

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.143/2012

Revision Petition under
Section 116 the Delhi
Cooperative Societies Act,
2003.

In the matter of :-

Shri H. K. Madhia
Flat No.58, Anuradha Apartments
A-2, Paschim Vihar
New Delhi-110063

... Petitioner

Versus

1. Registrar,
Cooperative Societies,
Govt. of NCT of Delhi,
Having its office at :
Old Court Building, Parliament Street
New Delhi-110011

2. The Subhash Coop. Group Housing Society Ltd.
Anuradha Apartments
A-2, Paschim Vihar
New Delhi-110063
(Through its Administrator)

3. Shri Lal S. Vaswani
90/87, Malviya Nagar
New Delhi
... Respondents

DHARAM PAL, FINANCIAL COMMISSIONER

Order dated 23rd December, 2014

1. This order shall dispose of the Revision Petition under section 116 of Delhi Cooperative Societies Act, 2003 filed against the impugned order dated 17.02.2012 passed by the Registrar of Cooperative Societies, Delhi, vide which membership of Shri H. K. Madhia in New Subhash CGHS Ltd. was ceased from the date of enrolment and he was directed to vacate Flat No.58 in the housing complex of the Society. It was further ordered that Shri H. K. Madhia shall hand over vacant possession of the said flat and land admeasuring 300-400 sq.ft. on the rear side of the flat to the

administrator of the society within a one month from the date of issue of that order which shall in turn will hand over the flat to the legal heir/nominee/representative of late Shri G. S. Vaswani who is the rightful owner of flat no.58 of New Subhash CGHS Ltd.

2. Brief facts of the case are as under :

(a) Shri S. G. Vaswani, who was a member of New Subhash Coop. Group Housing Society Ltd., was expelled by the GBM of the society held on 11.2.1994. During pendency of approval of expulsion, the said Shri Vaswani expired on 26.4.1995. Shri H. K. Madhia was enrolled as member by the society on 3.3.1996, whereas expulsion of late Shri S. G. Vaswani was confirmed by the RCS office on 27.3.1996. The Hon'ble Court of Financial Commissioner vide order dated 19.8.1996 set aside the said expulsion as no order can be passed against a dead person. No appeal was filed by the society against this decision of the Financial Commissioner.

(b) Shri Lal S. Vaswani, son of the deceased member filed complaints in respect of various irregularities including the illegal enrolment of Shri H. K. Madhia as member of the society & allotment of flat no.58 and sale of society's land to him. In the first instance, Shri S. K. Chugh, Deputy Secretary(GAD) was appointed as inspecting officer, who after hearing all the concerned parties submitted his detailed report on 8.12.2008 and held that the allotments of flat no.58 and 57 to S/Shri H. K. Madhia and Shri Virender Yadav respectively were rendered illegal in view of the blatant violation of the acts and rules.

(c) Thereafter, Shri P. C. Jain, Joint Secretary(GAD), Govt. of NCT of Delhi was appointed as Inquiry Officer under section 62(2) of the DCS Act 2003. He also studied the matter in depth and heard the concerned parties. He vide his Report dated 2.2.2010, inter-alia, held that the enrolment of Shri H. K. Madhia was apparently in violation of all cooperative rules and regulations; the allotment of flat no.58 to Shri Madhia was absolutely against the cooperative laws and transparency; the sale of piece of land measuring 300-400 sq.ft. to Shri Madhia was not in accordance with the cooperative norms, rules, conventions and was deliberately effected by way of doing some unauthorized insertions in the minutes books of the MC meeting; in the allotment of the flat, neither vacancy existed at the time of enrolment nor the admission fee/share money was deposited nor any mandatory declarations were obtained; and the office of RCS was not involved in the allotments by the society.

(d) RCS considered the facts and observed that Sh. H.K. Madhia was enrolled as a member of New Subhash CGHS on 03/03/1996 when there

was no vacancy in the society as the expulsion proceeding in respect of expulsion of late Sh. S.G. Vaswani were confirmed by the RCS only on 27/03/1996. This order of RCS was set aside by the Court of Financial Commissioner on 19/08/1996 against which no appeal was preferred. After considering all the facts, RCS passed the impugned order dated 17/02/2012.

