

Case No. 69/2012

Sh. Manish Jain & Anr. Vs. RCS & Ors.

29.05.2014

Present : Sh. Anil Kumar, Counsel for the Petitioners.
: Sh. Rajiv Vij, Counsel for R-4 to R-8
: Sh. Karunesh Tandon, Counsel for R-9

1. Brief facts of case are that Petitioners purchased Flat No.39 in Railway Employees Coop- Group Housing Society Ltd., Sharda Niketan from Smt. Nitu Gupta vide GPA and Agreement to Sell dated November 4, 2009.
2. Petitioners prayed in the present revision petition to set aside report dated October 31, 2011 submitted by Shri Ashok Kumar Sharma, Assistant Registrar(NW) and to implement the report dated April 19, 1999 as submitted by the then Administrator of the Society and also the inspection report dated January 21, 2010 submitted by Shri P. C. Jain, IO.
3. Shri Ashok Kumar Sharma, Assistant Registrar(NW) in his report dated October 31, 2011 made the following observations :-

“7.4 Though Smt. Neetu Gupta was inducted as member on 15.7.2006. She was not assigned any membership number. Clearly even if the violation of the provisions of the section 77 of DCS Act, 2003 and rules made thereunder by the Management Committee and particularly, Sh. Suresh Gupta, the Secretary of the Society and father-in-law of Smt. Neetu Gupta are not taken into account, she is to be treated as junior most member and her claim for allotment of flat would arise only after all the eligible and member senior to her are allotted the flat. It is a fact that Smt. Santosh Kumar Chadha is the senior most member among the five applicants who were allotted flats in 1996-97 by way of self draw and Smt. Neetu Gupta who was inducted as member in 2006 and subsequently allotted flat no.39 illegally without getting her name cleared from the RCS office and without the draw of lots by the DDA is the junior most member.

7.5 It stands established that the claim of Smt. Santosh Kumar Chadha for entitlement of flat is foremost and above all these remaining members. Hence, the allotment of flat no.39 to Smt. Neetu Gupta is illegal and has been deliberately made with ulterior motives. Only action required at this stage is to reject her claim for membership of the society and allotment of flat no.39 to

her. She may be refunded the amount paid by her and reflected in the account of the society with interest @ 6% as per provision of rule 32(3) of DCS Rules, 2007. Since Smt. Neetu Gupta in connivance with her father in law Sh. Suresh Gupta, the Secretary of the society as fraudulently obtained the membership as well as possession of flat no.39, the amount to be refunded should paid to Smt. Preeti Jain and Sh. Manish Jain who have subsequently purchased the flat from Smt. Neetu Gupta. Smt. Preeti Jain and Sh. Manish Jain did not ascertain the clear ownership of the flat no.39 before buying the same and therefore, the possibility of their connivance with Smt. Neetu Gupta cannot be ruled out. However Smt. Preeti Jain and Sh. Manish Jain may take recourse to law if they have paid excess amount to Smt. Neetu Gupta as cost of the flat no.39.

7.6 In view of the forgoing it is clear that these are the cases of sale/purchase of the flats by way of connivance of the then Management Committee and all the illegal allottees of these six flats. Hence these allotments need to be rejected. The flats need to be got vacated. Thereafter, the allotment of five flat no.27, 29, 33, 42, 49 and 39 needs to be re-advertised as per provision of the rule 19(2) of DCS Rules, 2007.”

4. One Smt. Santosh K. Chadha filed a WP (C) No. 5351/2010 before High Court for issuing directions in her favour for allotment of flat in the Society as she got an award dated May 22, 2001 in her favour according to which a flat was to be allotted to her. Petitioner prayed to the High Court to implead them in the said WP filed by Smt. Santosh K. Chadha. The High Court disposed of the WP and application with the following directions:

“(i) Since the occupants of flat nos. 27, 29, 33, 42 and 49 had been deprived of their possession in pursuance to our directions on account of their misconceived endeavour to approach the Financial Commissioner, the said parties having suffered deprivation of possession now for four months, the said applicants be put in possession of their respective flats subject to their rights being determined in any proceedings initiated in accordance with law by them and with liberty to the RCS to take action in pursuance to its report. Thus applicants will file an undertaking before this court not to sell, transfer, assign or part with possession of the flats in question and to hand over possession to the Registrar in case they ultimately fail finally in the proceedings initiated by them and are given a window of three weeks to move the competent authority in accordance with the law, within which time the RCS will take not any coercive action. On the said undertaking being filed and verified by the Dy. Registrar (Writ) of this court the keys will be released to the respective parties.

Learned counsel for the applicant states that they will file the undertaking by 25.01.2012 and the writ petition will be listed before the Dy. Registrar (Writ) on 30.01.2012 for compliance and release of keys.

(ii) The keys of flat no. 39, lying deposited in this court, will be released to the respondent no. 2/RCS forthwith. On the petitioner completing necessary formalities qua the allotment of the flat in her favour, possession of flat no. 39 will be given to the petitioner subject to the said petitioner filing an undertaking before this court not to sell, transfer, assign or part with possession of the said flat, till such time as there is final adjudication qua the rights of the applicants in CM No. 12951/2011. The society will indicate the amount to be paid by the petitioner to the society within a week calculated in terms of the award dated 22.05.2001 and on payment of the amount will forward the case of the petitioner to the RCS. We give the same window of three weeks to the said applicant to take recourse to appropriate legal remedy as they may be advised.

It is also open for these purchasers to give up their rights qua the flat and take their remedy against the sellers in view of the disentitlement of the seller to the flat in question as concluded by the RCS. This option will be exercised by the applicants within the same period of three weeks and in case they chose to only proceed against the sellers the petitioner will be discharged from the undertaking given to this court. If, however, they chose to pursue their legal remedy qua the flat then they shall also file an undertaking before this court not to sell, transfer or alienate the flat in question by 25.01.2012.

(iii) Any proceedings initiated by the applicants before the competent authority/ Financial Commissioner will be examined and concluded expeditiously by the said authority preferably within four months of the institution of the proceedings.

(iv) The notice of contempt stands discharged accepting the apology of the applicants in CM No. 12469/2011.”

5. On receiving the said directions, the petitioner approached this Court by way of present revision petition.
6. In these cases, various facts have to be evaluated and clarified qua entitlement of petitioner as owner of flats, examination/acceptance of Enquiry Report/Inspection Report by Competent authority/RCS.
7. In view of the above, petitioner is directed to approach the RCS for conclusion of proceedings initiated by the authority. RCS is also directed to conclude the same expeditiously keeping in view the observations made by

the High Court in order dated January 20, 2012 in WPC 5351/2010. The petition is disposed of accordingly.

8. File be consigned to record room after completion.

-sd-
(D.M. Spolia)
Financial Commissioner
Delhi.