

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 119/2012

In the matter of:-

1. UMESH KUMAR JAIN,
FLAT NO. 726,
2. DEVENDER NATH SHARMA,
FLAT NO. 217,
3. ANITA GOEL & KULDIP GOEL,
FLAT NO. 516,
4. HARBINDER KAUR SARNA,
FLAT NO. 623,
5. DINESH KUMAR,
FLAT NO. 327,
6. ARUN KUMAR JAIN,
FLAT NO. 421,
7. SNEH LATA KHURANA,
FLAT NO. 513,
8. RITU SETHI,
FLAT NO. 325,
9. SUDESH BHARDWAJ,
FLAT NO. 324,
10. RITU SINGH,
FLAT NO. 619,

ALL SITUATED AT
MODERN APARTMENTS,
SECTOR-15, ROHINI,
DELHI-110085

....PETITIONERS

VERSUS

1. REGISTRAR, CO-OPERATIVE SOCIETIES,
PARLIAMENT STREET,
NEW DELHI-110001

2. MODERN CO-OPERATIVE
G/H SOCIETY LTD.,
THROUGH ITS ADMINISTRATOR,
JAMNAGAR HOUSE,
SHAHJAHAN ROAD,
NEW DELHI
3. SANT LAL GUPTA,
14-A, ASHOK PARK EXTENSION,
NEW DELHI-110026
4. MITHILESH JAIN,
BM-109, SHALIMAR BAGH (W),
DELHI
5. NAURANG RAM,
A-4/4, PASCHIM VIHAR,
DELHI
6. VIRENDER KUMAR JAIN,
18/6, SHAKTI NAGAR,
DELHI
7. RAKESH GROVER,
189, VIDYA VIHAR,
PRITAM PURA, DELHI
8. VIJAY GROVER,
189, VIDYA VIHAR,
PRITAMPURA, DELHI
9. NARENDER KUMAR,
6, CHANDAMAL PARK,
MAIN ROHTAK ROAD,
DELHI-26
10. RAM SARAN,
17, CHANDAMAL PARK,
MAIN ROHTAK ROAD,
DELHI-26
11. KASHMIRI LAL,
10/6 JAIDEV PARK,
NEW DELHI-26
12. SHIV PRASAD,
Z-122, LOHA MANDI,
NARAINA, DELHI

...RESPONDENTS

CASE NO. 151/2012

IN THE MATTER OF:

1. DHANANJAY GARG,
FLAT NO. 737,
2. VEENET MITTAL,
FLAT NO. 14,
3. SMT. RAJ RANI SHARMA
THROUGH SMT. NEELAM DEVI
FLAT NO. 23,
4. TRISHLA JAIN,
THROUGH FLAT NO. 426
5. ANJU DALMIA
THROUGH FLAT NO. 418,

ALL SITUATED AT
MODERN APARTMENTS,
SECTOR-15, ROHINI,
DELHI-110085

...PETITIONERS

VERSUS

1. REGISTRAR, CO-OPERATIVE SOCIETIES,
PARLIAMENT STREET,
NEW DELHI-110001
2. MODERN CO-OPERATIVE
G/H SOCIETY LTD.,
THROUGH ITS ADMINISTRATOR,
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DELHI
5. NAURANG RAM,
A-4/4, PASCHIM VIHAR,
DELHI

6. VIRENDER KUMAR JAIN,
18/6, SHAKTI NAGAR,
DELHI
7. RAKESH GROVER,
189, VIDYA VIHAR,
PRITAM PURA, DELHI
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17, CHANDAMAL PARK,
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DELHI-26
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NEW DELHI-26
12. SHIV PRASAD,
Z-122, LOHA MANDI,
NARAINA, DELHI

...RESPONDENTS

DHARAM PAL, FINANCIAL COMMISSIONER

ORDER dated: October 10, 2014

1. This order shall dispose of the revision petitions bearing No. 151/12 and 119/12 filed against the impugned order dated February 24, 2012 of Registrar of the Co-operative Society (herein after called RCS).
2. Brief facts of the case are as under:
 - (i) Vide resolution dated April 27, 1987, Modern Cooperative Group Housing Society proposed the expulsion of 27 members including the 10 respondents (herein). The said proposal was forwarded to RCS for the approval on February 20, 1988. But

in the meanwhile society enrolled new members without waiting for approval of their resolution for expulsion of 27 members by RCS. The RCS vide order dated June 04, 1996 rejected the expulsion of all 27 members. Against this decision of RCS, Society filed the revision petition before the Financial Commissioner which was dismissed vide order July 30,1996. Society filed an appeal before the Hon'ble High Court of Delhi. Vide its order dated March 12,1997 Hon'ble High Court of Delhi set aside the order dated June 04,1996 of RCS and July 30,1996 of Financial Commissioner and remanded the case back to the RCS.