3. Petitioner has filed this revision petition against the impugned order dated 17/02/2012 of RCS mainly on the following grounds :-

- (i) That the petitioner is a member of the society having membership No.59. He was enrolled as member in the society on 3.3.1996. The share certificate is dated 3.3.1996, signed by the then president, secretary & Treasurer of the society. Further Society has never disputed the issue related to share Certificate, Share Money & Admission Fees and hence the office bearers of Society is governed by the principle of "holding out".
- (ii) That the society had an open space in flat no.58 which was un-useful for the society and the society wanted to dispose it off. He applied for purchase of the said open space. The cost of this open space in the backyard of flat no.58 was informed and demanded by the Society @ Rs.75,000/- which he paid through cheque No.487391. He paid the cost of the land, admission fee and share money. He has paid in total Rs.8,50,000/- to the society, which is admitted by the Registrar in the show cause notice dated 27.4.2011.
- (iii) That the appointment of the Inquiry officer Shri S. K. Chugh and Shri P. C. Jain is against section 61 and 62 of the act. However, the petitioner has filed written submissions to the notice received from Shri P. C. Jain.
- (iv) That the RCS did not take any action on the report of the enquiry by Shri P. C. Jain. But instead of taking any action, issued a show cause notice under section 41 of the DCS act 2003 read with rule 19 and 25 of the DCS Rules.
- (v) That the petitioner is a member of the society and he had no knowledge whether on 3.3.1996 there was vacancy in the society or not. But it is a fact that Shri S. G. Vaswani was a member of the society and he was expelled by the General Body of the Society being a defaulter and his expulsion was approved by the Registrar. As per the record, no stay was granted by the Financial Commissioner and finally the Lt. Financial Commissioner, Shri Madan Jha, held in his order dated 19.8.1996 that the petitioner shall clear the entire dues within a period of 35 days and in case of default or failure, the expulsion order shall stand restored. There is no

proof on record whether the legal heir of the deceased member Shri S. G. Vaswani who was petitioner before the Financial Commissioner had cleared the dues in 35 days or not. Since no payment was made by Shri Cheti Vaswani or any other legal heir within 35 days of the order passed by the Financial Commissioner, the expulsion order as approved by the Registrar stands restored and is liable to be stood expelled by the society.

(vi) That the Registrar had failed to appreciate that the society has raised a demand dated 18.3.1996 for Rs.5,50,000/- towards the cost of the flat.

(vii) That under section 41 of the DCS Act, the Registrar has no power to cease the membership as he has not incurred any disqualification enumerated in this section nor he has the power under rule 19 and 25 to cease the membership. This fact was ignored by the RCS while passing the order dated 17.02.2012.

(viii) That the RCS has wrongly passed the order under section 41 of the DCS Act, 2003 read with Rule 19 & 25 of the DCS Rules 2007, as the said DCS Act, 2003 & Rules, 2007 were not applicable when Sh. H.K. Madhia was enrolled as member of the Society as the said Act came into effect on 01.04.2005 and the Rules came into effect on 19.10.2007 only. The membership of the petitioner cannot be ceased under the new Act.

(ix) That Sh. Lal S. Vaswani concealed from this Hon'ble Court that he is also a member in Nirman Vihar CGHS td. And also claiming flat no. 57 in the New Subhash CGHS Ltd.

4. Shri Lal. S. Vaswani (Respondent no. 3 herein) on the other hand in his reply has submitted that :-

(a) The petitioner has neither challenged the Inspection Report dated 8.12.2008 nor the Inquiry Report dated 2.2.2010 or the findings thereon or the order dated 17.2.2012 passed by Respondent No.1.

(b) The petitioner herein has intentionally and deliberately played a fraud upon this Hon'ble Court by not filing the copy of order dated 19.08.1996 passed by the Hon'ble Court of Financial Commissioner in the matter of Cheti Vaswani w/o late Sh. S.G. Vaswani Vs. New Subhash CGHS & Ors., but he has filed some different order passed by this Hon'ble Court in another case No.133/96-CA titled Smt. R.V. Vaswani Vs. New Subhash CGHS Ltd. and ors.

