

IN THE COURT OF THE SPECIAL REGISTRAR COOPERATIVE SOCIETIES
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001

No. 13708/DGO/PA/CGHS/2023/ 1768 -1771

Dated: 27/04/2023

IN THE MATTER OF:

Ms Maya Kumari

Versus

.....Appellant

Delhi Govt., Officer CGHS Ltd.,
(through President/Secretary)

.....Respondent


Present.: Advocate Sh Sanjay Chiripal for the appellant
Advocate Sh Anukul Raj for the respondent society/Secretary of the society.

ORDER UNDER SECTION 91 OF DCS ACT 2003

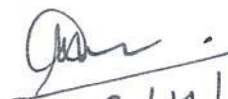
By this I shall dispose off the appeal under section 91 of DCS Act 2003 filed by the appellant against the respondent society against refusal letter dated 06.03.2023.

BRIEF FACTS OF THE CASE:-

An appeal dated 29.03.2023 was filed by the appellant Ms Maya Kumari against the respondent society Delhi Govt., Officers CGHS Ltd., against letter dated 06.03.2023 refusing to transfer membership in her name. On 05.02.2019, the appellant purchased Flat No. A-705, in the respondent society, from Mr. Shankarsan Dash s/o Late Sh. Gopal Chandra Dash, in whose favour membership of the society was transferred based on a registered sale deed. Appellant has taken Housing loan from the DCHFC and as per requirement of loan process appellant was asked to submit No Dues Certificate from the society. On request of the appellant, Mr. Shankarsan Dash applied for issuance of an NOC to the society and the same was issued by the Society in the name of Sh. Shankarsan Dash. Appellant thereafter submitted the NOC with the financial institution and obtained Housing Loan for purchase of the flat. Appellant submitted an application to the Society on 09.03.2019 for transfer of Membership of the flat in her name along with required documents including copy of registered sale deed dated 06.02.2019 and copy of share certificate. Respondent society informed vide letter dated 17.03.2019 that as Mr. Shankarsan Dash has not obtained permission from the society for sale of the flat under the DCS Rules, 2007, so the MC has resolved not to accept the request for the membership of the society. It was further informed vide letter dated 18.03.2019 that Sh. Shankarsan Dash has not paid all his dues and the appellant has not obtained permission from the society for the purchase of the flat. Another request was given by the appellant to the society on 23.03.2019 requesting therein to reconsider the applicant's request for transfer of the membership. Appellant also mentioned about relevant DCS Act and Rules and the Judgement passed by the Hon'ble High Court of Delhi in the matter of Kusum Lata Gupta and Ors. vs. RCS and Ors. and accordingly the said judgment was brought into the notice of the society. On 31.03.2019, the society replied to


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letter of the appellant again refusing to transfer membership in her name. On 05.04.2019, another letter was given by the appellant to the society requesting the society to reconsider the request for transfer of membership. It was informed to the society that all judgments passed by the Hon'ble Supreme Court and the Hon'ble High Courts are binding on subordinate courts as well as on authorities. On 22.06.2019, another letter was given by the appellant to the society mentioning therein that several requests have been made, but the membership has not been transferred so far in favour of the appellant. Whereas as per section 91 of the DCS Act, an application for membership is to be decided within 30 days from the date of receipt of the application. It was again informed to the society that the appellant is willing to pay the legitimate fee/dues as per provisions of law. On 23.07.2019, the society informed that it has not issued the No Dues Certificate to Mr. Shankarsan Dash for the purpose of sale. It was also informed that the previous owner has not paid the dues which are required at the time of sale as per the General Body Meeting resolution dated 10.04.2011, Sr. No. 10. On 06.10.2019, another letter was written by the appellant to the society. On 17.11.2019, another letter was written by the appellant to the society. Copy of the directive dated 14.01.1999 issued by RCS was annexed with the said letter of the appellant. The appellant had started paying regular maintenance and other charges levied on the flat from the date the appellant took the possession of the flat. On 29.11.2019, the society sent a letter to the appellant reiterating all reasons given earlier for denying membership of the society to the appellant. Membership was granted to Mr. Shankarsan Dash on 30.01.2015 on his application dated 21.11.2014 whereas as per reply of the society, the resolution dated 10.04.2011 came into consideration in the GBM held on 14.09.2014. Mr Shankarsan Dash purchased the flat in 2013 and he was granted membership in 2015 without paying any amount. Vide letter dated 06.12.2019, the society requested the appellant to attend the MC meeting on 15.12.2019. On 02.01.2023, a letter was sent by the appellant to the Assistant Registrar, Co-Operative Societies (Section-2, Group Housing) requesting therein to direct the society to transfer membership with respect to Flat No. A- 705, Priyadarshini Apartments, Delhi in favour of the appellant. Another letter was sent by the appellant to the Society through email on 11.01.2023 requesting the society to provide a copy of GBM resolution of society purportedly approved on 14.09.2014. It was also asked whether this resolution has been approved by the "Registrar of Society" or not. In response to the letter dated 11.01.2023 of the appellant, the society sent a reply dated 13.02.2023. On 28.02.2023 the Office of RCS forwarded the letter dated 02.01.2023 of the appellant to the Society with the direction to take necessary action within time bound manner as per the DCS Act 2003 and DCS Rules 2007. Society sent a refusal letter dated 06.03.2023 wherein the request dated 11.01.2023 of the appellant has been rejected by the MC of the society only on account of non-payment of Building Maintenance Fund in view of the AGM Dated 14.09.2014. No other ground for refusal has been stated in the refusal letter dated 06.03.2023. Respondent society cannot add anything to the provisions of Section 91 of the DCS Act 2003 and/or to the provisions of Rule 92(3) of DCS Rules 2007. Respondent society is duty bound to transfer membership in favour of the appellant if all the conditions of Section 91 of DCS Act 2003 are fulfilled. General Body of the respondent society is not above the DCS Act 2003 and/or DCS Rules 2007. refusal letter dated 06.03.2023 of the society refusing to transfer membership in the name of the appellant is bad in the eyes of law, is unsustainable in the eyes of law being in contravention of the provisions of Section 91 of DCS Act 2003 and Rule 92(3) of DCS Rules 2007 and is liable to be set aside. Appellant has relied upon Judgments of Hon'ble Supreme Court of India in the matter of Rashmi Rekha Thatoi and Another Vs State of Orissa (Criminal Appeals No. 750 of 2012 with No. 751 of 2012 decided on May 4, 2012) and Judgment reported as


