

**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

Versus

.....Appellant

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 P H :: (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

has also transferred membership in the name of Smt Kalpana Parekh and Sh Vineet Parekh in 2020. The appellant has annexed a copy of letter dated 25.03.2018 forwarded by Sh G S Kohli, the then Administrator of the society in respect of the appellant as also copies of letters dated 04.03.2018 22.04.2018 and 22.04.2018 forwarded by Sh G S Kohli, in respect of other persons of the society including Mrs Shobha Arvind Dhingra and Smt Kalpana Parekh and Sh Vineet Parekh. MC elected on 22.09.2019 is aggrieved of the appellant objecting to its actions. The appellant has annexed copies of letters dated 08.01.2020, 12.01.2020 and 16.08.2020 signed by various residents/members of the society including the appellant. The MC elected on 22.09.2019 out of personal ill will and vendetta has rejected the application for transfer of membership in favour of the appellant on false and flimsy grounds, is now also opposing the appeal and has also rejected applications for transfer of membership of Smt Usha Gupta (now deceased and wife of Sh Ashok Gupta), Sh Kamal Kishore Chhabra and Smt Manju Jain (wife of Sh Praveen Jain) who are also signatories of the said letters. The appellant has annexed copies of rejections letters dated 02.03.2020 and 02.03.2020 in respect of Smt Usha Gupta (now deceased, N-2) and of Sh Kamal Kishore Chhabra (S-10). Transfer of Membership in his favour cannot be withheld due to the fact that membership was not transferred in favour of Mr Kratu Khanna. This would lead to cessation of membership in respect of flat no. S-9 for all times to come. The society has transferred membership directly in favour of Smt Shobha Arvind Dhingra in 2019 from Sh Tarlochan Singh without transferring membership in name of the appellant who had purchased the flat from Sh Tarlochan Singh. The transfer of membership in respect of Mrs Shobha Arvind Dhingra has also been done after almost 9 years. The appellant has annexed a copy of one of the Affidavits dated 05.10.2018 executed by Mrs Shobha Arvind Dhingra submitted with her application for transfer of membership showing that she purchased the flat No.: S-29 from the appellant who in turn had purchased it from Sh Tarlochan Singh. The appellant has also annexed a copy of share certificate in respect of the said flat. MC elected on 22.09.2019 cannot adopt different yardsticks for different residents of the society. The correspondence entered into by the society with Mr Kratu Khanna have no relevance at all. The society cannot now take any other ground for refusal other than those stated in its refusal letter dated 02.03.2020. Even if Mr Kratu Khanna was not eligible to become a member of the society that in itself does not curtail or inhibit the right of the appellant to become a member of the society. Moreover, no rejection letter has been produced by the society nor copy of any of the MC meetings has been produced wherein the application for transfer of membership in favour of Mr Kratu Khanna was rejected. There is no provision under any Law wherein Will of a person is submitted to any authority before the death of the Testator. Original copy of Will is not required to be produced for transfer of membership. A copy of registered sale deed or agreement to sell is to be produced with application for transfer of membership. The appellant has annexed a copy of letter dated 25.03.2018 of then Administrator addressed to RCS. The society has no locus standii at all to challenge the authenticity, legality and/or validity of the registered Will. The Society cannot even raise any objection nor refuse to rely upon the registered Sale Deed which has been registered by Sub-Registrar-I, North District, Delhi. There is no question of the Society of not relying on the registered Will as it is only on the basis of the registered Will that the Sub Registrar-I has registered the Sale Deed executed by Mr Kratu Khanna in favour of the appellant. RCS did not point out objections of any kind. Objection as regards Section 79 of DCS Act 2003 or Rule 5 of the Society Bye-Laws were never raised by the Society in its refusal letter dated 02.03.2020. The MC elected on 22.09.2019 has transferred various memberships in the society without adhering to the provisions of Section 79 of the DCS Act 2003. Execution of a Sale Deed i.e. sale of immovable property by a person is not and cannot be dependent on prior permission of the society. There is no question of any concealment of facts. The appellant has never received any letter from the Society pointing out any short comings or seeking any further documents. RCS has not allowed application for transfer of any person which were forwarded to it for approval by the then Administrator. The society has transferred membership in the names of some of such persons after 22.09.2019. There is no time limit which has been prescribed under

