

OFFICE OF THE REGISTRAR COOPERATIVE SOCIETIES
GOVERNMENT OF NCT OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI – 110 001

F.Addl.RCS/u/s-91/2020/2019) 1891 – 1892

Dated: 20/10/2020

IN THE MATTER OF:

Smt. Veena Kumari
W/o Sh. Brijendra Kumar
R/o C-48, Preet Vihar,
New Delhi-110092

.....Appellant

Versus

The President/Secretary,
New Ashoka CHBS Ltd.,
Ashoka Bhawan, Ashoka Niketan,
New Delhi-110092

.....Respondent

ORDER

This order shall dispose of the appeal filed under Section 91 of DCS Act, 2003 by Smt. Veena Kumari, the basis of registered Will dated 11.07.2008 executed by Mrs. Shiela Wati, the mother of the appellant.

It is averred in the appeal that property bearing No. B-31, Situated in New Ashoka CHBS Ltd., Ashoka Niketan, Delhi-110092 was purchased by Smt. Shiela Wati from Shri Ajay Kumar Gupta, membership No. 133 (Original Allottee) Son of Shri H.P. Gupta, Resident of G-24/5, Rajouri Garden, New Delhi-110027, through registered instructions/documents dated 10.04.2000.

It is further averred that after purchasing the said property from Shri Ajay Kumar Gupta by Smt. Shiela Wati the membership of Shri Ajay Gupta seizes as provided under Section 91 of DCS Act, 2003.

It is further averred/contended that after the death of the mother, the appellant requested the President/Secretary of the New Ashoka CHBS Ltd., vide letter dated 26.12.2018 and various personal requests/visits to transfer the membership in her name. It has been contended that the requisite papers in connection with the transfer of membership under the provisions of DCS Acts and Rules i.e. Application Form-20, Affidavit in Form 21 on Stamp Paper of Rs. 10/-; attested copy of duly registered instruments/documents; receipt of transfer fee of Rs. 500/- + 100/- as Share Money and Rs. 10/- as Admission Fee. Apart from above ID Proof, PAN Card etc. for allotting/transferring the membership in her name. Copies of which have been annexed alongwith the appeal.

On the basis of the aforementioned circumstances and provisions, it was prayed for direction to New Ashoka CHBS Ltd. to transfer the membership in the name of the appellant.

The appellant in support of her appeal filed brief submission.

The respondent society appeared and filed Counter Submissions to which rejoinder submissions were filed by the appellant.

That during the pendency of the appeal, an application was filed by the appellant to place on record the documents received through RTI Application. The copy of the same was supplied to the counsel for the New Ashoka CHBS Ltd.

A short reply has been filed by the counsel for the New Ashoka CHBS Ltd. who in its reply has admitted the documents of their society, as filed alongwith the application to place on record the documents by the appellant.

The said application was accordingly allowed as there was no serious objection to the same.

Arguments heard and record perused.

The counsel for the appellant took me through the documents whereby it is indicated that Shri L.C. Gupta had applied for the membership of New Ashoka CHBS Ltd. and had submitted the membership form to the society on 04.09.1961. The Managing Committee had approved the membership on 14.02.1965 vide approval No. 4, as recorded in the minutes. He was allotted membership No.133

Shri L.C. Gupta requested the Managing Committee of the New Ashoka CHBS Ltd. for transfer of Membership No. 133 in favour of Shri Ajay Kumar Gupta, Son of Shri H.P. Gupta vide letter dated 20.03.1978. Alongwith the said request of transfer Shri Ajay Kumar Gupta completed all formalities including filling up of form etc. were done by Shri Ajay Kumar Gupta. The transfer of membership was approved as per Managing Committee's resolution (Item No.6) on 30.04.1978.

The transfer of membership in favour of Shri Ajay Kumar Gupta was cleared by the office of RCS vide communication dated 11.01.1999. Whereafter, a letter dated 11.05.1999 was issued by DDA to the society indicating that the draw of lots

will be held on 25.05.1999 at 11.30 A.M. The draw of lots was held as scheduled and Shri Ajay Kumar Gupta was allotted Plot No. B-31, New Ashoka CHBS Ltd., Ashoka Niketan, Delhi-110092. A Perpetual Sub Lease dated 26.11.1999 in respect of plot No. B-31, New Ashoka CHBS Ltd., Ashoka Niketan, Delhi-110092 was also executed in favour of Shri Ajay Kumar Gupta, duly registered before Sub Registrar, Delhi on 02.12.1999.

