

Delhi High Court

Shakuntla Gupta vs Registrar Of Coop. Society on 12 August, 2002

Equivalent citations: 100 (2002) DLT 12

Bench: B Khan, J Kapoor

ORDER

1. Petitioner claims to have purchased flat No. 24-B at Janyug Apartments from one Usha Arora, an original member of R-2 Society Along with her share certificate and on execution of relevant documents on payment of consideration amount. She says that she thereafter approached the office bearers of R-2 Society for her recognition as owner of the Society. But they demanded Rs. 20,000/- as "Entry Fee" which was paid by her vide receipts dated 23.6.1997 and 19.7.1997. But despite this office bearers of Society raised one demand after the other against her and threatened her of forcible eviction etc. though, she was regularly paying maintenance and other requisite charges which were payable by the original member (Usha Arora). She had all along approached Society's Committee for transfer of membership rights etc., but no action was taken in the matter. Petitioner's further grievance is that even though charging of 'Entry Fee' of Rs. 20,000/- was in contravention of Registrar's directive dated 14.12.1999, yet Registrar had not taken any action in the matter even after being approached in this regard. She prays that Registrar be asked to frame appropriate guide-lines and devise appropriate procedure for recognition of purchasers of Society flats as owners and he be directed to enforce his directive dated 14.12.1999 restraining Group Housing Co-operative Societies from charging any 'Entry Fee' and that R-2 be directed to mutate share certificate in her name and to refund Rs. 20,000/- charged as "Entry Fee".

2. R-2 has filed detailed counter challenging locus of petitioner to file this petition and denying all allegations made by her. It is submitted that R-2 had not at any time paid Rs. 20,000/- as "Entry Fee". This amount was, however, paid by original member Usha Arora for some welfare fund against receipt. It is also denied that any 'Entry Fee' was charged from petitioner in contravention of Registrar's directive dated 14.12.1999. Allegations of any harassment or nuisance allegedly being created by members of the Society is also denied. It is also explained that the sale of flat by original member Usha Arora was under enquiry and was liable to attract action against her which could also result in the cancellation of allotment of flat to her and consequently petitioner would also be liable to be evicted.

3. Since petitioner is substantially seeking direction to the Registrar for enforcement of his directive and for finding a way out to confer membership rights on transferees of flats, we find nothing wrong in her locus to file this petition. Apart from that, we have already held that charging of Entry Fee by Group Housing Societies from purchasers of flats of original members was unauthorised, incompetent and in contravention of Registrar's directive dated 14.12.1999 in our judgment rendered in CWP- 524/1998 decided on 9.8.2002. Following that and on the same analogy, we also hold in the present petition that charging of "Entry Fee" of Rs. 20,000/-, if any, from petitioner, was incomplete, illegal, invalid and unauthorised and shall be deemed quashed for the reasoning given in our judgment supra. Meanwhile, R 1-2 are directed to examine this aspect of the matter and find out whether Rs. 20,000/- deposited against receipt was credited to any "Entry Fee" account and in that case it should be adjusted towards other permissible dues recoverable from petitioner.

4. Beside this petitioner's primary grievance seems to be that her case for transfer of membership rights was not being considered and no action was taken on it by R 1-2. For this she wants Registrar to devise some guide-lines or procedure to facilitate the conferring of ownership rights to purchasers of flats of original members. We are informed that Rule 34-A of the relevant Rules was already in force to take care of this issue and that under this respondents were obliged to consider purchasers' claim for transfer of membership rights subject to fulfillment of requirements prescribed therein. It is not known whether petitioner's case falls within the purview of that Rule or whether she had satisfied the requirements laid down there under.

5. Be that as it may, this petition is disposed of by the following order:

"1. Any "Entry Fee" charged by R-2 from petitioner shall be deemed quashed and shall be liable to be refunded to her or be adjusted in other permissible charges recoverable from her.

2. R1-2 are directed to consider petitioner's case for transfer of membership rights to her under Rules and pass appropriate orders thereon within a reasonable time subject to her satisfying the prescribed requirements.

3. R-1 Registrar is directed to enforce his directive dated 14.12.1999 and to make sure that Group Housing Societies do not resort to charging of any levy or fee from purchasers of flats of original members, which had no sanction of law behind it."