(c) Allotment of flats was done through draw of lots held on 7.12.1980 and flat no.58 was allotted to Late Shri S. G. Vaswani and same was handed over to late Shri S. G. Vaswani vide GBM Resolution dated

28.10.1986. Thereafter, he filed an affidavit dated 16.11.1987 with the society thereby confirming the allotment of flat.

(d) Society even before the approval of expulsion of Shri S. G. Vaswani, illegally enrolled Sh. H.K. Madhia on 3.3.1996 as a member, when there was no vacancy in the society.

(e) The society violated the provisions of rules 24 and 30 of the then existing DCS, Rule 1972 and also the bye laws of the society. The said action had taken place in the hush-hush manner, without the knowledge or approval of RCS office.

(f) Since the petitioner has already been owing a flat No.32, GH-1 Pocket, Paschim Vihar, New Delhi, therefore, by virtue of provision under rule 25 of the DCS Rules, 1973, he was ineligible/disqualified to become a member of another society.

(g) Petitioner herein was allotted/sold a piece of land measuring 300-400 sq.ft. adjacent to the flat No.58 which was the common area of the society against statutory laws/principles. Petitioner allegedly paid Rs. 75,000/- for the same. As per the knowledge of the respondent herein, the petitioner had also raised construction on the said land in the shape of two rooms. Managing Committee had no authority to sell a piece of land which is a common area as per the drawings and approved plans. Society is governed by the perpetual lease deed executed between the President of India through the DDA and the society and that the society has no absolute right to sell any part of it to any body.

(h) The petitioner never applied for membership in accordance with law, in a prescribed format. And further he did not furnish any affidavit/undertaking regarding eligibility as required under law. The said essential requirements were not completed by the petitioner and as such his membership was void *ab initio*.

(i) The alleged share certificate dated 3.3.1996 is a fabricated document which has been obtained by the petitioner in a fraudulent manner without paying the share money and as such the same is of no avail.

(j) No clearance from the office of respondent No.1 was taken before enrolling the petitioner and allotting him flat no.58. A copy of the reply dated 26.2.2007 as furnished under RTI Act by the office of Respondent No.1 is also enclosed which confirms the same.

(k) It is wrong and denied that the petitioner had no knowledge at the time of his alleged enrolment that there was no vacancy in the society. It is submitted that ignorance of law is no excuse.

6. Society (Respondent no. 2 herein) in its reply has submitted that :-

(i) Petitioner's membership of the answering respondents' society was *prima facie* illegal since the same was obtained by fraud as there was no vacancy in the society at the time of alleged enrolment of the petitioner. The petitioner had not deposited the share money and admission fee at the time of his alleged enrollment as was confirmed by inspection report dated 08.12.2008 and a further inquiry report dated 2.2.2010. The share certificate has been fraudulently obtained by the petitioner and no admission fee/share money as been reflected in the audit report of the Society for the year 1995-96. The alleged enrollment of the petitioner is illegal being against the provisions of the DCS Act and Rules made pursuant thereto.

(ii) Petitioner had concealed the facts of his owning a flat at GH-1/32 Paschim Vihar New Delhi at the time of his alleged enrolment for flat no. 58 in the society and did not file mandatory declaration in this regard.

7. RCS (Respondent No.1) herein in its reply has submitted that:

(a) The petitioner was enrolled as a member when there was no vacancy in the society as the expulsion proceeding were pending in the office of RCS and were not confirmed.

(b) The mandatory formalities under the Rule 24 and 30 of DCS Rules 1973 were not followed by the Society while enrolling the petitioner as member of the society. It is further submitted that the account/audit report of the society for the year 1995-96 does not reflect the share money / admission fee paid by the petitioner. The approval of the RCS in respect of the membership of the petitioner was also not taken.