(ii) RCS vide order dated August 26, 1997 rejected the expulsion of 14 members (including 10 respondents herein).

(iii) Society filed an appeal before the Financial Commissioner, Delhi which was dismissed vide order dated November 03,1997.

(iv) Society filed a WP(C) bearing no. 02/98 before the Hon'ble High Court of Delhi which vide its order dated September 04, 2002 set aside the orders of Registrar of Co-operative Societies and Financial Commissioner Delhi. Thereafter Society in General Body Meeting (herein after called GBM), held on October 20, 2002, admitted 15 persons as members in a self draw and issued share certificates to them.

(v) Aggrieved by the said order of Hon'ble High Court dated April 09, 2002, Sh. Sant Lal Gupta and Ors. filed a civil appeal No. 9439 of 2003 before Supreme Court of India which vide its order dated October 18, 2010 directed that the appellants

(therein) be adjusted against the 15 un-allotted flats as intimated by the RCS in response to RTI query. Supreme Court further set aside the High Court order dated September 04, 2002 passed in civil writ petition No. 02/98 thereby restoring the judgement of RCS dated August 26, 1997 and of Financial Commissioner dated November 03, 1997.

(vi) However an Interlocutory Application No. 6-7 of 2011 was filed by the petitioners (herein) in the civil appeal No. 9439 of 2003 before the Hon'ble Supreme Court of India. Vide order dated March 03, 2011 Hon'ble Supreme Court of India directed that applicants (therein, petitioners herein) are permitted to move Registrar/Administrator to vindicate their grievance. It was further directed that application shall be disposed of after hearing the parties as well as society.

(vii) In the compliance of the above directions of Supreme Court of India, RCS vide order dated February 24, 2012, directed the society to re-admit 14 persons (including the 10 respondents herein) as members of the society. The expulsion of 13 members was also confirmed vide corrigendum dated September, 11, 1997.

(viii) A Contempt petition was also filed before the Supreme Court of India bearing contempt petition (Civil) no. 08 of 2011. In this matter vide order dated March 12, 2012, Hon'ble Supreme Court of India observed as following:

“on going through our earlier order dated October 18, 2010 and the subsequent order passed by us in I.A. no. 06-07 in civil appeal no. 9439 of 2003 dated March 04, 2011 as well as order

passed by the Registrar Cooperative Societies dated February 24, 2012, we are satisfied that no further adjudication is required".

3. Petitioners in their petition have raised the following main issues:

- (i) That neither the Respondents(herein) nor the Registrar, who was a Respondent in the aforementioned SLP intimated and brought to the notice of the Hon'ble Supreme Court of India that the Petitioners are already in peaceful possession of the flats. On the other hand all the aforementioned Respondents (Respondent Nos. 3 to 12; The Registrar and the Administrator of the Society) informed the Supreme Court that the flats remain ~~un-allotted~~
- (ii) It was also submitted by the petitioners that had the Supreme Court been told the correct position by any of the parties, who were before it, the present dark, deadly and dismal situation would not have emerged. The Petitions state that they were at no stage of the proceedings were heard by any Court.
- (iii) That because the Registrar Co-operative Society has failed to access the judies invested in him strictly in accordance with the direction by the Hon'ble Supreme Court of India in No.6-7 of 2011 and therefore impugned order is liable to be quashed, modified, annulled.
- (iv) That the Registrar Cooperative Society has no power to set aside the admission of the appellants as member of the Society that is respondent No. 2. It has been held by the then Lieutenant Governor in case of Low Income Group Housing

Society vs. the Registrar, %o may further observe here that the enrolment of the members is the prerogative of the Managing Committee of the Society and the Registrar had and has nothing to do with it+.

(v) Petitioners in their petition further submit that as per the provisions of Act and the Rules, a person can cease to be a member on acquiring any disqualification as per bye laws of the society or conditions contained in section 24 of the DCS Act 1972 or a member is expelled on account of persistent default or cease to be member under rule 40 of the DCS Rules 1973. The petitioners are not covered under any of the provisions of the Act or the rules and therefore cancellation of the appellants as member of the society is not only illegal but also without application of mind.

(vi) That the impugned order is liable to be quashed as the then RCS, Sh. Gopal Dixit vide its order dated 26.08.1997 had directed the society to re-admit the expelled members i.e. respondent numbers 3-12 herein and by way of the impugned order the respondent number 3-12 have been directed by the Registrar to re-admit them and Administrator has been directed to issue share certificates. Re-admission of the respondent number 3-12 cannot be equated with their original membership and therefore cancellation of membership of the appellants herein has nothing to do with the re-admission or allotment of any flats thereof. Re-admission tantamount to junior most members of the Society.

(vii) That because the respondents have obtained the order dated October 18, 2010 by playing fraud upon the Court and therefore is a nullity ad non-est in the eyes of law and inoperable against the petitioners.

