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

+ **W.P.(C) 688/2024 & CM APPL. 3057/2024**

SARLA SHARMA

..... Petitioner

Through: Mr. J.P. Sengh, Sr. Advocate with
Mr. Vijay Dahiya, Mr. Shashank
Sharma and Mr. Naresh Chahar,
Advocates

versus

DELHI NIWAS CGHS LTD. & ANR.

..... Respondents

Through: Mr. Sandeep Kumar, Advocate for R-
1.
Mr. Karn Bhardwaj, ASC for
GNCTD with Mr. Rajat Gaba, Mr.
Shubham Singh, Advocates for R-2

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Date of Decision: 18th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (O R A L)

1. The present Writ Petition filed under Article 226 of the Constitution of India, impugns the order dated 12.10.2023 passed by the Financial Commissioner in Case No. 106/2021 i.e., the Revision Petition filed under the Section 116 of the Delhi Cooperative Societies Act, 2003 ('DCS Act'), by the Petitioner herein.

***Brief Facts***

1.1. The Registrar of Co-operative Society ('RCS') i.e., Respondent No.2 vide its order dated 02.06.2000 cancelled the membership of one Mr. P.C. Gautam from the Respondent No.1, society qua the flat 94-B which is situated in Delhi Niwas CGHS LTD. i.e. Respondent No.1 ('Subject Flat') on the ground that Mr. P.C. Gautam had concealed in his membership application affidavit that his wife also had an allotment in a separate co-operative society. The said order was challenged right upto Supreme Court and was upheld. The said order therefore attained finality.

1.2. In furtherance of the order dated 02.06.2000 the Delhi Development Authority ('DDA') vide order dated 23.04.2007 cancelled the conveyance deed dated 31.12.1998 of Mr. P.C. Gautam with respect to the Subject Flat.

1.3. Mr. P.C. Gautam preferred a writ petition (WP(C) 3623/2007) before this Court against the said order dated 23.04.2007 passed by DDA and this Court vide order dated 29.07.2007 granted stay on the operation of the order dated 23.04.2007.

1.4. In the interregnum the Petitioner herein was made a member of the Society on 03.08.2007 vide Membership certificate no. 5466 on the basis of registered sale deed of 1996 and was issued a share certificate by the erstwhile committee of Respondent No.1 qua the Subject Flat. The said grant of membership was a unilateral act of the Society. It is evident from the record that the pendency of the writ petition (WP(C) 3623/2007) was used to orchestrate the grant of illegal membership in favour of the Petitioner.



1.5. Mr. P.C. Gautam on 29.07.2010 unconditionally withdrew the writ petition filed before this Court challenging the DDA's order dated 23.04.2007. The order dated 23.04.2007, therefore, attained finality.

1.6. The Respondent No.1 i.e., the Society filed an execution petition in 2011 for recovery of possession of the Subject Flat to enforce the order dated 02.06.2000. Mr. P.C. Gautam expired on 01.08.2020 and thereafter in November, 2020 Respondent No.1 approached this Court vide writ petition (WP(C) 9268/2020). In this writ it was prayed by the Respondent No.1 that in 2011 it had filed an execution petition, but the file of the said petition was not traceable by the RCS. This Court disposed of the said writ with the direction to RCS i.e., Respondent No.2 to reconstruct the file.

1.7. Thereafter the file was reconstructed and numbered as execution petition (Ex. Pet No. 48/2020) under Section 105 of the Delhi Co-operative Societies Act, 2003 ('DCS, Act'), seeking the execution of the order dated 02.06.2000 passed by the RCS i.e. Respondent No.2. The Society sought recovery of the possession of the Subject Flat.

1.8. The Petitioner herein filed her objections in the above-said execution petition, which was dismissed by the RCS i.e., Respondent No.2 vide order dated 13.07.2021. She claimed to be the owner of the Subject Flat and asserted her possession. The Petitioner is the daughter in law of Shri P.C. Gautam and this material fact was not disclosed by her in the objections.

1.9. Against the said order dated 13.07.2021 of the RCS, the Petitioner herein filed revision petition (Revision Petition No. 106/2021), which was dismissed by the Financial Commissioner vide the impugned order dated 12.10.2023.



