

(2019) 11 DEL CK 0543

In the Delhi High Court

Case No : Civil Writ Petition No. 5854 Of 2014, Civil Miscellaneous Application No. 14362, 18515 Of 2014

Sheela Gehlot

APPELLANT

Vs

Registrar Cooperative Societies & Ors

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Delhi Cooperative Societies Act, 2003 — Section 70, 71

Citation : (2019) 11 DEL CK 0543

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Ajay Kohli, Astha Garg, Gautam Narayan, Dacchita Shahi

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. This petition challenges an order dated 18th February, 2014 passed by the Delhi Cooperative Tribunal ("Tribunal") whereby the Appeal No. 30/2006 filed by the Petitioner against the order dated 4th July, 2006 passed by the Deputy Registrar (Arbitration) allowing the claim petition filed by the Respondent No. 2/ Delhi Dayalbagh Cooperative House Building Society Limited (hereafter "Society") under Section 70 of the Delhi Cooperative Societies Act 2003 (DCS Act) and referring the dispute between the Society and the Petitioner to arbitration was disallowed.

2. The facts in brief are that a sale deed was executed by the Society on 9th December, 1968 in respect of the property No. B-21, Soami Nagar, New Delhi admeasuring 500 sq. Yds. (hereafter "property in question") in favour of Shri H. N. Vibhakar. On 22nd December, 1976, Shri H.N. Vibhakar executed a registered Will bequeathing the property in question in favour of Smt. Veena Babbar (Respondent No.4). After Shri H. N. Vibhakar expired on 30th July 1977, the property stood mutated in the name of Smt. Veena Babbar on 10th April, 1979 in

the records of Municipal Corporation of Delhi. On 9th July, 1985 the District Judge, Delhi granted letter of administration in respect of the Will in favour of Smt. Veena Babbar. She got the building plan sanctioned from the Delhi Development Authority on 12th May, 1988. The Society accepted a sum of Rs.2125/- from heron account of additional compensation of the land and issued a receipt in this regard on 6th October, 1996.

3. As far as the Appellant is concerned, she purchased the property in question from Smt. Veena Babbar by registered sale deed on 29th April, 2005. On 9th January, 2006 the Society filed a claim under Section 70 of the DCS Act for declaration of sale/transfer of the property in question in favour of the Appellant as illegal and of no consequence. The stand of the Society was that in terms of its Bye Laws, the sale had to be either to a member of the society or to the Society itself.

4. On 4th July, 2006 the Deputy Registrar (Arbitration) admitted the Society"s claim petition under Section 70 of the DCS Act and referred it for arbitration under Section 71 thereof. In the said order, a reference was made to the Society"s Bye-law 51, which stated that "No member shall be permitted to transfer/sell or mortgage his house to any person other than the members of the Society or Society itself". This was incorporated as condition Nos. 2 and 3 in the sale deed/transfer document and was held to be binding on Smt. Veena Babbar from whom the Appellant purchased the property in question.

5. The Appellant challenged the above order by an Appeal No. 30/2006/DCT before the Tribunal. Reliance was placed before the Tribunal on the decision of a Division Bench of this Court in Delhi Dayalbagh Co-op. Society Ltd. v. RCS 195 (2012)(DLT) 459 in which it was held that after the coming into force of the DCS Act, the bye-laws of the Society could not be inconsistent with the provisions thereof and that it was the duty of the Registrar of the Co-operative Societies ("RCS") to direct amendment of the Bye-law which was not consistent with the DCS Act. It was further held that Clause 2 of the sale deed, similar to the one in the present case, "would be a clog on the title" and that "the society cannot bind down the seller for six months as per that clause, after which only the seller/owner would be at liberty to sell and dispose of the property". The Court referred to the decisions in Navjivan Co-operative House Building Society Ltd. v. Delhi Co-operative Tribunal, ILR 1987 Del 323, a decision of the Division Bench of the Bombay High Court in St. Anthony's Co-operative Society Ltd., Mumbai v. Secretary (Co-operation and Textile Department), Mumbai and Ors. 2001 (1) Bom CR 730 as well as the decision of the Supreme Court in Zorastrian Cooperative Housing Society Ltd. v. District Registrar, Cooperative Society (Urban) (2005) 5 SCC 632.