the provisions of DCS Act 2003 and DCS Rules 2007 within which membership is to be applied by a person to the society. The application for transfer of membership in favour of the appellant was forwarded by the then Administrator to RCS as everything was found to be in order. The respondent Society has itself admitted in para no. 6 of its Preliminary Submissions that the Administrator had sent the application for transfer to the Office of RCS and which was kept pending there. It is surprising that society contends that it does not have the letter submitted by it on 25.03.2018 to RCS but has annexed letters issued to Mr Kartu Khanna in year 2010. Either the society is deliberately stating that no such correspondence as stated by the appellant is available in the file or else the society is responsible for loss of documents from its office and appropriate FIR should be lodged for missing documents from the society's office and responsibility should be fixed on persons who are responsible for loss/missing documents from the society's office. The MC members elected on 22.09.2019 are responsible for not disposing off the application for transfer of membership of the appellant within one month of their being elected on 22.09.2019 and have made themselves liable for action under Section 118(9) of DCS Act 2003. Appellant cannot be made to suffer for non actions on the part of the previous MC of the society or its Administrators. Copy of the registered Will is/was not required at all for transfer of membership in favour of the appellant which was submitted in good faith. Prayer clauses of the appeal may be allowed.

The society in its written arguments has taken all the grounds which it had taken earlier in its reply. However, the society has submitted for the first time in its written arguments that appellant had applied for transfer of membership in 2011 and was asked to submit the original documents like share certificate, permission letter of Mr Kratu Khanna but the same were never supplied by the appellant herein as a result of which his application was not processed further.

I have heard the arguments of Ld Counsel for the appellant on 26.02.2021 and have carefully gone through the documents on record, reply of the society, Judgments submitted by the Ld Counsel for the appellant and the written arguments of the society.

As regards the argument of Ld Counsel for the appellant regarding improper authorisation of the secretary of the society to submit the reply, I am of the considered opinion that the society has not submitted copy of resolution of any MC meeting held subsequent to first summons dated 13.11.2020 for appearance on 09.12.2020. I am guided by the Judgments placed on record by the Ld Counsel for the appellant that a separate resolution was required to contest the present appeal and the Secretary of the society is without resolution of the MC to contest that extent the reply filed by the Secretary of the society is without resolution of the MC to contest the appeal and is without proper authorisation to the secretary. However, as the appeal has been filed against the refusal letter dated 02.03.2020 of the society itself, therefore I intend to deal on merits with all the objections raised by the society refusing to transfer membership in favour of the appellant.

The society in its rejection letter dated 02.03.2020 has stated that :

" The Managing Committee of the society, at its meeting held on 01.03.2020 perused and considered your application and all attached documents. The observation of managing committee are as under. "

...page three to five are photocopy of similar application dtd. 17-02-2018 submitted to the then administrator.....Page no. forty three is letter from Mr.Manjeet Singh dtd 29-08-2011 to then manager of the society requesting transfer of share pertaining to this flat.

" Firstly as is clear from application dated 29.08.2011 on page no. Forty Three above, it is clear that the application for transfer of share pertaining to this flat is pending for more than eight years. Therefore it is clear that successive management committee and administrators decided not to do this transfer of share of this flat. Secondly from the documents submitted to the committee it is not possible to verify the authenticity of the Will of Dr.K.D.Khanna. This casts a doubt on the ownership right of all subsequent purchasers. Unless this will is authenticated by a court of law, this committee cannot place reliance on this will and therefore the ownership of all subsequent purchases comes under shadow of doubt. For the reasons mentioned above the application for transfer of share of flat no. S-9 is hereby rejected.