(viii) That the order dated October 18, 2010 had been passed due to suppression/concealment of material facts and by misleading the Court by representing that the flats were vacant and were not allotted to any other person till dated.

(ix) Because the scheme of allotment by self draw has been regularized by an undated notification issued by the respondent no. 1. It is further submitted that the petitioners have already moved an application for regularization of self draw of flats on January 11, 2012. It is further submitted that the Act in its section 77 permits allotment of flats by draw of lots.

4. Respondents other than society and RCS have submitted that petitioners were enrolled by Modern CGHS in utter violation of the provisions of law since there were no vacancies as the expulsion was not approved by the RCS. These are illegal occupants of 15 flats by way of so called self draw. As neither RCS recommended their names to Delhi Development Authority(herein after call DDA) nor DDA held any draw of these petitioners.

5. RCS in its reply also submitted that the allotment of flats has to be through draw of lots by DDA in presence of the representative of society and the officials of the RCS. No one can lay its claim to a particular flat. It was supersession of the procedure of allotment. As a result of which observation came from the Apex Court of allotment

of the flats as mentioned in its order. No one can go beyond the procedure prescribed under the Statute.

6. Administrator in his reply, on behalf of the society has stressed that as per Rule 36(3) of, DCS Rules 1973, the approval or rejection was to be granted within 6 months from the date of the receipt of the proposal and in case no decision of approval or rejection is taken the proposal of the society is deemed to have been approved.

7. I have considered the petitioners averment on the issue of submission before the Supreme Court of India that the petitioners are already in the possession of the flats. Rule 24 of Delhi Cooperative Societies Rule 1973 clearly defines the allotment procedure for filling up any vacancy created on the expulsion of the members. RCS in his order dated February 24, 2012 has aptly observed that *%am the considered opinion that the self draw held on October,20,2002 was illegal and this was never recognized or regularized by this office+*. In view of this, the contention of the petitioners is not tenable. Petitioners' contention that had the correct position been told to Supreme Court the outcome might have been different is a hypothetical contention. The RCS followed the directions of the Hon'ble Supreme Court of India and provided full opportunity to the petitioners to vindicate their grievances and after considering all the facts and circumstances order dated February 24, 2012 was passed.

8. Petitioners in their petition referred the decision of the Hon'ble LG on the issue of enrolment of members by Society. However, it is important to emphasize that the present case relates to expulsion of members and allotment of flats without following the procedure as prescribed under the law.

9. Petitioners in their petition also submitted that they have not suffered any disqualification as per section 24 of Delhi Cooperative Societies Act 1972 therefore cancellation of petitioners as member of the society is illegal. This averment is also not tenable because RCS passed the order on the issue of the allotment of the flats to those members whose expulsion was not approved.

10. Petitioners also submitted that since RCS in its order dated August 26, 1997 had directed the society to readmit the expelled members therefore it cannot be equated with their original membership hence cancellation of membership of the petitioners herein has nothing to do with the readmission or allotment of any flats thereof. It is important to emphasize that the expulsion of the respondents (3-12 herein) was never approved/ratified by the RCS, therefore, the respondents (3-12) have every right to retain their original membership.

11. Petitioners have agreed that respondents have obtained the order dated October 18, 2010 by playing fraud upon the Court but they have failed to establish as to how and what kind of fraud was committed by the respondents. Further Hon'ble Supreme Court in its order did not mention the word "%vacant flats". Apex Court only referred to the "%un-allotted+flats" as intimated by RCS in response to RTI query. Therefore, this averment is also not tenable.

12. Petitioners also submitted that allotment by self draw has been regularized by the RCS vide an undated notification. I considered this averment also but petitioners did not submit any notification issued by the RCS by which scheme of self draw has been regularized. Petitioners also failed to submit the decision of the RCS on the

application dated January 11, 2012 for the regularization of the self draw of flats.

13. I also considered the averment of administrator regarding deemed approval wherein it has been observed that although the Rule 36(3) of the DCS Rules, 1973 states that the six months time to RCS on the decision of the application from society but it does not states anything about deemed approval as interpreted by the Administrator. Hence the proceedings of enrolling new members were void *ab-initio*. Without any vacancy, no new members could have been enrolled. Moreover, if there is a vacancy, the procedure to fill-up that vacancy is also defined in Rule 24 of Delhi Cooperative Societies Rule 1973.

14. In view of the above facts and circumstances, I am of the considered view that since the expulsion proceedings in respect of respondents no. 3-12 were not approved by the RCS and those vacancies were never created due to these expulsion proceedings, I do not find any infirmity in the order of RCS. Accordingly petitions are hereby dismissed.

15. Pronounced in the open Court.

-SD-

(DHARAM PAL)
Financial Commissioner,
Delhi.
October 10, 2014