs. 1 lakh shall be charged from the members of the Society who would transfer/sell their flat.

2.8. The Society issued a reply dated 06th March, 2023 refusing to accede to the Respondent No. 3's request for transfer of membership until she made the one-time payment of Rs. 1 lakh towards the building maintenance fund.

3. Aggrieved by the said demand Respondent No.3 filed an appeal before the RCS and vide the impugned judgment dated 26th April, 2023, the RCS allowed the appeal and set aside the society's refusal letter dated 06th March, 2023 along with all other refusal letter of the Society with a direction to transfer the membership in the name of Respondent No.3 on the ground that GBM's resolution dated 14th September, 2014 is in contravention of the provisions of the DCS Act and Rules.

4. The Petitioner herein filed an appeal under Section 112 of the DCS Act against the judgment dated 26th April, 2023 before the FC. The FC dismissed the said appeal vide the order dated 08th February, 2024, which is impugned in the present petition.

Arguments of the Petitioner

5. Learned Counsel for the Petitioner states that Sh. Shankaran Das request for the 'No Dues Certificate' mislead the Petitioner that the same is required for his personal bank loan. He states that the said certificate was issued only for the said purpose and not for the sale of said Flat.



5.1. He states that as per Section 79 (a) read with Section 25 (d) of the DCS Act, it is mandatory for a member to seek prior permission of the Society and clear his/her dues before transfer of share. He states that in the present case no permission as mandated under the said provisions was obtained from the society.

5.2. He states that Rule 92 (2) and (4) of the Rules of 2007 provides that a seller of a flat is required to give fifteen (15) days' notice of his intention of selling a flat to the Society and he/she cannot transfer the flat without obtaining any prior approval.

5.3. He states that since for the period from 1994 to 2011 the members had not contributed to the Building Maintenance Fund and Building Replacement Fund, therefore the Society in GBM dated 10th April, 2011 proposed for a one-time payment of Rs. 1 Lakh from the members who would sell their flat, which was approved in the GBM dated 14th September, 2014. He states that this payment of Rs. 1 lakh was neither paid by Sh. Shankaran Das nor by the Respondent No.3 and therefore her request for the transfer of share of the said Flat in her name was rejected.

5.4. He states that the appeal under Section 91 of the DCS Act filed by Respondent No. 3 before the RCS was time barred as the same was filed after a lapse of 4 years from the date when cause of action first arose i.e., 17th March, 2019.

5.5. He fairly states that the Respondent No. 3 is eligible to be admitted to membership and the Society is willing to do so subject to her making the payment of Rs. 1 lakh.

Conclusion



6. We have heard the learned counsel for the Petitioner and perused the record.

7. The impugned judgment(s) passed by the RCS and Financial Commissioner are in conformity with the statutory provisions of the DCS Act and the law settled by this Court in ***Kusum Lata v. Registrar Cooperative Societies & Anr¹***.

8. The narrow compass of the dispute raised by the Petitioner Society in this petition is with respect to non-payment of Rs. 1 lakh by Sh. Shankaran Das (seller) at the time of sale of the flat to Respondent No. 3 in contravention of the resolution dated 10th April, 2011 passed by the GBM. The said demand of one-time payment is towards Building Maintenance Fund and Building Replacement Fund for the period of 1994 to 2011.

9. The legitimacy of such one-time charges demanded by Society from its member at the time of the sale of flat was an issue which was considered and decided by the Division Bench of this Court in a batch of petitions titled ***Kusum Lata v. RCS*** (supra), wherein this Court after considering the relevant provision authoritatively held that the Society has no power or jurisdiction to charge any money from the subsequent allottees as a transfer fees by whatever name it is called and held such demands to be illegal. The relevant paras of the judgment read as under:

“1. These writ petitions are similar in nature and they involve identical questions of law and facts and, therefore, they are being disposed of by this common judgment and order.

2. The principal issue which arises for consideration in these writ petitions is whether or not the respondent societies could charge any gate money/entry fee/development fund/transfer fee/common good fund from the bona fide purchasers, who had purchased the

¹ ILR (2007) I DELHI 650.



flats from the original members of the society. Almost all the respondent societies concerned have charged from the petitioners herein, who are purchasers of flats from the original members of the society, charges of the aforesaid nature of various amounts ranging upto about a lac of rupees, from each of the purchasers of the flats so as to make them members of the society.

15. The Registrar, Co-operative Societies is vested with the power and jurisdiction to oversee management of the society and if there be any case of mismanagement, the Registrar is empowered to take action against the defaulting society. **The activity which is being carried out by the society is for the welfare of the members in the spirit of co-operative movement. There is no bar on transfer of the flat by the allotted of a flat to a third party and when such a sale takes place by way of execution of transfer deed or agreement for sale, the purchaser of the flat steps into the shoes of the original occupier as he comes into the occupation of the said flat by virtue of the aforesaid transfer. By virtue of the aforesaid transfer, he also becomes entitled to use and occupy the flat and for doing so, he is also entitled to user of the common facilities including those facilities which are mentioned in Section 91 of the Delhi Co-operative Societies Act, 2003.** The society may ask for and demand payment of a reasonable amount from the said transferee of a flat for making available to him all those aforesaid facilities, but there could not be any justification for demanding an amount, which is not commensurate with the object sought to be achieved. If some development is to take place in the society, monetary contribution towards the same is required to be made by all the members of the society and not only by few members who have acquired the property subsequent to the original allottees.

