

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

F.No.GH/SEC-8/RCS Court/2023/C.D No.107753846 ²⁰⁹² - Dated: 2 | 9 | 24
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Order

In the matter of:

Smt. Madhu Lomesh W/o Sh. Raj Kumar Lomesh
(Membership No. 841)

General Attorney in successor of Sh. Krishan Lal
Flat No. 551, Talagarj CGHS Ltd.

Plot No. 49, Sector-13, Rohini, Delhi

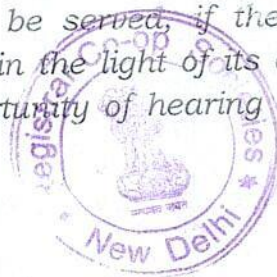
..... Petitioner

This order shall dispose of the proceedings initiated in compliance of the order dated 04th July, 2023 of Ld. Financial Commissioner in Case No. 172/2015 in matter of Madhu Lomesh V/s RCS & Ors. The Ld. Financial Commissioner vide the aforesaid order has ordered as under:

"From the documents on record, it is seen that there have been many similar cases in the present Society. Some of these cases which were remanded by the predecessor Financial Commissioner were reviewed by the RCS in the years 2016, 2017 and 2018 wherein the RCS has observed that the inquiry officer has wrongly taken that the membership has been transferred by the original members, whereas as submitted by the society the membership remained in the name of original members. Further, it was held that the provision of Delhi Cooperative Societies Act, 2003 were not applicable in these cases and accordingly, the proceedings against the last purchaser were dropped. Copies of such orders are also placed on record. The society has also submitted that there are a number of cases in the society which are on the similar footings as of the Petitioner.

In the present case, the petitioner has even obtained the membership in the society which was given by the society after receiving equalization charges of Rs. 75000/- alongwith share money in the year, 2011.

In the light of the foregoing, this Court is of the considered view that the ends of justice would be served, if the Registrar Cooperative Societies revisits the issue in the light of its own subsequent orders after giving adequate opportunity of hearing to the petitioner herein.



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The Registrar Cooperative Societies should endeavour to pass a speaking order in the matter preferably within a period of six months.

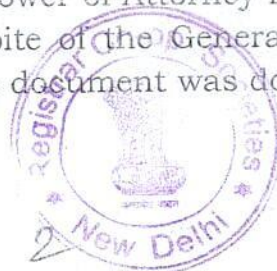
The impugned order dated 16.02.2015 passed by the Registrar Cooperative Societies is set aside and the matter is remanded to the RCS to decide in accordance with above. Accordingly, revision petition bearing No.172 of 2015 titled Madhu Lomesh Vs Registrar Cooperative Societies & Ors. is disposed off in terms of the above. No order as to costs."

In this regard, it is pertinent to note that the then Ld. RCS vide his order dated 16.02.2015 had ordered as under:

In view of the documents received and submissions made it is clear that this type of transfer of membership without transferring the right in the property is not permissible. No person can be allowed to acquire the membership to take the benefit of subsidized/concessional allotment of land and to sell the same by making profit through the avenue of cooperative movement.

Thus, the transfer of membership by Sh. Krishan Lal to Mrs. Veena Malhotra and subsequent transfers are illegal and in violation of the provision of Section 41(1)(c) of DCS Act, 2003. The membership of Sh. Krishan Lal (M.No.751) is ceased in Talaganj CHHS Ltd. w.e.f. 19.12.1997, the date on which the first transfer of membership was effected by him through GPA favouring Smt. Veena Malhotra. Since, the transfer of membership by Sh. Krishan Lal is void ab initio and as Sh. Krishan Lal was himself ineligible to get the possession of the flat on 19.03.1999, any transfer of the flat subsequently to Mrs. Veena Malhotra, by her to Mr. Dinesh Kohli and by him to Mrs. Madhu Lomesh is also illegal based on the law that subsequent purchaser cannot have better title than the original member.

Accordingly, in compliance of orders passed by the Ld. Financial Commissioner, the notice for hearing was issued to the parties. The petitioner filed the written submissions wherein he submitted that Sh. Krishan Lal was the bonafide member of the society (Membership No. 751) since 05.10.1995, who made the entire payment to the Society and subsequently the flat No. 551 was allotted to him by the Delhi Development Authority vide allotment letter dated 24.05.1998. The petitioner also submitted that prior to the allotment, Sh. Krishan Lal had executed General Power of Attorney in the name of Ms. Veena Malhotra to do some act, but despite of the General Power of Attorney, the entire payment and execution of the document was done by Sh. Krishan Lal. It

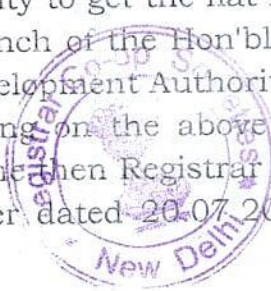


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is pertinent to mention that allotment of the flat was done in the name of Krishan Lal vide allotment dated 24.05.1998. The petitioner also submitted copy of the possession letter dated 16.11.2000 in support of his claim. The petitioner further stated that after the flat was allotted Smt. Veena Malhotra has executed the GPA in favour of Sh. Dinesh Kohli through registered GPA, vide GPA dated 30.10.1998 i.e. only after the allotment of the flat No. 551. The said Dinesh Kumar Kohli has then executed the GPA in favour of the Petitioner pertaining to the sale of Flat No. 551 in the Society vide GPA dated 16.07.1999 that too only after the allotment and possession of the flat in question and since then the Petitioner has been in possession and occupation of the Flat No. 551 in the Society.