(c) That the vacant land is the property of the DDA who is the lessor of the land and without the prior permission of the DDA, the Society is not empowered to sell the land to the petitioner. Further, the building section plan of the Society has to be taken into consideration as to whether the land in question can be sold to the petitioner.

8. I have heard the concerned parties at length and I have also perused their written submissions and available documents on record. RCS on the basis of Inspection Report conducted by Shri S. K. Chugh, Deputy Secretary(GAD) and Inquiry Report conducted by Shri P. C. Jain, Joint

Secretary(GAD) and after giving opportunity of being heard to concerned parties, has given the following findings :

"I am of the considered opinion that Sh. H.K. Madhia was enrolled as a member of New Subhash CGHS Ltd. on 03/03/1996 when there was no vacancy in the society as the expulsion proceedings in respect of expulsion of late Sh. S.G. Vaswani were pending in the RCS office which were confirmed by the RCS only on 27/03/1996. These were finally set aside by the Court of Financial Commissioner on 19/08/1996 and no appeal was preferred against this order by the society and therefore, the order has attained finality and he is to be treated as a valid member of the society since 19/08/1996. Therefore, the enrolment of Sh. H.K. Madhia without observing the mandatory formalities and provisions of Rule 24 and 30 of the then DCS Act and Rules is void ab-initio. Moreover, the mandatory declaration that Sh. H.K. Madhia, his spouse and his dependent children did not possess any flat/plot in NCT of Delhi, was not submitted / obtained at the time of enrollment of Sh. H.K. Madhia. Payment of Rs. 3,00,000/- was also made by Sh. H.K. Madhia before his enrollment on 03/03/1996 and balance of Rs. 5,50,000/- paid on 26/03/1996 also confirmed that at the time of his enrollment for membership only a part payment of money was made which shows "undue haste" on the part of the then management. Consequently he acquired Flat No. 58 in the housing complex of the society without the approval of Competent Authority and also entered into illegal purchase and acquisition of land admeasuring 300-400 sq. ft. in a fraudulent manner in connivance with the then President, Secretary of the Society which is also against the Cooperative Rules.

Therefore, after giving careful consideration to all the available facts on record, RCS in exercise of the powers vested in him u/s 41 of the DCS Act, 2003 read with Rule 19 and 25 of the DCS Rules, 2007 ordered for cessation of membership of Shri H. K. Madhia (membership No. 59) in New Subhash CGHS Ltd. from the date of his enrolment and directed him to vacate Flat No.58 in the housing complex of the Society acquired by him in a fraudulent manner. He further ordered that Shri H. K. Madhia shall hand over vacant possession of the said flat and land admeasuring 300-400 sq.ft. on the rear side of the flat to the administrator of the society within a month from the date of issue of that order which shall in turn, handed over the flat to the legal heir/nominee/representative of late Shri S.G. Vaswani who is the rightful owner of flat no.58 of New Subhash CGHS Ltd."

9. The petitioner either through his written or oral submissions has not been able to challenge these findings in any substantial manner. One of the main contention of the petitioner is that RCS had no power u/s 41 of the DCS Act, 2003 and Rule 19 and 25 of DCS Rules, 2007 to cease his membership. Further, that RCS has wrongly passed order u/s 41 of the DCS Act, 2003 read with Rule 19 and 25 of the DCS Rules, 2007 as these were not applicable when the petitioner was enrolled as a member of the society in the year 1996. On this aspect, it a matter of record that the inspection was carried out by Sh. S.K. Chug u/s 71 of the DCS Act, 2003 and inquiry by Sh. P.C. Jain u/s 62(2) of the DCS Act, 2003 was ordered on 15/10/2009. Since both the inspection and subsequent inquiry was conducted under the provisions of the new Act, the subsequent action by

the RCS was rightly taken under the provisions of the new Act and Rules. Further it is an established fact that there was no vacancy at the time of admission of the petitioner as a member. Therefore, his membership was void *ab-initio*. Since his membership was void *ab-initio* on the ground mentioned above, it is immaterial whether the action was taken under the provisions of old or new Act.