In view of the above discussions your application for transfer of share pertaining to flat no. S-9 in your name is hereby rejected.

The society has taken only two grounds of refusal in its letter dated 02.03.2020 i.e. application dated 29.08.2011 has been pending for eight years and inability of the society to verify authenticity of the Will thereby casting a doubt on the ownership of all subsequent purchasers incapacitating the committee to rely upon the Will. The society has taken several new grounds in its reply to the appeal other than those taken by it in its letter dated 02.03.2020. The Ld Counsel for the appellant has rightly argued that the society cannot take any new grounds for non grant of membership to the appellant other than those taken in its letter dated 02.03.2020 as the appeal has already been filed against rejection letter dated 02.03.2020 of the society. Even though the various new grounds of refusal taken by the society in its reply were not required to be adjudicated, I am dealing with all the issues raised by the society to avoid any further litigation on this count as the issue of membership of the appellant is pending since 2011. The society taking several new grounds of refusal in its reply to the appeal and then in its written arguments appears to show the biasness of the managing committee of the society towards the appellant and that it is bent upon to somehow or the other not to transfer membership in favour of the appellant.

The society has admitted in its refusal letter dated 02.03.2020 that it has applications dated 29.08.2011 and 17.02.2018 for transfer of membership from the appellant. The society has not placed on record any letters issued by it rejecting the applications for transfers dated 29.08.2011 and 17.02.2018 of the appellant any time prior to 02.03.2020. Rather the society admits in its letter dated 02.03.2020 that application for transfer of share of the appellant is pending for more than eight years. The society has also not placed on record any letter to show that it sought any other or further documents or clarifications from the appellant subsequent to his applications dated 29.08.2011 and 17.02.2018. The appellant cannot be blamed or made to suffer on this count of non action by the society. The onus was on the society to give justifiable reasons for keeping the application pending for eight years which it has failed to give. If the contention of the society is believed that successive management committees and administrators decided not to do this transfer of share of this flat then a rejection letter was required to be issued by the society which it has not issued as no such letter has been placed on record by the society.

The transfer of membership has been sought by the appellant on the basis of a sale deed dated 18.12.2009 registered on 22.12.2009 executed in his favour by Mr Kratu Khanna who has become sole owner of the flat on the basis of registered Will dated 15.05.1997 which has been

recorded in the sale deed dated 18.12.2009. I am in agreement with the argument of the Ld Counsel for the appellant that as the transfer of membership has been sought on the basis of a registered sale deed executed by the seller, there was no requirement under the provisions of Section 91 of DCS Act 2003 to have provided a copy of the registered Will to the society on the basis of which the seller has become the sole owner of the flat in question. In view of the same, contention of the society as regards authenticity of the Will by a Court of Law or that Will cannot be relied upon being merely a photocopy or that no probate has been obtained or that the society cannot rely upon the registered Will in the absence of authenticity and probate and that ownership of all subsequent purchasers coming under a shadow of doubt are rejected. Further I am also guided by Judgment relied upon by Ld Counsel for the appellant of Hon'ble High Court of Delhi in the matter of Mrs. Winifred Nora Theophilus vs Mr. Lila Deane & Others reported as AIR 2002 Delhi 6 :: 2001 (62) DRJ 422 which has held that:- "Therefore there is no problem in arriving at the conclusion that if the will is made in Delhi relating to immovable property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required." In view of the same, contention of the Ld Counsel for the appellant that this is not the Forum or Court to challenge the validity or legality of the registered Will or the registered Sale Deed. Further I am guided by Judgment relied upon by Ld Counsel for the appellant of Hon'ble Supreme Court of India in the matter of Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo reported as (2009) 5 SCC 713 which has held that:- "The registered sale deed is presumed to be valid unless the contrary is proved. The onus is on the person who challenges the same to show that it is either not acted upon or a sham transaction" and also on Judgment relied upon by Ld Counsel for the appellant of Hon'ble Supreme Court in the case of Prem Singh and others v. Birbal and others, (2006) 5 SCC 353 which has held that:- "There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption." In view of the above, the arguments of the society as regards authenticity or validity or legality of the registered sale deed dated 18.12.2009 and of the registered will dated 15.05.1997 and the society not relying upon these registered documents are frivolous, baseless and are rejected.