Arguments of the Petitioner

2. The learned senior counsel for the Petitioner states that Financial Commissioner failed to appreciate that the Petitioner was admitted as a member of the Society i.e., Respondent No.1 vide certificate no. 5466 dated 03.08.2007 in her own right with respect to the Subject Flat on the basis of the registered sale documents in her favour.

2.1 He states it was not a transfer of membership from the original allottee i.e., Mr. P.C. Gautam to the Petitioner. He states that the Petitioner's membership is independent and subsisting as on date.

2.2 He states that Society is obliged to seek adjudication of their claims against the Petitioner through statutory arbitration under the DCS Act or as per Section 40 of the DCS Act; and they cannot oust the Petitioner herein from the Subject Flat in pursuance to the orders dated 02.06.2000 and 03.08.2007 passed against the original allottee i.e., Mr. P.C. Gautam.

2.3 He states that the Petitioner herein had no notice of the legal proceedings against the original allottee i.e., Mr. P.C. Gautam as regards cancellation of his membership by RCS and the conveyance deed on 23.04.2007 by DDA even though, he was the Petitioner's father-in law.

Analysis and Findings

3. This Court has considered the submissions of the counsel for the Petitioner and perused the record.

4. The Subject Flat was initially allotted in favour of Mr. P.C. Gautam by the RCS. Further a conveyance deed was executed by DDA in favour of Mr. P.C. Gautam on 31.12.1998 on the recommendation of RCS.



5. However, in the year, 2000 Mr. P. C. Gautam was disqualified from his membership by the RCS, i.e., Respondent No. 2 vide order dated 02.06.2000 on the ground that he has withheld his wife's status of being a member of another cooperative housing society. The said order was upheld by the Financial Commissioner vide order dated 25.03.2003. The writ petition filed against the said order of the Financial Commissioner was dismissed by the High Court on 18.07.2003 in W.P.(C) No. 4486/2003. The SLP No. 24798/2003 filed against the order of the High Court was also dismissed by the Supreme Court on 12.01.2004. In this manner, the order of the RCS cancelling the membership of Mr. P.C. Gautam attained finality.

6. In view of the aforesaid cancellation of the membership, DDA on 23.04.2007 cancelled the conveyance deed 31.12.1998 issued in favour of Mr. P.C. Gautam.

7. The Society i.e., Respondent No.1 in the year 2011, filed an execution petition against Mr. P.C. Gautam for recovery of the possession of the Subject Flat. The execution petition became untraceable and aggrieved from the delay, the society filed a writ petition, i.e., W.P.(C) No. 9268/2020 before the High Court seeking directions to the RCS i.e., Respondent No.2. The RCS re-constructed the file of the execution petition and issued notice to the parties. The said writ petition was disposed of with a direction to the RCS to dispose of the execution petition expeditiously.

8. In the said execution proceedings, the Petitioner herein entered appearance and filed her objections. It was contended that she has purchased the subject Flat from one Mr. Radhey Shyam on 25.07.1996 by registered documents. It was stated that Mr. Radhey Shyam had purchased the Subject



Flat from Mr. P.C. Gautam on 24.01.1996. It was contended that the sale was for valuable consideration and the Petitioner has been in possession of the Subject Flat since the purchase in the year 1996 and has been a regular member of the Society i.e., Respondent No.1.

9. The Executing Court concluded that the transaction between Mr. P.C. Gautam, Mr. Radhey Shyam and the Petitioner herein in the year 1996 is a sham transaction. The Executing Court returned the said finding after taking note that the Petitioner herein is the daughter-in-law of Mr. P.C. Gautam and Mr. Radhey Shyam Sharma is the brother of Mr. P.C. Gautam. The Executing Court further noted that the conveyance deed from DDA in favor of Mr. P.C. Gautam for the Subject Flat was executed on 31.12.1998 and the said fact belies the existence of any genuine transaction in 1996 between Mr. P.C. Gautam and the Petitioner herein. The Executing Court has returned a finding that the Petitioner herein suppressed material facts in her objections and more particularly her familial relationship with Mr. P.C. Gautam. The Executing Court further held that the admission of membership of the Petitioner to the Society on 03.08.2007 was a fraudulent act as it was done by the then managing committee of the Society despite being aware of the RCS's order dated 02.06.2000 and DDA's order dated 23.04.2007. The objection of limitation was dismissed on the ground that the execution proceedings were filed in the year 2011 and therefore was within limitation.