The petitioner further stated that it is significant to write that on the directions of the Hon'ble High Court of Delhi Sh. S. K. Jha, the then Special Registrar of the Registrar Cooperative Societies conducted the enquiry, who submitted his report and Learned Inquiry Officer has inadvertently given the wrong findings in his report whereby the documents executed by Sh. Mahesh Kumar Ahuja has been declared illegal. Further, on the basis of above report, the Registrar of Cooperative Societies has conducted the proceedings against the last purchaser of the flat in question and vide an order dated 07.10.2015 without verifying the correctness of events has accepted the findings of the Inquiry officer. The Petitioner has further stated that the execution of power of attorney will not confer any right of the ownership as per section 54 of The Transfer of Property Act as per the law laid down by the Hon'ble High Court of Delhi in the catena of judgments i.e. Alimuddin Versus Registrar Cooperative Societies, reported as "1996 (63) DLT 655 (Del) (DB), S. K. Bahl Vs. Delhi Development Authority & Ors, reported as "MANU/DE/1329/2013" and Ramesh Chand Vs. Suresh Chand & Anr. Reported as "MANU/DE/1690/2012"

The Petitioner further stated that she is the bonafide purchaser of the flat as she purchased the flat through registered GPA and Agreement to Sell by paying the court fees to the government and the law laid down by the Hon'ble High Court of Delhi in the case titled as "Sunita Viyanak Vs. Delhi Development Authority" in Writ Petition (C) No. 6995/2003, wherein the Hon'ble High Court has categorically directed the Delhi Development Authority to treat the further purchaser as a bonafide purchaser and mandamus was issued to the Delhi Development Authority to get the flat free hold and the said order was further upheld by Double Bench of the Hon'ble High Court of Delhi in LPA No. 1965/2006, titled "Delhi Development Authority VS Sunita Vinayak. The petitioner further stated that relying on the above mentioned judgment assed by Hon'ble High Court of Delhi, the then Registrar Cooperative Societies, namely, Sh. T. Srikanth, vide his order dated 20.07.2016, has dropped the




proceeding against the subsequent purchaser in the matter pertaining to one of the member of the same society (owner of the flat No.B-254, namely Tarvinder Kaur), whose case was remanded back by Court of Financial Commissioner vide common order dated 15.10.2013. Similar findings were also given by the then Registrar Cooperative Societies in order dated 24.01.2018, in respect of flat No. A-443, (Smt. Payal Vijay through attorney Sh. Vinay Bhushan) and other similar cases.

I have also gone through the submissions made by the petitioner alongwith the documents and the judgments relied upon by her as well as orders passed by my predecessors in respect of several members of the same Society whereby proceedings against the last purchaser has been dropped. It seems that the Petitioner is entitled to get the relief as prayed for as the documents filed by the Petitioner categorically shows that the possession of the flat was duly taken by the original member on 16.11.2000 under his own signature despite the issuance of General Power of Attorney and the Petitioners are subsequent General Power of Attorney holders dated 19.11.2003. Further, Hon'ble High Court of Delhi vide its order dated 16.02.2006 in WP(C) No. 6965/2003 in the matter of Sunita Vinayak Vs DDA has directed the DDA to treat the petitioner as bonafide purchaser as a bonafide and process his application for conversion as per its conversion policy.

In view of above mentioned facts and circumstances, I am of the considered opinion that the Petitioner herein also deserves the relief on the ground of parity, hence proceedings against the Petitioner i.e. Sh. Krishan Lal through his Attorney Smt. Madhu Lomesh, who was the last purchasers of Flat No. 1414 in Talaganj Cooperative Group Housing Society is hereby dropped.

Ordered accordingly.




Anil Kumar Singh
Registrar Cooperative Societies

Sent To:-

1. Smt. Madhu Lomesh W/o Sh. Raj Kumar Lomesh, R/o Flat No. 551, Talaganj Cooperative Group Housing Society Ltd, Neelkanth Apartment, Plot No. 49, Sector-13, Rohini, New Delhi-110085
2. The President/Secretary, Talaganj CGHS Ltd., Neelkanth Apartment, Plot No. 49, Sector-13, Rohini, New Delhi-110085
3. ARCS, Housing Section-8, O/O RCS.
4. In-charge Computer Cell with the direction to upload on the website of the Department.
5. Guard file.