It is undisputed that Mr Kratu Khanna was joint holder of the flat in question with Late Smt Kanwal Khanna. The society after the death of Smt Kanwal Khanna, first holder, did not transfer membership in the name of Mr Kratu Khanna due to want of certain documents from him. The society has not placed on record any letter to show that the application for transfer in favour of Mr Kratu Khanna has been rejected due to want of documents. The society has also not placed on record any letter to show rejection of membership in favour of Mr Kratu Khanna due to any disqualification incurred by him. I am in agreement with the argument of Ld Counsel for the appellant that reliance of the society on letters dated 11.05.2010, 22.05.2010, 15.06.2010 and 23.08.2010 issued to Mr Kratu Khanna and his application dated 10.08.2009 taken to be rejected by the society as he did not respond and failed to provide information/documents are not relevant for the purposes of grant of membership to the appellant. Subsequent transfer of membership to a new purchaser cannot be denied due to non transfer of membership by the society in favour of previous owner of the flat. Ld Counsel for the appellant has rightly argued that as the appeal has been filed by the appellant against the refusal letter dated 02.03.2020 of the society there was no need to implead Mr Kratu Khanna, seller of the flat in question, in the present appeal.

Contention of the society as regards the appellant not giving any reasons for delay in moving application for transfer for the first time on 29.08.2011 when sale deed is dated 18.12.2009 is also not tenable as no time limit has been prescribed under the provisions of Section 91 of DCS Act 2003 for submission of application for transfer of membership with the society.

In Para 6 of the Preliminary Submissions of the reply of the society it is stated that "It is also very much clear as has been admitted by the appellant herein that his application was forwarded by the then Administrator to the Hon'ble RCS, but the same has not been disposed off till date" and in para no. 5 of para wise reply the society states that "no such correspondence as stated by the appellant in the corresponding para is available in the file pertaining to flat no. S-9 available with the society." The society has admitted in its refusal letter dated 02.03.2020 that it has a copy of application dated 17.02.2018 of the appellant. The society has annexed with its reply copies of letters issued by it in year 2010 to Mr Kratu Khanna but states that it does not have a copy of letter dated 25.03.2018 of the then Administrator submitted before RCS. It has been stated in letter dated 25.03.2018 of the then Administrator, copy placed on record by the appellant, that "*Kindly find placed below application for transfer of membership for the following applicant:- Sh.Manjit Singh Mehta. Self attested Copy of all document required for transfer of membership are also attached with application. The originals have already been seen by the undersigned and endorsement has been recorded on each documents. Submitted for further action in your office.*" It is strange that the society has dealt with the application dated 29.08.2011 of the appellant in its refusal letter dated 02.03.2020 rather than application dated 17.02.2018 which was forwarded to RCS by the then Administrator vide letter dated 25.03.2018. This act of the society as also the society stating that it does not have a copy of letter dated 25.03.2018 forwarded by the then Administrator to RCS appears to be deliberate and intentional.

