

**OFFICE OF THE JOINT REGISTRAR/APPELLATE AUTHORITY
REGISTRAR COOPERATIVE SOCIETIES, GOVT., OF NCT OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET,
NEW DELHI-110001**

No.: F.JR/RCS/Sec-6/U/s 91/Appeal/2020/ 2116-2117

Dated.: 16/03/2021

IN THE MATTER OF:-

Manjit Singh Mehta

.....Appellant

Versus

Riviera Apts., O.C.H.S.Ltd.,
(Through its President/Secretary)

.....Respondent

Appeal filed on: 18.03.2020
Arguments heard on.: 26.02.2021
Order passed on.: 15.03.2021

Sh Sanjay Chiripal, Ld Counsel for the appellant
Sh Shantanu Rastogi, Ld Counsel for Respondent Society

ORDER

This order shall dispose of the appeal filed on 18.03.2020 under Section 91 of DCS Act 2003 by Sh Manjit Singh Mehta against letter dated 02.03.2020 of the Secretary of the Society "Riviera Apts., O.C.H.S.Ltd., situated at 45 Mall Road, Delhi-110054" refusing to transfer membership in respect of flat no.: S-9 in the name of Sh Manjit Singh Mehta, appellant herein.

The appellant has stated in the appeal that he purchased flat no.: South-9, 2nd floor in the Respondent Society vide Sale Deed dated 18.12.2009 registered on 22.12.2009 by Sub-Registrar-I, Kashmere Gate, Delhi vide Registration No.: 8669. The respondent Society is registered with RCS under the provisions of DCS Act 2003 and DCS Rules 2007. The appellant had applied for transfer of membership vide letter dated 29th August, 2011. The respondent Society neither rejected nor granted membership to the appellant. The respondent Society did not request the appellant to submit any other further documents. The appellant continued to make several verbal reminders to all the Administrators and the members of the Managing Committee after applying for the transfer of membership. The appellant was assured that his application is in order and that membership would be transferred in his name very shortly. The appellant once again applied for transfer of membership on 20.04.2017. The Society again neither rejected nor granted membership to the appellant. Sh G S Kohli took charge of the society as its Administrator in November/December 2017. The appellant once again submitted an application for transfer of membership complete in all respects as per the provisions of DCS Act 2003 and DCS Rules 2007 on 11.03.2018 and an amount of Rs.610/- was also paid to the society vide cheque no.: 818334 dated 11.03.2018 for which a receipt no.: 11083 dated 11.03.2018 was issued to the appellant. Having found the application complete in all respects, Sh G S Kohli, the then Administrator forwarded the application of the appellant on 26.03.2018 to the Office of RCS in view of the

provision of Law that the Administrator is not empowered to enroll new members except with the prior permission of RCS. Sh G S Kohli, the then Administrator of the society did not point out any infirmity in the application for transfer of membership of the appellant as otherwise Sh G S Kohli would not have forwarded the application of the appellant to the Office of RCS. The application was kept pending before the Office of RCS for reasons not known to the appellant. Last elections have been held in the society on 22.09.2019 wherein the seven members have been elected as the Members of the MC of the society. The appellant made several verbal requests to the MC elected on 22.09.2019 to transfer the membership in his favour as the same was in order having been forwarded by Sh G S Kohli, the then Administrator of the respondent Society to the Office of RCS. The MC elected on 22.09.2019 did not take decision on the application of the appellant within one month of its being elected on 22.09.2019. Vide letter dated 02.03.2020, the MC of the society rejected the application for transfer of membership of the appellant on various grounds. The appellant has submitted details of chain of transfer of title i.r.o. of the flat in question from Dr K D Khanna to Sale Deed dated 18.12.2009 executed between Sh Kratu Khanna and Sh Manjit Singh Mehta. Feeling aggrieved from rejection by the respondent Society to transfer membership in favour of the appellant the appellant has preferred the present appeal on various grounds. It has been prayed that the rejection letter dated 02.03.2020 of the Society be set aside, direct the respondent Society to transfer the membership in favour of the appellant i.e. Manjit Singh Mehta in a time bound manner and to make necessary endorsement on the share certificate, hold that the MC was duty bound to have taken a decision on the share transfer application of the appellant within one month of its being elected on 22.09.2019.

Notices dated 13.11.2020 were issued to the appellant and the society for 09.12.2020. None appeared for the society on 09.12.2020. The appellant was represented by his Ld Counsel on 09.12.2020. Notice was again issued to the society for 17.01.2021. On 17.01.2021, Ld Counsel for the society sought time to file reply and the case was adjourned to 03.02.2021. The society through its proxy Counsel submitted the reply on 03.02.2021 and the case was adjourned to 17.02.2021 for rejoinder and arguments. On 17.02.2021 Court could not be held and the case was adjourned to 26.02.2021. On 26.02.2021 Ld Counsel for the appellant submitted rejoinder copy of which had been supplied to the Ld Counsel for society. A clerk had appeared on behalf of the society on 26.02.2021. Arguments were heard from the Ld Counsel for the appellant on 26.02.2021. One weeks time was granted to the society to submit written arguments with advance copy to the Ld Counsel for the appellant and thereafter the case was reserved for orders. Written arguments were received from the society on 11.03.2020. The society has not placed on record proof of its having sent a copy of written arguments to the Ld Counsel for the appellant.

