

**(2002) 03 DEL CK 0143**

**Delhi High Court**

**Case No:** C.W.P. No"s. 3085, 3197, 3218, 3230, 3231, 3256 and 3279 of 1996 and C.M.  
No"s. 5377, 5564, 5598, 5623, 5624, 5653 and 5694 of 1996

Mrs. Mala Goel

APPELLANT

Vs

Delhi Development Authority  
and Others

RESPONDENT

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**Date of Decision:** March 6, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2002) 100 DLT 6

**Hon'ble Judges:** Dr. M.K. Sharma, J

**Bench:** Single Bench

**Advocate:** Party in perso, for the Appellant; Harjeet Kaur and Shyam Sunder, for the Respondent

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**Judgement**

M.K. Sharma, J.

As the subject matter involved in the present writ petitions is same and common, I propose to dispose of the said writ petitions by this common judgment and order.

2. The present writ petitions are directed against the demand made by respondent No. 4-Society demanding payment of an amount of Rs. 25,000/- from the petitioners as registration charges pursuant to Resolution dated 26.6.1994. It is stated in the writ petitions that the petitioners who purchased flats through general power of attorney and got the same registered in their names. They also obtained a letter of possession pursuant to which possession of flats at Ekta Garden were given to the petitioners. Subsequent thereto, a Resolution was passed by respondent No. 4 to the effect that all attorney holders would have to pay non-refundable charges of Rs. 25,000/-. Being aggrieved by the said action, the petitioners filed representations before the respondent No. 4-Society challenging validity of the aforesaid demand notices issued to the petitioners. The said representations were rejected by respondent No. 4-Society and hence the present petitions.

3. The petitioner appearing in person in C.W.P. No. 3085/1996 submits that the aforesaid demand notices issued to the petitioners by respondent No. 4-Society is illegal and without jurisdiction. She submits that in any event the said Resolution could only have prospective effect and could not have been given retrospective effect. She also submits that since the petitioners purchased the flats through general power of attorney and got the same registered in their names and also obtained letters of possession prior to the aforesaid date, the said Resolution cannot be given a retrospective effect.

4. The respondent No. 4 Society has filed a counter affidavit contending, inter alia, that the aforesaid Resolution could be given a retrospective effect so as to make it uniform in all cases where possession has been obtained through execution of registered power of attorney. It is stated therein that there is no bar in giving a retrospective effect to the aforesaid Resolution so as to maintain uniformity in respect of similarly situated persons. The respondent No. 4 has also justified the demand of Rs. 25,000/- as registration fee by stating that the same was demanded to recognise the power of attorney holders for the purpose of affording certain facilities and is being charged keeping in view certain formalities to be completed sooner or later such as examining the eligibility of the purchaser to become a member of the Society, correspondence with the Registrar of Cooperative Societies, DDA etc.

5. I have perused the records in the light of the aforesaid submission of Ms. Mala Goel the petitioner appearing in person in C.W.P. No. 3085/1996 as also the averments made in the counter affidavit filed by respondent No. 4. My attention is also drawn by Ms. Mala Goel to the affidavit filed by the Registrar, Cooperative Societies in a connected matter being C.W.P. No. 3197/1996. In the said writ petition, a counter affidavit has been filed on behalf of Registrar, Cooperative Societies, wherein it is stated that the Society, namely respondent No. 4, under law cannot demand any amount from its members on account of registration charges. It is also stated that the members in that regard can raise a dispute u/s 60 of the Delhi Cooperative Societies Act before the answering respondent that is, before the Registrar, Cooperative Societies.

6. In the light of the aforesaid statements, I have also considered the records placed before me. The Society seeks to justify the aforesaid demand on the ground that the amount is required to be paid keeping in view certain formalities to be completed sooner or later. In this connection, reference may be made to the provisions of Section 60 of the Delhi Cooperative Societies Act, which provides that:

"60. (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society arises-

(a) .....

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives or any deceased officer, deceased agent, or deceased employee of the society; or

(d) .....

such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute."

7. The petitioners admittedly purchased the flats through power of attorney and obtained possession of the same to the knowledge of the Society. Therefore, the petitioners come within the ambit of the provisions of Section 60(1)(b) falling within the expression "person claiming through a member". When a dispute arises between such persons claiming through members and the society, such dispute could also be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

8. The petitioner appearing in person in C.W.P. No. 3085/1996 sought to submit that the dispute as raised in the present petition cannot be a dispute touching the constitution, management or the business of a Co-operative Society. I, however, cannot agree with the aforesaid contention of the petitioner for the demand made by the Society for payment of registration charges amounting to Rs. 25,000/-definitely falls within the ambit of the expression "business of a Co-operative Society". In that view of the matter, the dispute as raised in the present petition before this Court clearly falls within the provisions of Section 60 of the Delhi Cooperative Societies Act and, Therefore, such a dispute between the petitioners claiming through members and the Society, namely respondent No. 4 are required to be referred to the Registrar for decision.

9. Since the petitioners have an efficacious remedy available before them particularly when disputed questions of fact are involved, I direct the petitioners to approach the Registrar, Cooperative Societies seeking for reference of the disputes as raised in the present writ petitions. The petitioners shall seek for a reference of the disputes before the Registrar, Cooperative Societies, as contemplated u/s 60 of the Delhi Cooperative Societies Act, within two weeks from today. On submission of such applications, the same shall be referred to be arbitrated upon in accordance with the provisions of Section 60. The proceedings shall be completed and the decision on the arbitration proceedings shall be rendered at an early date, preferably within a period of three months from the date of reference. It shall also

be open to the petitioners to raise all disputes as raised in the present petitions before the Registrar, Cooperative Societies.

10. In terms of the aforesaid order, the writ petitions stand disposed of. Pending applications stand disposed of accordingly. There shall be no order as to costs. dusty.