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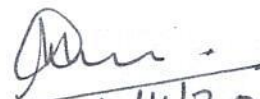
(1998) 6 SCC 39 :: (1998) 3 SCR 574. Appellant has relied upon provisions of Rule 92 of DCS Rules 2007 which reads as :- 92(3) *No other amount towards donation or contribution on any other pretext or name shall be collected by the committee from the transferor or the transferee.*

Notice dated 06.04.2023 was issued for appearance on 20.04.2023. Respondent society argued the appeal on 20.04.2023. Arguments were heard from the appellant and the respondent society on 20.04.2023.

Society has vehemently relied upon section 79 of DCS Act 2003 that prior permission was not taken from the society before the appellant purchased the flat from Mr Shankarsan Dash. Society has further argued that GBM is supreme and as per GBM resolution dated 14.09.2014, Rupees One Lakh is required to be paid by the seller on account of Building Maintenance Fund at the time of sale of flat, which has not been paid by the seller in case of the appellant and therefore unless this amount is paid, the society cannot transfer the membership in favour of the appellant. The society has relied upon provisions of DCS Act 2003 and DCS Rules 2007 to contend that it can charge building maintenance fund.

Appellant has countered the arguments of the society. Ld Counsel for the appellant has argued that GBM is supreme but within the provisions of Act and Rule and prevailing law of land. It cannot pass any resolution in contravention to the provisions of Act and Rules and prevailing law of Land and cannot act against the Judgments of Hon'ble High Court of Delhi. Ld Counsel for appellant has argued that Hon'ble High Court of Delhi has held that no money can be charged in any form or nomenclature at the time of transfer of membership. He has further argued that provisions of Section 79 (a) of DCS Act 2003 which the society has relied upon has already been deleted vide notification dated 12.01.2007. Society cannot put any restrictions on transfer of membership other than what is stated in section 91 of DCS Act 2003. Ld Counsel for the appellant has laid stress on Rule 92(3) of DCS Rules 2007 and argued that GBM resolution dated 14.09.2014 circumvents the law laid down in Judgment of Hon'ble High Court of Delhi in the matter of Kusum Lata which is not permitted under Law. The society cannot charge money on any pretext from either the seller or the buyer at the time of transfer of membership. The society has not refused transfer of membership on any other ground.

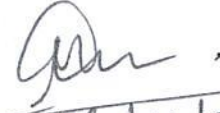
I am in agreement with the Ld Counsel for the appellant that GBM cannot pass any resolution in contravention to provisions of Act and Rules and Law laid by Hon'ble High Supreme Court and Hon'ble High Courts. It is further correct that provisions of Section 79(a) of DCS Act 2003 to seek prior permission from the society has been deleted vide notification dated 12.01.2007. Further, transfer of membership cannot be withheld on premise of charging building maintenance fund from either the seller or the purchaser at the time of transfer of membership. The appellant has purchased the flat in question by virtue of a registered sale deed. The society has not pointed out any disqualification qua the appellant for becoming member of the society. Provisions of Rule 92(3) of DCS Rules 2007 are clear that "No other amount towards donation or contribution on any other pretext or name shall be collected by the committee from the transferor or the transferee." Contention of the society that membership will be granted to the


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appellant only after Rupees One Lakh is paid as Building Development Fund by her cannot be conceded to as the same is illegal.

In view of the above, the refusal letter dated 06.03.2023 of the respondent society and all other previous refusal letters of the respondent society refusing to transfer membership in favour of the appellant are set aside. The respondent society is directed to transfer membership in the name of the appellant within 10 days from the date of receipt of this order. The respondent society is however at liberty to initiate proceedings for recovery of the amounts, if due to it on any account from the seller or the appellant, as per the provisions of DCS Act 2003 and DCS Rules 2007.


It is ordered accordingly.


26/4/2023

(Dr. T Philip Thanglienmang)
Special Registrar Cooperative Societies

Copy to:

1. Ms Maya Kumari, W/o Sh Arun Kumar, R/o Flat No.: A-705, Delhi Govt., Officers CGHS Ltd., Priyadarshini Apts., IP Extension, Delhi-110092
2. Delhi Govt., Officers CGHS Ltd., (through President/secretary), Priyadarshini Apts., 17 IP Extension, Delhi-110092
3. AR(Section-2)
4. In-charge (Computer Cell) for uploading on website


26/4/2023

Dr. T Philip Thanglienmang)
Special Registrar Cooperative Societies