10. The Financial Commissioner as well after perusing the record has upheld the findings of the Executing Court and more specifically the finding that the alleged transaction of sale between Mr. P.C. Gautam, Mr. Radhey Shyam and the Petitioner herein is a sham transaction intended to defeat the



orders dated 02.06.2000 passed by the RCS i.e., Respondent No.2 and order dated 23.04.2007 passed by the DDA.

11. Even before this Court, the Petitioner has merely reiterated the submissions made before the Executing Court and the Financial Commissioner. The submission of the Petitioner that the order of the RCS directing her to hand over the physical vacant possession of the Subject Flat without following the procedure contemplated under Section 40 of the DCS Act or Section 70 of the DCS Act is misconceived.

12. The Executing Court and the Financial Commissioner have arrived at a concurrent finding that the Petitioner herein is not a bonafide purchaser of the Subject Flat. The Subject Flat as per the records of the RCS and DDA had been allotted in favour of Sh. P.C. Gautam and conveyance deed was executed on 31.12.1998. The said conveyance deed was cancelled by DDA vide order dated 23.04.2007. Thereafter, no fresh allotment of the Subject Flat was made by RCS and DDA in favour of the Petitioner. In these circumstances, the occupation of the Petitioner of the Subject Flat after the cancellation of the conveyance deed dated 31.12.1998 was illegal and without any authority of law.

13. Similarly, the membership of Mr. P.C. Gautam was cancelled by the RCS on 02.06.2000 and the said order has been upheld by the Supreme Court vide order dated 12.01.2004. The said facts were within the knowledge of the then managing committee of the Society as it had contested the proceedings in support of Mr. P.C. Gautam before the High Court and the Supreme Court. The Petitioner herein admittedly sought membership in the Society in the year 2007 on the basis of the alleged



documents executed in the year 1996 between the Petitioner, Mr. Radhey Shyam and Mr. P.C. Gautam. The grant of membership to the Petitioner on 03.08.2007 by the then managing committee of the Society as against the Subject Flat was clearly illegal for as on that date both, the allotment of the said Flat in favour of Mr. P.C. Gautam as well as his membership stood cancelled. Admittedly, no permission of the RCS was sought before admitting the Petitioner as a member of the Society as contemplated under Rule 19 of the DCS Rules. The Executing Court has therefore, rightly concluded that the grant of membership to the Petitioner was per-se illegal and an act of collusion by the erstwhile managing committee at the behest of Mr. P.C. Gautam. The Petitioner's membership is void ab initio.

14. The contention of the Petitioner that she purchased the property in 1996 is belied by the conveyance deed dated 31.12.1998 executed by DDA in favour of Mr. P.C. Gautam as well as the fact that Mr. P.C. Gautam contested the proceedings of the cancellation of his membership between the year 2000 and 2010 in his own name. In those legal proceedings there was no disclosure of any transfer of the Subject Flat in favour of Mr. Radhey Shayam or the Petitioner herein. It is apparent that the Petitioner's induction as a member of the Society on 03.08.2007 was made during the pendency of W.P.(C) No. 3623/2007 taking advantage of the interim order dated 29.07.2007. The membership of the Petitioner is therefore tainted and not genuine.

15. The orders passed by the Financial Commissioner and Executing Court do not suffer from any infirmity. In the facts of this case, though the orders of cancellation of Mr. P.C. Gautam's membership attained finality in



the year 2004, the Petitioner who is the family member of Mr. P.C. Gautam has circumvented the compliance of the said order for now 20 years and perpetuated her possession illegally.

16. This Court, therefore, finds no merit in the present petition and the same is accordingly dismissed along-with pending application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 18, 2024/hp/sk