Thereafter, vide various documents dated 10.04.2000 such as SPA (Registered), Agreement to Sell, Receipt, Possession Letter, Will (Registered), right and title of Plot No. B-31, New Ashoka CHBS Ltd., Ashoka Niketan, Delhi-110092 was transferred in favour of Smt. Shiela Wati, Wife of Shri Pyare Lal, Resident of 254 B, Nai Basti, Delhi-110006.

The counsel for the appellant has also taken through the documents in respect of Preet Nagar CHBS Ltd. and submit that Shri L.C. Gupta applied for membership of Preet Nagar CBHS Ltd. vide application dated 02.08.1966 which was accepted on 11.08.1966. Shri L.C. Gupta was allotted Plot No. C-124, Preet Nagar CHBS Ltd. on 08.08.1976. The draw of lots for allotment of plot to the members of Preet Nagar CHBS Ltd. was conducted on 08.08.1976, 18.03.1978, 27.10.1978 and 25.04.1979 as per letter dated 26.12.1982 address to Shri V.M. Bansal, Deputy Director (CS) DDA, Vikas Minar, New Delhi.

However, vide order dated 27.06.2001, the clearance of membership of Shri Ajay Kumar Gupta was revoked.

The counsel for the appellant has taken me through the order dated 27.06.2001 and submits that the order dated 27.06.2001 has been passed on the premise that Shri L.C. Gupta was originally a member of Preet Nagar CHBS Ltd. vide membership No. 81 and was allotted plot No. C-124, Preet Vihar in the draw of lots held on 08.08.1976.

The RCS has further observed that while being member of Preet Nagar CHBS Ltd. Shri L.C. Gupta also became member of New Ashoka CHBS Ltd.

It is further the submission of the counsel for the appellant that on the basis of the documents placed on record, Shri L.C. Gupta had become the member of New Ashoka CHBS Ltd. vide application dated 04.09.1961 and his membership was approved on 14.02.1965 whereas, Shri L.C. Gupta applied for membership of Preet

... Ashoka CHBS Ltd. only on 02.08.1966 and his application was approved on 11.08.1966

On the aforesaid, it is submitted that Shri L.C. Gupta was initial member of the New Ashoka CHBS Ltd. and had subsequently become of the member the Preet Nagar CHBS Ltd. Accordingly, the primary membership of Shri L.C. Gupta is of New Ashoka CHBS Ltd. and secondary membership is of Preet Nagar CHBS Ltd. Accordingly, in case membership of Shri L.C. Gupta was to be cancelled/revoked it ought to be of Preet Nagar CBHS Ltd. and not New Ashoka CBHS Ltd.

Further, it is also submitted that prior to passing of the order of revocation dated 27.06.2001, no show cause notice was ever served upon Shri Ajay Kumar Gupta and/or Shri L.C. Gupta and/or the Society. Had that been so true and correct facts would have been brought to the notice of the Ld. RCS and the order dated 27.06.2001, as passed would not have been passed.

The appellant has also through her submission has taken to the provisions of Bombay Cooperative Societies Act, 1925 as was in force in the Union Territory of Delhi prior to enactment of Delhi Cooperative Societies Act, 1972 and Delhi Cooperative Societies Rules, 1973. The Reliance placed on the same is with regard to the repeals and savings on the day Delhi Cooperative Societies Act, 1972 came into force. Section 98 of Delhi Cooperative Societies Act, 1972 reads as under: -

“98. Repeal and Savings: on the day on which the Delhi Cooperative Societies Act, 1972 comes into force, the Bombay Cooperative Society Act 1925 (Bom. 7 of 1925) as in force in the Union Territory of Delhi shall stand repealed:

Provided that the repeal shall not affect: -

- a. the previous operation of the act so repealed or anything duly done or suffered thereunder; or
- b. any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or
- c. any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or
- d. any investigation, legal proceeding or remedy in respect of any such right,

privilege, obligation, liability, penalty forfeiture or punishment as aforesaid.