16. We find no reasonable justification for demanding amount equivalent to about a lac of rupees for inducting a transferee as a member of the society. The business of the society is to construct flats and make allotment of the same to its members. One of the other businesses of the society is to provide for and maintain the common facilities available to all the members. **In our considered opinion, the submission of the counsel appearing for the societies is counterproductive, for, if maintenance of common utility services is not the business of the society, in that event they have**



no power and jurisdiction to charge even a penny from the transferee.

18. In terms of the aforesaid order, these writ petitions stand disposed of.”

(Emphasis supplied)

10. Pertinently, at the contemporaneous time Section 79(a) of the DCS Act was also amended and the power of the Society to charge a transfer fee was omitted by the amending Act 8 of 2006, which came into effect on 13th January, 2007. The text of unamended and amended Section 79(a) reads as under:

Unamended sub-section (a) of Section 79 of the DCS Act	Amended sub-section (a) of Section 79 of the DCS Act
(a) the previous permission of the co-operative housing society has been obtained <u>by the transferor by paying the transfer fee;</u>	(a) the previous permission of the co-operative housing society has been obtained by the transferor [***];

11. The learned counsel for the Petitioner fairly states that the Respondent No. 3 is otherwise eligible to be admitted to membership and the Society is willing to do so subject to her making the payment of Rs. 1 lakh. In our considered opinion, in view of the express prohibition under the statute and the law laid down by this Court, the demand for Rs. 1 lakh raised by the Society on Respondent No. 3 as a condition of transfer is contrary to law and has been rightly held to be illegal by the RCS.

12. The reliance placed by the Petitioner on Sections 79(a) and 25(d) of the DCS Act is misconceived as the Petitioner admits that Respondent No. 3 is eligible to become a member and she has purchased the flat vide



registered sale deed. There is thus, no reasonable basis for the Society to not transfer the membership. The provision of Section 79(a) of the DCS Act is directory in nature and the permission contemplated therein can be granted post facto if the transferee is eligible for being admitted to membership. The provision of Section 25(d) of the DCS Act is not attracted in the facts of this case as admittedly the transferor Sh. Das did not having any outstanding dues as evidences by 'No Dues Certificate' dated 11th January, 2019.

13. In fact, the Financial Commissioner has rightly relied upon the judgment of Supreme Court in Delhi **Dayalbagh Cooperative House Building Society Ltd. v. Registrar of Cooperative Societies & Ors.**² wherein, the Court held that a Society has no jurisdiction to object to a transfer/sale by a member to a non-member/transferee and the rights of the non-member/transferee to become a member of the Society are saved under Section 91 of the Act of 2003. The Respondent No. 3 herein is therefore entitled to membership in the appellant Society. The relevant para reads as under:

“48. It may be relevant to note that the subject land was throughout exhibited by the Society as freehold land having ownership rights and allotments were made by the Society to its members by the registered sale deed at the time of allotment of plots. It is to be noticed that a letter dated 27-7-1985 was written by the Secretary of the Society to the Lt. Governor and it was mentioned in Para 2 of the letter that “Delhi Administration acquired 30 acres of land allotted to the Society on 25-3-1957 on freehold basis”. Later, in the letter dated 15-3-1989 issued to the Secretary of the Society it was certified that the status of the land is totally freehold and allotment of the plots to the society members was also on the basis of it and the Society at one stage approached the civil court in RCA No. 95 of 1982 titled Delhi Dayalbagh Coop. House Building Society Ltd. v.

² (2019) 3 SCC 745.



Arjun Das and it was observed by the learned trial Judge that “the land in dispute is freehold one and there is no legal bar to the same being sold”. In the given facts and circumstances, if the allotment has been made by the Society as a freehold land to its members who have further transferred/sold the subject land/plot by registered sale deed to its successors/purchasers, their rights to become member of the Society are indeed saved under Section 91 of the 2003 Act that in no manner could be eluded by the bye-laws and that apart if anyone has any objection regarding the registered instrument(sale deed) pursuant to which right has been created, at least it is not open to examine its validity within the domain and ambit of Section 70 of the Cooperative Societies Act and any person, if felt aggrieved, the remedy lies only before the civil court having jurisdiction questioning the registered instrument within the parameters available under the law.”

(Emphasis supplied)

14. We therefore find no merit in the present petition and the same is dismissed alongwith pending applications.

15. In our considered opinion the demand of Rs. 1 lakh raised by the Society was ex-facie illegal and it has wrongly deprived Respondent No. 3 for five years since 2019 of her rights as a member. Though the RCS directed the Society to transfer the membership in favour of Respondent No. 3 in a time bound manner by its order dated 26th April, 2023, the Society has persisted with its illegal demand and has failed to transfer the membership till date. The extended time granted by the Financial Commissioner to transfer the membership also expired in April, 2024. This illegal conduct of the Petitioner Society cannot be countenanced in view of the settled legal position.

16. We therefore direct that Society to transfer the membership in favour of Respondent No. 3 forthwith and not later than 10 days from today, failing which the Managing Committee shall become liable to personally pay a sum



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of Rs. 50,000/- to the Respondent No. 3 for any further delay. In case of default, the said sum will be recoverable by Respondent No. 3 from the members of the Managing Committee in execution as per the provisions of the DCS Act.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 2, 2024/hp/sk

Signature Not Verified

Signed By: MAHIMA
SHARMA
Signing Date: 04.05.2024
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