

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 237/2013

Revision Petition under section
116 of the Delhi Co-operative
Societies Act, 2003

In the matter of :

**Ideal CGHS Ltd.
Plot No.14, Sector-1-A, Pocket-6,
Dwarka, New Delhi-110075.
(Through its Secretary)Petitioner**

Versus

- 1. Shankar Gaur
Flat No.304, Ideal CGHS Ltd.
Plot No.14, Sector-1-A, Pocket-6,
Dwarka, New Delhi-110075.**
- 2. Assistant Registrar (CND),
O/o Registrar Co-op. Societies,
Parliament Street,
New Delhi.Respondents**

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 21.07.2015

1. This order shall dispose of the revision petition filed by the petitioner society u/s 116 of the DCS Act 2003 against the order dated 18.09.2013 read with order dated 09.12.2013 passed by the Assistant Registrar. Vide order dated 18.09.2013, Asstt. Registrar disposed of the petition filed by Sh. Shankar Gaur, u/s 91 of DCS Act 2003 with the directions to Petitioner society *to transfer the membership of Sh. Shanker Gaur within 15 days of issue of the order as all the requisite formalities have been fulfilled.* Vide order dated 09.12.2013 Asstt. Registrar dismissed the review application of society against the order dated 18.09.2013 with the direction that society shall ensure membership to be granted to Sh. Shanker Gaur within 10 days of receipt of the letter.
2. Petitioner society filed a revision petition with following main submissions:

(a) The respondent no. 1 had earlier filed an application for transfer of the membership on 19.02.2013 with certain documents and the same was duly considered by the Managing Committee (MC) and rejected vide order dated 18.03.2013 for the reason that on scrutiny of the paper submitted by the applicant it was observed that no registered document/title deed was filed by the applicant in his favour and as such in view of the provisions contained in Section 91 of the DCS Act read with Rule 92 of the Delhi Co-operative Societies Rules,2007, the applicant was not eligible for membership of the society.

(b) Thereafter the respondent no. 1 filed an application dated 15.04.2013 for membership with material change in the title deeds before the Registrar. The rejection of the application dated 19.02.2013 filed earlier with the society and rejected vide order dated 18.03.2013 was concealed in the said application dated 15.04.2013 filed before the Registrar. It is well settled that the appellate Court cannot assume the original jurisdiction and in the present case the applicant was required to file a fresh application before the society if he could establish the eligibility in the changed scenario if any.

(c) Respondent no. 1 has not filed any registered agreement to sell, even with the application filed before the Registrar and it is malafide and wilful to avoid stamp duty. This is a transaction between father and son and in any case no transfer of membership can be done without complying with the specific provisions of Rule 92.

(d) The Ld Assistant Registrar failed to appreciate that the Respondent no. 1 was not eligible for transfer of the membership as he has failed to file any Registered Sale Deed which is mandatory, in view of the provision contained in the Rule 92 of the DCS Rules 2007.

(e) Because the Ld Assistant Registrar failed to appreciate that Shri Ram Pal Gaur had executed the unregistered agreement to sell earlier on 21.02.2004 and he had no locus standi to execute power of attorney in favour of the Respondent no. 1 on 06.04.2013. The agreement has not been registered to evade stamp duty to the tune of about Rs 4 Lacs.

3. Respondent no. 1 filed the reply to revision petition and submitted the followings mainly:-

(a) After the rejection of membership by the society vide order dated 18.03.2013, the Respondent no. 1 removed all the objections made in the order by the society, by getting the GPA(Blood/Family Relations) registered on 06.04.2013 vide registration no. 508 in Book no. 4 Vol no. 1631 page 160 to 163, with the sub Registrar IX, New Delhi, The revised papers for membership with the registered GPA were made ready for submission to the society, but no member of the M/c was ready to receive the fresh papers, rather the respondent was made to run one after the other member for getting the revised papers received by them. It was observed that they were just passing time so that the period of one month for making the appeal may lapse(which was to lapse on 17.04.2013). As the intentions of the society was found malafide, the respondent submitted appeal papers on 15.04.2013 to the appropriate authority.