And any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.”

The appellant has also placed reliance on the provisions of Bombay Cooperative Societies Act, 1925 with regard to the transfer of membership beyond first degree blood relation, which came into effect for the first time in the year 1990 by a general Directive issued under Rule 77 of Delhi Cooperative Societies Rules, 1973 restricting transfer of membership to the first degree blood relation. In the present case the transfer of membership as sought in the year 1978 and was also approved in the year 1978 and after considering all these facts the same was cleared by the office of RCS vide his order dated 11.01.1999.

The appellant also relies upon the judgment of the Hon'ble Supreme Court dated 11.03.1997 passed in Civil Appeal No. 1866 of 1997 titled as 'Jagdish Singh versus Lt. Governor and Others'. The Hon'ble Supreme Court dealt with the question of the prohibition of the membership in a cooperative society where a person has become a member of two cooperative societies and after deliberations held to the following effect: -

“Sub rule (1) disqualifies a person for admission as members of a housing society if he or his spouse or any of his dependent children is a member of any other housing society. The disqualification in question obviously attaches to membership of second society and has no connection with his membership of the first society.”

The Hon'ble High Court (Hon'ble Mr. Justice Mukul Mudgal) in WP(C) No. 13032 of 2004 titled as “Shri Pal Jain versus Financial Commissioner”, relying upon the aforesaid judgment has taken the similar view.

The counsel for the respondent has not denied the factum of dates of membership and approval Shri L.C. Gupta as well as Shri Ajay Kumar Gupta as well as the clearance/transfer of membership in favour of Shri Ajay Kumar Gupta by the society as well as RCS. However, he submitted that the appellant has through her mother already approached the Hon'ble High Court as well as the Hon'ble Supreme Court and as such this forum has no jurisdiction to open the matter again. It was further pointed out that RCS has no authority to review its own order. The counsel for the respondent further stated that that the property was not freehold and as such NOC was required from the society which was not taken by Shri Ajay

It was further submitted by the counsel for the respondent that after cancellation the plot is liable to be allotted to the deserving person in the waiting list. Further in case she has grievance she can take recourse against Shri Ajay Kumar Gupta. It is also submitted that the present appeal is barred by resjudicata as the appellant (Mother) has already approached the Hon'ble High Court as well as the Hon'ble Supreme Court and could not get any fruitful result. On the aforesaid basis the counsel for the appellant contends that the appeal is liable to be dismissed.

In rejoinder the counsel for the appellant has led me through the order passed by the Hon'ble High Court and submits that the Hon'ble High Court also went on the premise of allotment of land and not on membership of the appellant's predecessor in interest. It is stressed that as RCS in its order had observed that Shri L.C. Gupta was initial member Preet Nagar CHBS Ltd. and had while the member of Preet Nagar CHBS Ltd. became the member of New Ashoka CHBS Ltd, The Hon'ble High Court also on the same premise that Shri L.C. Gupta was the member of Preet Nagar Cooperative House Building Society Ltd. Vide membership No.81, he was allotted plot No.124, Preet Vihar, New Delhi and while continuing to be a member of the aforesaid society, Mr. L.C. Gupta also became a member of the society vide membership No.133 with effect from 14th December, 1965 and he continued to be a member till 30th April, 1978. In the meanwhile, Mr. L.C. Gupta and his nephew, respondent No.4 approached the society with a request to transfer his membership in favour of the Shri Ajay Kumar Gupta. Alongwith the request, he and Shri Ajay Kumar Gupta filed affidavits to the effect that they did not own any other plot or house in Delhi either in their names or in the names of their spouses and dependent children. Accordingly, the respondent society transferred the membership of Shri L.C. Gupta in the name of his nephew, i.e. Shri Ajay Kumar Gupta which was also approved by the RCS and DDA. As a result, Shri Ajay Kumar Gupta was allotted plot No.B-31, Ashoka Niketan, Delhi, measuring 166.66 sq.yards in a draw of lots held on 25th May, 1999. This was followed by execution of a perpetual Sub-lease deed dated 26th November, 1999 in favour of Shri Ajay Kumar Gupta. Subsequently, a vigilance enquiry was initiated and as a result of the said enquiry, it was revealed that Shri L.C. Gupta was holding dual membership of two house building societies, as stated hereinabove. Consequently, the impugned letter dated 27th June, 2001 was addressed by the RCS to DDA pointing out the violation of Rule 28 of the Delhi Cooperative Societies Rules, 1973 (for short 'the Rules') which prohibits dual membership and revoking the clearance of membership in respect of Shri Ajay Kumar Gupta.