The society has not pointed out any disqualification incurred by the appellant for becoming a member of the society. The society has not been able to justify as to why it has not disposed off the application of the appellant for last more than 9 years. It appears that the application dated 17.02.2018 of the appellant having been found in order and complete in all respects was forwarded by Sh G S Kohli the then Administrator of the society to RCS on 25.03.2018. Moreover, issue as regards section 79 of DCS Act 2003 has never been raised by the society ever since 29.08.2011 i.e. date of first application for transfer of membership by the appellant nor in its letter dated 25.03.2018 submitted to RCS nor in its refusal letter dated 02.03.2020. The issue has been raised for the first time by the society in its reply to the appeal. Ld Counsel for the appellant has placed reliance on Judgment dated 11.07.2016 of *Hon'ble High Court of Gujarat in the matter of Whether This Case Involves Aversus Nayab Sachiv (Appeal) in Special Civil Application No.: 16790 of 2011 in this regard*. Ld Counsel for the appellant relying on the Judgment has rightly argued that appellant is neither ineligible nor disqualified to become a member of the society. I am further guided by the same Judgment which has held that:- "*The society cannot refuse transfer of membership without sufficient cause nor can it prevent an existing member from selling or transferring flat to another person who is also qualified to become a member. Further the society does not have an absolute and unfettered right to admit, deny or refuse membership. Sale deed executed by seller cannot be nullified in the absence of prior permission. At best, not taking prior permission can be an irregularity and not an illegality so gross that it would debar a person from membership for all times to come even after having purchased the flat. In the absence of any objection from the seller to transfer membership in favour of the appellant, membership cannot be denied on grounds of not taking prior permission from the society.*" The seller has not raised any objection to transfer of flat in favour of the appellant. In view of the above discussions, reliance of the society on section 79 of DCS Act 2003 which it has taken for the first time in its reply to the appeal and that too after almost 9 years of first application dated 29.08.2011 of the appellant seems intentional, frivolous and misplaced and is hereby rejected.

The society has taken a new ground of rejection for the first time in its written arguments that appellant had applied for transfer of his flat in 2011 and was asked to provide

original share certificate and permission letter from Mr Kratu Khanna but the same were not supplied by the appellant herein as a result of which his application was not processed further. This objection was never taken by the society in its letter dated 02.03.2010 nor in its reply to the appeal. Moreover, the society has not placed on record copy of any of its letters showing that the society demanded any further documents or original share certificate from the appellant from 29.08.2011 onwards till 02.03.2020. It appears that this contention of the society through its managing committee is an after thought with an intention to raise one or the other objection to transfer of flat in favour of the appellant. The society has not countered any of the allegations of the appellant levied in the rejoinder as regards biasness of the managing committee towards the appellant, pick and choose policy adopted by the managing committee and of adopting different yardsticks for different persons in the society. From the documents placed on record by the appellant it appears that there is substantial force in his allegations against the managing committee of the society.

The society has not given any justifiable reason for not deciding the application of the appellant within one month of 22.09.2019 i.e. date of its being elected. As per the provisions of Section 91 of DCS Act 2003 it was mandatory on the part of MC to have disposed off the application within one month of its having received the application. The application of the appellant was pending much prior to the managing committee having been elected on 22.09.2019 and the application has been rejected vide letter dated 02.03.2020 almost five and a half months of the MC being elected on 22.09.2019. The appellant is at liberty to initiate proceedings under section 118(9) of DCS Act 2003 as per Law, if he so desires, against the MC elected on 22.09.2019.

In view of the above discussions, all the objections raised by the society are unsustainable and are rejected. The appeal is allowed and the refusal letter dated 02.03.2020 of the society is set aside. As the appellant has submitted complete set of documents as per the provisions of DCS Act 2003 and DCS Rules 2007 with the society for transfer of membership in his favour, the society is directed to transfer the membership in the name of the appellant namely Sh Manjit Singh Mehta in respect of flat no. S-9 in the society within two weeks from the date of receipt of this order.


(P.R. TRIPATHI) 15/3/21
JOINT REGISTRAR/APPELLATE AUTHORITY

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

Dated.: 16/03/2021

P.R. TRIPATHI
Joint Registrar
D/o Registrar Co-operative Societies
Govt. of N.C.T. of Delhi.
Old Court Building, Parliament Street
New Delhi-110001

Copy to:-

1. AR(Section-6), Registrar Cooperative Societies, Parliament Street, New Delhi-110001
2. AR/AD (Computer Cell), Registrar Cooperative Societies, Parliament Street, New Delhi for uploading on the website of the RCS.