

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.107756275 | 2023 - Dated: 2/9/24
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Order

In the matter of:

Sh. Mahesh Kumar Ahuja
(Membership No. 645)
Through his Attorney Ms. Sudha Gupta
Flat No. 1652, Talaganj CGHS Ltd.
Plot No. 49, Sector-13, Rohini, Delhi

..... Petitioner

This order shall dispose of the proceedings initiated in compliance of the order dated 01st September, 2023 of Ld. Financial Commissioner in Case No. 09/2016 in matter of Mahesh Kumar Ahuja V/s RCS. 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. 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 by the Petitioner.

In the present case, the petitioner has paid Rs. 5000/- to DDA as penalty for sale of flat before the draw of allotment and also paid Rs. 5500/- as share of composition fees to the DDA. However, the flat in question was not declared freehold by the DDA due to non availability of requisite certificate from the Society.

It is also noted that the petitioner has not arrayed the society as a necessary party in the present revision petition.

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



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The impugned order dated 07.10.2015 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.09/2016 titled Mahesh Kumar Ahuja Vs Registrar Co-operative Societies 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 07.10.2015 had ordered as under:

It is well settled that no one can sell anything which he does not own. Under the DCS Act and Rules, transaction as stated above are prohibited. The original member had categorically stated that he sells all his rights in the Talaganj CGHS. Sale of membership is not permitted under the Act. Upon selling the same on 23.02.1998 he himself was not eligible to take possession of the flat in November 2000 after draw was held in May 1998. Reliance placed by respondent upon Section 26 & 35 of DCS Act, 1972 are no help as these deals with transfer of membership in case of death of member, which is not the case herein. Here the member had sold his membership, which is not permitted under the Act. Further society was kept in dark about the transaction entered into by the original member, as such where permission have not been obtained, the same is void-ab-initio. Since the original member was not eligible to take possession of the flat, any transfer made by him is also illegal. Hence, I find no infirmity in the inquiry report and the action taken is perfectly valid. The respondent is hereby disqualified to be a member of the society.

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. Mahesh Kumar Ahuja was enrolled as a member of the Society vide membership No. 645 on 12.12.1994, Sh. Mahesh Kumar Ahuja had executed one Power of Attorney dated 20.02.1998 in favour of Sh. Narain Dass Kursija authorizing him to do some act on his behalf. However, Sh. Mahesh Kumar Ahuja used to make all the payments to the society from his own account and the flat was allotted to him by the Delhi Development Authority in the year 1998 and subsequently the possession of the flat was also taken by Sh. Mahesh Kumar Ahuja on 16.11.2000 under his own signature. The petitioner also submitted copy of the possession letter dated 16.11.2000 in support of his claim. The petitioner further stated that thereafter on 05.03.2001 being the General Attorney of Mr. Mahesh Kumar Ahuja, Sh. Narain Dass Kursija executed the agreement to sell and General Power of Attorney in the name of Sh. Chiranji Chopra and Smt. Chanchal Chopra. Thereafter on 19.11.2003 Sh. Chiranji Chopra and Smt. Chanchal

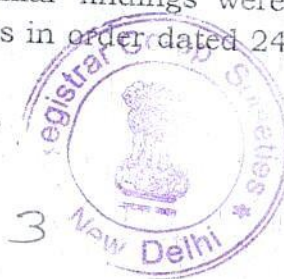


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Chopra executed the registered agreement to sell and General Power of Attorney in the name of Smt. Kamlesh Rani (Mother-in-law of the Petitioner) and Smt. Sudha Gupta (Petitioner) and it is crystal clear that the GPA executed in favour of the Petitioner herein has been done 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. 1652 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



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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 along with 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. Mahesh Kumar Ahuja through his Attorney Ms. Sudha Gupta, who was the last purchasers of Flat No. 1652 in Talaganj Cooperative Group Housing Society is hereby dropped.

Ordered accordingly.




Anil Kumar Singh
Registrar Cooperative Societies

Sent To:-

1. Ms. Sudha Gupta, attorney of Sh. Mahesh Kumar Ahuja, R/o Flat No. 1652, 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.