Whereas the facts are admittedly different and not correctly brought to the notice of the Hon'ble High Court which led to passing of adverse order against the mother of the appellant.

Admittedly, the facts as brought before me clearly stipulate that Shri L.C. Gupta was the initial member of New Ashoka CHBS Ltd. where he applied for the membership on 04.09.1961 and his membership was approved on 14.02.1965. Whereas, Shri L.C. Gupta became the member of Preet Nagar CHBS Ltd. vide his application dated 02.08.1966 which was admitted by the Managing Committee on 11.08.1966. On the aforesaid basis I find substance in the submission of the counsel for the appellant. Further, no list of any waiting list member has been placed on record by the respondent, accordingly, a plot is still lying vacant which was allotted in favour of Shri Ajay Kumar Gupta.

As per judicial pronouncement, the disqualification of a member having dual membership obviously attaches to the membership of the second society and has no connection with the membership of his first society.

From the aforesaid narration of facts it is clear that Sh L.C.Gupta had become the member of The New Ashoka Co-operative House Building Society Limited initially before becoming the member of the second society that is The Preet Nagar Co-operative House Building Society Limited. Further before passing the order dated 27/6/2001, no show cause notice appears to have been sent to the society and Sh Ajay Kumar Gupta. The order as passed shows that it has been passed taking allotment in The Preet Nagar Co-operative House Building Society Limited as initial membership in Preet Nagar Co-operative House Building Society Limited, whereas the facts are otherwise.

In these circumstances the order dated 27/6/2001 needs to be recalled. Accordingly as Sh L.C.Gupta was an initial member of The New Ashoka Co-operative House Building Society Limited having applied on 04/09/1961 and his membership being approved on 14/02/1965 and on the other hand applied for membership in Preet Nagar Co-operative House Building Society Limited on 02/08/1966 and approved on 11/08/1966. The primary and foremost membership accordingly is of The New Ashoka Co-operative House Building Society Limited. As per DCS Act and Rules, as amended from time to time and the various judicial pronouncements the disqualification of membership arises in case of a person becoming member and his cessation in the second society and in this case the second society is Preet Nagar Co-operative House Building Society Limited.

I accordingly on the aforesaid facts hold that Sh L.C.Gupta the predeceaser-in-interest of the appellant was the primary and the initial member in the New Ashoka CHBS Ltd. and as such the appellant has acquired right, title and claim of membership in the New Ashoka CHBS Ltd., through predeceaser-in-interest Shri L.C.Gupta/ Shri Ajay Kumar Gupta.

It has also been brought to my notice that RTI applications were filed in 2006 to 2008 and from the replies/information/documents provided, it came to the notice of the appellant that the membership in New Ashoka CHBS was prior in time. The said facts were not in the knowledge of the appellant or her mother at the relevant time. Moreover, it was only after the death of the mother that she got hold of the papers and started perusing the matter.

On the aforesaid facts, order dated 27/06/2001 passed by RCS is liable to be recalled and is accordingly recalled, by exercising powers as envisaged under section 115 of DCS, Act, 2003. The society is directed to get all necessary formalities completed from the appellant within 10 days and treat the appellant as member of the society in place of Sh Ajay Kumar Gupta.

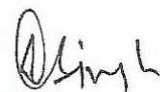


(Ranjeet Singh)

Additional Registrar Co-operative Societies

To

1. Smt. Veena Kumari, W/o Sh. Brijendra Kumar, R/o C-48, Preet Vihar, New Delhi-110092.
2. The President/Secretary, New Ashoka CHBS Ltd., Ashoka Bhawan, Ashoka Niketan, New Delhi-110092.



(Ranjeet Singh)

Additional Registrar Co-operative Societies