



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 15711/13
Irina Petrovna STOLYAROVA
against Russia
lodged on 13 February 2013

STATEMENT OF FACTS

The applicant, Ms Irina Petrovna Stolyarova, is a Russian national, who was born in 1962 and lives in Moscow. She is represented before the Court by Mr I. Puzanov, a lawyer practising in Moscow.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 17 March 2005 the applicant bought a flat in Moscow at 69/4-2 Bolshaya Filevskaya Street (“the flat”). The seller of the flat, Mr S., acquired it under the privatisation scheme in 2004. The facts preceding the privatisation of the flat and the subsequent invalidation of the applicant’s title to it may be summarised as follows.

1. Privatisation and sale of the flat

Before its privatisation the flat was owned by the City of Moscow. On an unspecified date it was allocated to Mr P. as social housing.

On 24 April 2001 Mr P. died.

On 14 December 2001 the Moscow City housing authorities authorised a flat exchange agreement between Mr P. and Mr M. and the latter moved in the flat.

On 20 November 2002 and 5 March 2003 respectively Mr M. registered his grandfather Mr S. and his grandmother Mrs S. in the flat.

On 23 March 2004 Mr M. and Mrs S. moved out.

On 18 May 2004 Mr S. signed a social tenancy contract with the Housing Policy and Housing Fund Department of the City of Moscow (*Департамент жилищной политики и жилищного фонда г. Москвы*, the Moscow Housing Department).

On 10 September 2004 Mr S. privatised the flat and became its owner.

On 1 November 2004 Mr S. registered his ownership of the flat in the State register (*Единый государственный реестр прав на недвижимое имущество и сделок с ним*).

On 25 January 2005 an “information ban” [on transactions] (*информационный запрет*) was imposed on the flat at the request of the Criminal Investigations Service of the Chief Department of the Interior of Moscow (*УУР ГУВД г. Москвы*) in view of the potential unlawful sale of the flat.

On 17 March 2005 Mr S. sold the flat to the applicant.

On 17 May 2005 at the request of Mr S. the “information ban” in respect of the flat was lifted.

On 18 May 2005 the applicant registered her ownership of the flat in the State register.

The applicant moved into the flat and has been living there since.

2. Challenge to the applicant’s ownership and eviction proceedings

On 25 November 2008 the Criminal Investigations Service of the Chief Department of the Interior of Moscow informed the Moscow Housing Department that they had discovered that the exchange of the flats between Mr P. and Mr M. had taken place after the former’s demise.

On 25 May 2009 the Moscow Housing Department instituted proceedings against Mr M., Mr and Mrs S. and the applicant asking the court to declare null and void the flat exchange between Mr. P. and Mr. M. of 14 December 2001, the social tenancy contract between Mr S. and the Moscow Housing Department of 18 May 2004, the privatisation of the flat by Mr S. of 10 September 2004 and its subsequent sale to the applicant of 17 March 2005. They further sought the applicant’s eviction and termination of her registration in the flat and claimed the return of the flat to the city of Moscow.

On 27 September 2010 the applicant lodged a counterclaim seeking to have her title to the flat recognised by the court. She contended to have purchased the flat in good faith (a *bona fide* buyer) and to have not known that Mr S. had had no right to sell it.

On 8 December 2010 the Dorogomilovskiy District Court of Moscow granted the claim of the Moscow Housing Department. The court found that, since Mr P. died on 17 April 2001, the flat exchange and all subsequent transactions in respect of the flat had been null and void. The court refused to recognise the applicant a *bone fide* buyer having found that she could and should have known of the “information ban” imposed on the flat of which on 18 April 2005 the registration service informed her representative.

By an additional judgment of 31 March 2011 the Dorogomilovskiy District Court dismissed the applicant’s counterclaims.

On 14 June 2011 the Moscow City Court quashed the judgments of 8 December 2010 and 31 March 2011 on appeal and remitted the case to the district court for a fresh examination by a different bench. In particular, the court held that the district court’s refusal to recognise the applicant a *bone fide* buyer had not been based on sufficient grounds. Furthermore, having recognised the Moscow Housing Department as the owner of the flat and having found that the flat had left the city of Moscow’s possession in the absence of the latter’s intention to divest itself of it, the district court had not

taken into consideration that the flat exchange had not stripped the owner of its title, and that subsequent transfer of the flat in private ownership of Mr S. had taken place with participation of the Moscow Housing Department. Therefore, in violation of the principle of equality of arms the district court had failed to examine why during the transfer of the title to the flat to Mr S. on 10 September 2004 the Moscow Housing Department had failed to check the circumstances under which Mr S. had acquired his right to privatise the flat. The court further noted in this respect that by 10 September 2004 Mr P.'s registration in the flat had already been terminated and the information on his demise had already been available.