10. Petitioner has further stated that Ld. Financial Commissioner vide order dated 15/08/1996 directed the legal heirs of the deceased member Sh. S.G. Vaswani to clear the entire dues in a period of 35 days failing which their expulsion shall stand restored. It has been further stated that since there is no proof on record whether legal heirs of Sh. S.G. Vaswani had cleared the dues in 35 days or not, therefore, the expulsion order as approved by the Registrar stand restored. I have gone through the order dated 19/08/1996 passed in Case No. 133/93-CA titled as Smt. R.V. Vaswani Vs. New Subhash CGHS Ltd. & Ors. and it has been observed that the order was passed in a totally different case filed by Smt. R.V. Vaswani through her attorney Shri R. V. Vaswani, 61, Greylands, Railway Officers Flats, Flat No.1, First Floor, New Marine Lines, Mumbai. It is pertinent to note that RCS vide order dated 27/03/1996 had approved the expulsion of following two members :

- (i) Sh. S.G. Vaswani, D-6, Hospital Campus, Udaipur; and
- (ii) Ms. R.V. Vaswani, 61, Greylands, Railway Officers Flats, Flat No.1, First Floor, New Marine Lines, Mumbai

Both of them filed separate revision petitions before the Financial Commissioner. In the case of Sh. S.G. Vaswani in Revision Petition No. 140/96-CA, RCS order dated 27/03/1996 was set aside on the ground that impugned order, being against a dead person, is perverse, non-est and non-sustainable. However, in a revision petition filed by Smt. R.V. Vaswani in Revision Petition No. 133/96-CA, RCS order was set aside by the Financial Commissioner vide order dated 19/08/1996 with the direction to Ms. R. V. Vaswani to clear the entire dues within a period of 35 days failing which the expulsion order shall stand restored. It is thus clear that this order was passed in a case relating to Ms. R.V. Vaswani and not in the case of Sh. S.G. Vaswani.

11. The contention of the petitioner that share certificate dated 03/03/1996 was issued by the society under the signature of the President, Secretary and the Treasurer of the society is negated by the reply submitted by the society that the said share certificate was obtained fraudulently. It has further been stated by the society that petitioner did not pay any share

money or admission fee as reflected in the audit report of the society for the year 1995-96 which has also been confirmed by the reply of the RCS.

12. With regard to the sale of open space in the backyard of flat No.58 by the Society to the Petitioner, I agree with the reply submitted by RCS and the Respondent No.3 that since DDA is the lessor of the land, society has no right to sell any part of the land which is part of the common area as per the drawings and approved plans. Further, the land given to society is not a free hold property. Therefore, the contention of the petitioner that he is the rightful owner of that piece of land is not tenable.

13. Petitioner's contention that he was not aware on the date of admission as a member i.e. 03/03/1996 whether there was any vacancy in the society or not is untenable in view of the fact that ignorance of law is no excuse. Further the Rule 35 of DCS Act, 1973 does not provide any provision for deemed approval on the proposal of expulsion of the society. It is clear that at the time of admission of petitioner as member there was no vacancy. Hence, his membership was void *ab-initio*. Further, RCS order dated 27/03/1996 was set aside by the Financial Commissioner vide order dated 19/08/1996 against which no appeal was filed. Petitioner's contention that he had not incurred any disqualification under section 41 of DCS Act, 2003 also does not hold water as his membership was null and void *ab-initio*.

14. Petitioner has further alleged that Sh. L.S. Vaswani has concealed that he is a member of Nirvan Vihar CGHS. This allegation is not relevant as the present case is related to the membership of Sh. S.G. Vaswani and not that of Shri L. S. Vaswani. However, if the petitioner is aggrieved in any manner by the alleged dual membership of Sh. L. S. Vaswani, he may if not done earlier, file appropriate complaint before the RCS, who will be at liberty to take further action as deemed fit as per law.

15. Therefore, in view of the above discussion, I find the revision petition devoid of any merit and the same is hereby dismissed.

16. Announced in the open Court.

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(DHARAM PAL)
Financial Commissioner, Delhi
23rd December, 2014