6. The decision of this Court in Delhi Dayalbagh Co-operative House Building Society Limited (supra) was taken in appeal by the Society to the Supreme Court by way of Civil Appeal No.1313/2019 and certain other appeals. By its decision in Delhi Dayalbagh Co-operative House Building Society Limited v. Registrar Co-

operative Society (2019) 3 SCC 745, the Supreme Court upheld the decision of this Court, and dismissed the aforementioned appeal. Relevant to the case at hand is a discussion on the very same clause 51 of the bye-laws and the rejection of the contention of the Society in that regard, as contained in paras 40 to 42 of the said judgment, which read as under:

"40. The contention of the learned senior counsel for the appellant that the sale/transfer of the plot in question by the member of the society being in violation of condition nos. 2 and 3 of the registered sale deed or clause 51 of the byelaws which put restriction on the member to transfer or a sale or otherwise to a nonmember of the society, without permission of the society in our opinion, deserves to be negated for the reason that there is no restriction/prohibition under the provisions of the Act, 2003 which has been discussed in detail earlier and to be noticed that if the byelaws to the extent are inconsistent to the provisions of Act 2003, it is the statute which will prevail and it is not the case of the appellant that the transaction of sale/transfer of the plot in question by the member of the society by registered sale deed or registered instrument is in violation of the provisions of the mandate of Act 2003 or rules 2007 framed thereafter.

41. To the contrary, it appears to be the duty of the Registrar cooperative societies including the registered housing cooperative society to scrutinise the byelaws of the society and to the extent they are inconsistent with the provisions of Act 2003 or of Rule 2007 framed therein, to ask them to make appropriate corrections and to amend it to make it in conformity with the Act, 2003. It is needless to say that it is the onerous duty of the competent authority to ensure that it performs the statutory task in this behalf but if the task has not been performed as yet, at least no provision in the byelaws inconsistent with the provisions of the Act, 2003 can have a force of law.

42. As regards clauses 2 & 3 of the original sale deed executed between the member of the society at the time of initial allotment is concerned, the society reserves its preemptive rights to have a cooling period of six months before the member may have an opportunity to transfer the subject plot in the manner he or she likes at least there was no absolute bar or restrain under clause 2 or 3 of the original sale deed, of which reference has been made, to transfer the land or is otherwise impermissible to a non member under any other laws. But it was possible with prior notice to the society and the cooling period of six months which may enable the society to purchase the plot on the market value and if it is unable to purchase, the member reserves the right to transfer or sell out the plot in a manner he or she likes reserving the preemptive rights of the society. In the given circumstances, transfer by a registered instrument cannot be held void unless it is in contravention of any law, which is not the case of the appellant society."

7. It was further observed in para 43 as under:

"It reveals that what transpired before the Tribunal or the High Court was whether the transfer of title by a registered instrument as alleged was open for scrutiny within the scope of Section 70 of Act, 2003. Although it was never the case of the appellant society that alleged registered sale deed was void ab initio, bad or obtained by fraud or malpractices and it was also not the case of the appellant society that the member of the society in transferring the rights over the property by a registered sale deed, is in violation of any of the provisions of the Act of 2003, or the rules of 2007 framed thereunder."

8. In that view of the matter, there can be no manner of doubt that the Society cannot insist upon Clause 51 of the Bye-laws of the society coming in the way of a subsequent transferee of the property in question further selling it by way of registered sale deed to a person who is neither a member of the Society or the Society itself. In other words, the Society could not have raised any objection to the sale of the property in question to the Appellant. However, the tribunal decided to dismiss the appeal vide impugned order.

9. Consequently, the impugned order dated 4th July, 2006 passed by the Deputy Registrar (Arbitration) and the impugned order dated 18th February, 2014 passed by the Tribunal are hereby set aside.

10. The writ petition is allowed in the above terms but in the circumstances with no order as to cost. The pending applications are also disposed of.