The society in its reply has contested the appeal. It has stated that it wrote several letters dated 11.05.2010, 22.05.2010, 15.06.2010 and 23.08.2010 to Mr Kratu Khanna to submit original share certificate and Form 20 but no response was received from him. As per final notice dated 23.08.2010 his application dated 10.08.2009 for transfer of membership was rejected as notice was not complied with. No transfer was allowed in name of Mr Kratu Khanna and his application having been rejected, transfer in name of appellant is thus bad in law and appeal is liable to be dismissed. The will of Late Dr K D Khanna has not been submitted with the society neither during his life time nor during after his death. The alleged will cannot be relied upon being merely a photocopy and no probate passed by competent court have been obtained by Mr Kratu Khanna nor the same have been submitted by the appellant. Transfer in favour of Smt Kanwal Khanna took place only on the basis of her being legal heir of Late Dr K D Khanna and not on the basis of the Will. The appellant has not impleaded Mr Kratu Khanna who is a necessary and a proper party. No prior permission as mandatorily required under section 79 of DCS Act 2003 and as per rule 5 of the society bye-laws was/has been obtained by Mr Kratu Khanna prior to executing the alleged sale deed. Alleged transfer by Mr Kratu Khanna in favour of the appellant is bad in law.

Mr Kratu Khanna has claimed himself to be the owner of the flat in question on the basis of the alleged Will and mutation entries in the records of MCD and that mutation entries do not confer any ownership rights. Appellant has not approached the Court with clean hands and has suppressed/concealed material facts. Appellant case/transfer has been pending for last 11 years and transfer was not done in his favour due to various short comings and especially membership was not transferred in favour of Mr Kratu Khanna. The application of the appellant was forwarded by the then Administrator to RCS and same has not been disposed off till date which means that there are certain shortcomings and deficiencies due to which neither the RCS nor the society has allowed the application. The appellant has failed to explain the reasons for delay in moving the application for transfer for the first time on 29.08.2011 when registered sale deed is dated 18.12.2009. The society has submitted that application has been pending for last 8 years which raised a reasonable apprehension and that authenticity of a document cannot be verified if it is a photocopy. Alleged will has not been duly authenticated by a court of law and has also not been duly probated. Society is not bound by the sale deed as no prior permission was obtained by Mr Kratu Khanna before executing sale deed. Decision could not be taken within 30 days due to other pending issues. Society has no power to ascertain authenticity of the will but perusal of the will shows that it does not bear any date and probate has not been obtained raising serious doubts. Society is not bound to rely on the said will. Sale deed was executed in favour of the appellant by Mr Kratu Khanna on the basis of the alleged Will. The society has prayed for dismissal of the appeal.

The appellant submitted a rejoinder to the reply of the society. The appellant has reiterated the contents of the appeal to be true and correct. The appellant has raised objection to the reply of the society having been submitted without any resolution pursuant to its receiving the summons after 13.11.2020 and has relied upon Judgments reported as 1997 89 Comp Cas 696 PH :: (1996) 114 PLR 190, (1980) Land LR 112 :: (1981) PLJ 79 :: (1981) RLR 120 and (1988) PLJ 240 :: (1988) 1 PLR 525 in support of contention that a separate resolution is required for each and every case of a cooperative society. The appellant has contended that authorization dated 03.02.2021 annexed with the reply of the society is based on decisions of MC Meetings dated 25.10.2020 and 26.10.2020 which are prior to 13.11.2020 i.e. date after which the first summons were received by the society. The appellant has stated that the reply of the society cannot be considered. The appellant has quoted relevant provisions of section 118(9) of the DCS Act 2003 wherein a penalty has been prescribed if the committee fails to dispose off the application within 30 days. The appellant has further relied upon the Judgment of Hon'ble Supreme Court of India in the matter of Mehsana District versus State of Gujarat reported as AIR 2004 SC 1576 :: (2004) 2 SCC 463 which has held that "Act and Rules are made to be followed and not to be violated. When the Statute prescribed the norms to be followed, it has to be in that fashion. Converse would be contrary to law." The appellant has submitted that reliance of the society on Section 79(1) of DCS Act 2003 is totally misplaced as the "prior permission" has been omitted vide notification no.: Part File 37/-1/Coop. Act/Policy/RCS/1024 dated 12.01.2007. No prior permission is required by the seller from the society before selling his flat in question. Transfer of immovable property is not dependent on any permission from the society. The appellant has stated that it is a settled Law that probate of Will made by Hindu, Buddhist, Sikh or Jaina is not required for immovable property situated in Delhi. The appellant has relied upon Judgments reported as AIR 2002 Delhi 6 :: 2001 (62) DRJ 422, (2009) 5 SCC 713 and (2006) 5 SCC 353. The present proceedings are an appeal under section 91 of DCS Act 2003 filed by the appellant and not by the society. This is not the Forum/Court of Law where the society can raise objections or challenge the validity or legality of the registered Sale Deed or the registered Will. RCS did not take any action on various applications for transfer of membership forwarded to it by Sh G S Kohli, the then Administrator of the society. Society has transferred the membership in favour of Mrs Shobha Arvind Dhingra (S-29) in 2019 itself after the MC having been elected on 22.09.2019 and