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**Court :** Delhi

**Decided On :** Aug-09-2002

**Reported in :** 99(2002)DLT741

**Judge :** B.A. Khan and; J.D. Kapoor, JJ.

**Acts :** [Constitution of India](#) - Article 226; Delhi Co-operative Society Rules - Rule 34A

**Appeal No. :** Civil Writ Petition No. 524 of 1998

**Appellant :** Capt. Kapil Raina

**Respondent :** Delhi Development Authority and ors.

**Advocate for Def. :** V. Shankara and ; Madhurima Tatia, Advs. for Respondent Nos. 2-3

**Advocate for Pet/Ap. :** Mala Goel, Adv

**Judgement :**

ORDER

1. Petitioner was first a tenant in Flat No. B-46 at Patpar Ganj allotted to one Arun Diwanwala, a member of R-4 society. He later purchased it after paying full consideration amount and executing relevant documents including a power of attorney and Conveyance Deed and is said to have acquired free hold rights by

now. He alleges that thereafter office bearers of respondent society started harassing him and raising demands. He was asked to pay an 'entry fee/power of attorney charges' of Rs. 1 lac and was threatened of electricity and water supply disconnection and of being thrown out of the flat if he failed to satisfy the demands. He resisted the demand and pleaded that he was liable to pay only such charges as were recoverable from the original member (vendor) and not any unauthorised charges like entry fee /power of attorney charges which was not livable by the society under any law. But despite this, the committee members interfered in his quiet possession of the premises and harassed him and his family members on one pretext or the other.

2. Learned Counsel for petitioner submitted that impugned demand raised against petitioner was without any authority of law and in contravention of Registrar's directive dated 14.12.1999 restraining all housing societies from charging any 'entry fee' from purchasers of flats from original members. He also pointed out that petitioner had acquired freehold rights meanwhile and yet the committee was dithering in transferring membership rights to him in terms of Rule 34-A of the relevant rules.

3. Respondent society has filed its counter, firstly, raising some technical objections regarding non-impleadment of vendor (original member) and questioning locus of petitioner, etc. On merits, it is denied that it had raised any demand of Rs. 1 lac from petitioner on account of 'entry fee/power of attorney charges'. It, however, admits that it had raised a demand of Rs. 50,000/- from him as some transfer fee which it had also charged from other such purchasers of the flats. The society has also referred to its Managing Committee resolution dated 12.3.1996, resolving to raise refundable development and administrative charges for various categories of flats and non-refund of refundable security deposit made by the members along with it. It has claimed that petitioner had failed to pay the transfer fee and maintenance charges and has invoked Rule 34-A of the relevant rules to suggest that transfer of membership was subject to fulfillment of certain conditions which petitioner had failed to satisfy.

4. By Court order dated 10.2.1998, R-4 was restrained from taking any coercive steps from dispossessing the petitioner. By subsequent order dated 29.3.2000 petitioner was required to pay due maintenance charges under Rules. The matter has remained pending ever since.

5. The short question that falls for determination is whether the alleged demand of Rs. 1 lac raised by R-4 society against petitioner was legal and valid and whether it had any sanction of law behind it. There is no dispute that petitioner was a bona-fide purchaser and that no society dues were outstanding against the original member from whom he had purchased the flat. His liability being co-extensive with that of vendor, he was, liable to pay only those charges which were recoverable from the original member. He could be charged beyond that only under some authority of law. Needless to point out that neither any provision of relevant Act or Rules nor any other law for that matter provided for levy and charging of any entry fee/power of attorney charges by purchasers of the flats from original members. therefore, it can't be said in the facts and circumstances of the case that action of R-4 in raising any such demand on account of any 'entry fee' or 'power of attorney' charges was authorised by any law. This finds support from Registrar's directive dated 11.12.2000 also which prohibits a housing society from charging such like fee.

6. We also find that Rule 34-A of the Rules was being unnecessarily invoked to suggest that bona-fide purchasers of the flats seeking transfer of membership rights were required to pay some 'entry fee/power of attorney charges'. This Rule, it must be made clear, only provides for transfer of membership rights to such purchasers who had acquired freehold rights subject to certain conditions and nothing more. therefore, wherever any bona-fide purchaser of flat satisfied its conditions, he was entitled to seek transfer of membership rights and the society was obliged to consider his case and pass appropriate order.

7. A queer situation has arisen in the present case, because the society (sic) to have raised any demand of entry fee. But it at the same time claims that it had asked the petitioner to pay Rs. 50,000/- as transfer fee. It also says that it had charged similar fees from other transferees. It is not the society's case that it had

prescribed a fee of Rs. 50,000/- for seeking transfer of membership rights to transferees or that petitioner was being charged on account of this. Its stand therefore seems to be a contradiction in terms. It is a different matter if petitioner was seeking transfer of membership rights to step into the shoes of original member for which he was to satisfy the requirement of relevant rules and in which case the society was obliged to consider his case.

8. Be that as it may, the society had created a mess of its own. It was only vacillating in its stand without being sure of its own action. Its reliance on Rule 34-A was also misdirected, this rule nowhere authorises any 'entry fee/power of attorney charges' being charged from a member seeking transfer of membership rights.

9. All told, we deem it just and appropriate to dispose of this petition by following order:

'The demand, if any, raised by R-4 society for recovery of Rs. 1 lac from petitioner on account of 'entry fee/power of attorney charges' shall stand quashed. It may, however, intimate any outstanding prescribed maintenance charges as recoverable from original member to petitioner who shall be liable to pay these in terms of Court order dated 29.3.2000. The society is also directed to consider petitioner's case for transfer of membership rights to him under law and subject to his satisfying the prescribed requirements dispose it of within four months from receipt of this order. It is also restrained from taking any coercive or unauthorised action against the petitioner, meanwhile.'

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