On 31 January 2012 the Dorogomilovskiy District Court granted the claim of the Moscow Housing Department and dismissed the applicant's counterclaims. The court found the flat exchange and all subsequent transactions in respect of the flat null and void. It refused to recognise the applicant a *bone fide* buyer having considered that she should have known of the existence of the "information ban" imposed on the flat causing a one month delay in the state registration of her title. The court further noted that the flat was in Mr S.'s ownership only six months before it was sold to the applicant and that the applicant bought it below the market price, which should have raised reasonable doubts as to the legal status of the acquired property.

On 22 August 2012 the Moscow City Court, in appellate proceedings, upheld the judgment, having fully endorsed the District Court's reasoning. At the same time, it follows from the record of the appeal hearing that the plaintiff explicitly stated to have no grounds to doubt that the applicant had bought the flat in good faith.

On 24 December 2012 the Moscow City Court refused to institute cassation proceedings, having found no violations of material or procedural norms in the previous proceedings.

B. Relevant domestic law

For the relevant provisions of domestic law see *Gladysheva v. Russia*, no. 7097/10, §§ 35-37, 6 December 2011).

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 to the Convention about having been deprived of her possessions. She claims that the deprivation was not in the public interest and not consistent with the conditions provided for by domestic law. The applicant argues that she bought the flat in good faith, which the Moscow Housing department never challenged and explicitly acknowledged in the appeal hearing of 22 August 2012, and that after the state registration of her title to the flat it was not for her to assume the risk of ownership being revoked on account of defects which should have been eliminated in the procedures specifically designed to do so (see *Gladysheva*, cited above).

2. She complains under Article 8 of the Convention about the forthcoming eviction alleging that it would be unlawful and disproportionate.

3. The applicant complains under Article 6 § 1 that, while the Moscow Housing Department never challenged the fact that she had bought the flat in good faith and made an explicit statement to this effect at the hearing of the case in appellate proceedings on 22 August 2012, the domestic court disregarded it and reached quite an opposite conclusion, arbitrary and based entirely on speculations. In this respect the applicant calls attention to undetermined legal nature of an “information ban” on a property in the absence of any relevant provision in domestic law. Furthermore, the applicant complains that the District Court disregarded the instructions by the Moscow City Court of 14 June 2011 and at the fresh examination of the case limited itself to reproducing the same reasoning as in its previous decision of 8 December 2010.

QUESTIONS TO THE PARTIES

1. In the light of the judgment by the Dorogomilovskiy District Court of Moscow dated 31 January 2012 (upheld on 22 August 2012) is the applicant’s eviction from the flat imminent? Where would the applicant be lodged after the eviction?

2. Is the applicant able to request a stay of the execution of the eviction on the grounds of her inability to afford substitute housing or on the grounds that this application is pending before the Court?

3. Has the applicant been deprived of her possessions in the public interest, in accordance with the conditions provided for by law and in accordance with the principles of international law, within the meaning of Article 1 of Protocol No. 1? If so, was that deprivation necessary to control the use of property in accordance with the general interest? In particular, did that deprivation impose an excessive individual burden on the applicant (see *Gladysheva v. Russia*, no. 7097/10, §§ 64-83, 6 December 2011)?

4. Has there been an interference with the applicant’s right to respect for her home, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see *Gladysheva*, cited above, §§ 90-97)?

5. Did the applicant have a fair hearing in the determination of her civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular:

(a) Did the Moscow Housing Department acknowledge that the applicant had bought the flat in good faith? Reference is made to the content of the record of the hearing of 22 August 2012.

(b) In the affirmative, what were the legal and factual grounds for the domestic court to reach a conclusion to the contrary?

(c) The Government are invited to clarify, with reference to the relevant domestic law, the legal nature of an “information ban” imposed on the flat following the letter by the Criminal Investigations Service of the Chief Department of the Interior of Moscow.

(d) Did the Dorogomilovskiy District Court of Moscow comply with the instructions of the Moscow City Court of 14 June 2011 at the fresh examination of the case on 31 January 2012?

(e) If not, was this shortcoming remedied at the subsequent examination of the case in appellate proceedings on 22 August 2012?