(b) GPA can be registered along with agreement to sale except in the case of blood relations. And it is clearly mentioned that Stamp duty equivalent to registration of sale deed needs to be paid in case of GPA other than blood relation. It is for this reason the GPA submitted by the respondent No. 1 carrying the heading GPA (Blood/Family Relation) has been executed.

(c) Further Section 91 read with Rule 92 of the Delhi Coop. Societies Act, 2003 and rules 2007 requires any one of the document i.e. Registered Power of Attorney or registered sale deed, or registered agreement for sale for applying the membership, and the Respondent no. 1 complied with requirement by submitting registered power of attorney alongwith other relevant documents. Thus Respondent No. 1 is eligible to get the membership.

4. Petitioner Society filed a rejoinder to the reply of Respondent no. 1 and submitted the following:

- (a) That it is well settled that the Appellate Court cannot assume the original jurisdiction and in the present case the applicant was required to file a fresh application before the society if he could establish the eligibility in the changed scenario if any.
- (b) The respondent failed to file a registered agreement to sell and as such the requirement of rule 92 (6) (d) is not met and as such the respondent is not eligible for transfer of the membership in his name and the society cannot be a party to the illegality.
- (c) The Respondent No. 1 has not filed any registered agreement to sell, even with the application filed before the Registrar and it is mala-fide and wilful to avoid stamp duly. This is a transaction between father and son and in any case no transfer of membership can be done without complying with the specific provisions of Rule 92 as stated above. The so called registered power of attorney now filed as also questionable for the reason that as the executant Sh. Ram Pal Gaur who is not even a member of the Society had also executed unregistered agreement to sell on 22.02.2004, and thereafter he had no locus standi to execute any power of attorney on 06.04.2013 which was filed before the Assistant

Registrar. In any case the Respondent No.1 is also required to file a registered sale deed in his name which he has failed to do so far and as such not eligible for transfer of the membership.

(d) The circular dated 22.07.2013, issued by the Divisional Commissioner, Delhi. The relevant para of the said circular is reproduced below:

"However, immovable property can be legally and lawfully transferred only by a registered deed like sale, gift conveyance etc. Transaction i.e. execution of general power of attorney/special power of attorney/WILL etc., in respect of immovable property, do not convey any title, and, thus, are not legally recognized valid modes of transfer of immovable property as per the existing provisions of the law".

(e) The respondent is relying upon the registered power of attorney now filed which is of no significance in view of the above circular in the law laid down by the Hon'ble Supreme Court.

5. Respondent No. 1 vide letter dated 25.01.2015 further submitted:

(a) GPA can only be registered alongwith agreement to sell except in case of blood relations. And it is clearly mentioned that stamp duty equivalent to registration of sale deed needs to be paid in case of GPA other than blood relation. It is for this reason that the GPA submitted by the Respondent No. 1 carry the heading GPA (Blood/family relation) in my case between father & son.

6. I have considered all the facts and circumstances placed on record and heard both the parties. It is undisputed fact that Shri Ram Pal Gaur father of Shri Shankar Gaur, Respondent no. 1, had executed an unregistered agreement to sale on 22.2.2004. Since that agreement was an unregistered document, therefore, society's

contention that Shri Ram Pal Gaur ceased to be a member is not tenable.

7. Provision of Section 91 of DCS Act, 2003 states that "*a registered Power of Attorney or registered Agreement for Sale or registered Sale Deed, as the case may be*" and in the present case Respondent no. 1 has a duly registered Power of Attorney in his favour executed on 06.04.2013 and this registered document has been duly provided to the society in the RCS Office and the Secretary of the Society had in fact agreed in principle to transfer membership to the Respondent No. 1 herein (as per the Assistant Registrar of Societies order dated 18.09.2013).

8. Therefore, in view of all the above, I do not find any merit in the revision petition. The RCS order dated 18.09.2013 read with order dated 09.12.2013 is upheld.

9. Accordingly, revision petition is disposed.

10. Pronounced in the open Court on 21.07.2015.

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(NAINI JAYASEELAN)
Financial Commissioner