

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Revision Petitions under section 116 of Delhi Cooperative Societies Act, 2003

1. Case No.176/2015

In the matter of :-

**Smt. Bimla Devi,
Aged 80 Years
W/o Shri R.P. Rastogi
Flat No. 406
Maitri Apartments
Sector-9, Rohini, Delhi.**

**..... Petitioner
(Represented by Smt.
Suruchi Agarwal, Counsel
for Petitioner)**

Versus

**1 The Registrar of Co-operative Societies
Through its authorized Officers
Parliament Street
New Delhi.
Respondent**

**2 The Maitrinagar Co-Operative Group Housing Society,
Plot No. 29 Sector-9 Rohini Delhi.**

**3 Sh. Arun Singla,
R/o Flat No. 005, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.**

**4 Sh. Parveen Singla,
R/o Flat No. 34, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi. Respondents**

**(Represented by Shri
Shyam Sunder, Counsel for
R-1, Shri J. N. Gupta,
Counsel for R-2 and Shri
Fanish K. Jain, Counsel for
R-3 and R-4)**

2. Case No.177/2015

In the matter of :-

Shri Ashok Katyal,

**Aged 57 Years
S/o Late Shri V. B. Katyal
Flat No. 004
Maitri Apartments
Sector-9, Rohini, Delhi.**

..... Petitioner
(Represented by Shri
Pankaj Vivek, Counsel for
Petitioner)

Versus

- 1 The Registrar of Co-operative Societies
Through its authorized Officers
Parliament Street
New Delhi.
Respondent**
- 2 The Maitrinagar Co-Operative Group Housing Society,
Plot No. 29 Sector-9 Rohini Delhi.**
- 3 Sh. Arun Singla,
R/o Flat No. 005, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.**
- 4 Sh. Parveen Singla,
R/o Flat No. 34, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.Respondents**

(Represented by Shri
Shyam Sunder, Counsel
for R-1, Shri J. N. Gupta,
Counsel for R-2 and Shri
Fanish K. Jain, Counsel
for R-3 and R-4)

3. Case No.178/2015

In the matter of :-

**Shri Rajinder Bansal,
Aged 57 Years
S/o Shri N. M. Aggarwal
Flat No. 503
Maitri Apartments
Sector-9, Rohini, Delhi.**

.....Petitioner
(Represented by Smt.
Suruchi Agarwal,
Counsel for Petitioner)

Versus

- 1 The Registrar of Co-operative Societies**

**Through its authorized Officers
Parliament Street
New Delhi.
Respondent**

**2 The Maitrinagar Co-Operative Group Housing Society,
Plot No. 29 Sector-9 Rohini Delhi.**

**3 Sh. Arun Singla,
R/o Flat No. 005, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.**

**4 Sh. Parveen Singla,
R/o Flat No. 34, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi. Respondents**

**(Represented by Shri
Shyam Sunder, Counsel
for R-1, Shri J. N. Gupta,
Counsel for R-2 and Shri
Fanish K. Jain, Counsel
for R-3 and R-4)**

4. Case No.1792015

In the matter of :-

**Shri Vipin Mehra,
Aged 46 Years
S/o Late Shri S. P. Mehra
Flat No.12
Maitri Apartments
Sector-9, Rohini, Delhi.**

.... Petitioner

**(Represented by Shri
Hemant Chaudhary,
Counsel for Petitioner)**

Versus

**1 The Registrar of Co-operative Societies
Through its authorized Officers
Parliament Street
New Delhi.**

**2 The Maitrinagar Co-Operative Group Housing Society,
Plot No. 29 Sector-9 Rohini Delhi.**

**3 Sh. Arun Singla,
R/o Flat No. 005, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.**

4 Sh. Parveen Singla,

**R/o Flat No. 34, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.**

..... **Respondents**
(Represented by Shri
Shyam Sunder, Counsel
for R-1, Shri J. N. Gupta,
Counsel for R-2 and Shri
Fanish K. Jain, Counsel
for R-3 and R-4)

5. Case No.180/2015

In the matter of :-

**Shri Mukesh Gupta,
Aged 41 Years
S/o Shri R.L. Gupta
Flat No.18
Maitri Apartments
Sector-9, Rohini, Delhi.**

.....**Petitioner**
(Represented by Shri
Pankaj Vivek, Counsel
for Petitioner)

Versus

- 1 The Registrar of Co-operative Societies
Through its authorized Officers
Parliament Street
New Delhi.
Respondent**
- 2 The Maitrinagar Co-Operative Group Housing Society,
Plot No. 29 Sector-9 Rohini Delhi.**
- 3 Sh. Arun Singla,
R/o Flat No. 005, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.**
- 4 Sh. Parveen Singla,
R/o Flat No. 34, Maitri Apartment,
Plot No. 29 Sector-9 Rohini Delhi.****Respondents**

(Represented by Shri
Shyam Sunder, Counsel for
R-1, Shri J. N. Gupta,
Counsel for R-2 and Shri
Fanish K. Jain, Counsel for
R-3 and R-4)

Jitendra Narain, FINANCIAL COMMISSIONER

Order dated : 15.01.2016

1. This order shall dispose of five revision petitions filed against the order dated 29.01.2015 passed by the Secretary, Coop-cum-Registrar, (hereinafter called RCS).

2. **The Hon'ble High Court of Delhi** has issued various directions to RCS and Administrator/Society and also to this Court by the following orders, a brief summary is attempted here :

(i) In WP(C) 3871/1991 vide order dated 16.12.1991, Court has given the direction to respondents no. 5 and 9 to deliver all the records of the society at least as per the list already filled by R-9 with the RCS.

(ii) In WP (C) no. 3871/1991 vide order dated 06.09.2006 Court has directed that "A report shall be submitted by the Registrar within three weeks from the today. The Counsel appearing for the Cooperative Society states that he is filing a status report. He shall file the status report within 3 weeks from today explaining the entire position regarding membership and allotment of flats, advance copy of which shall be given to RCS. The RCS in his report shall incorporate his stand and response to the stand taken by the Society in their status report.

In the mean time, no further allotment of flats shall be made by the society till the next date and the same time none of the allottees, who have already being given possession, shall be dispossessed from the premises. It is also directed that till the next date none of the allottees of flats in the society shall transfer, alienate or sell the flats".

(iii) In WP (C) no. 5398/1997 vide order dated 21.07.2010, the Court has held that "in our considered view there can be no doubt that in view of restoration of the membership of the petitioners a fresh seniority list would have to be prepared as per original membership. We are also informed that there is only one

authenticated draw of lots held under the supervision of DDA on 10.08.1988.

The Registrar Cooperative Society to carry out the necessary exercise to drawing up of the seniority list within '2'months from today and the current management of the Society will give all assistance.

Needless to say that if the Society still does not give the requisite assistance that aspect can be brought to the notice of the Court as it would amount to violation of our direction.

On the fresh seniority list being prepared and it being worked out as to how many flats are available for allotment, the RCS will forward the necessary papers to DDA for holding a draw of lots and the DDA will carry out the exercise within one month thereafter.

Needless to say that if any person have been put in possession of any flats in the meantime contrary to the aforesaid seniority list they would have to surrender possession".

(iv) In WP (C) no. 6878/2010 vide order dated 10.11.2010 the Court held that " It is clarified that the rights which have accrued to parties and have been foreclosed of parties in other legal proceedings are not affected by any directions passed in the writ petition.

The person who are in illegal occupation of flat on account of orders passed in other proceedings would have to vacate to make way for the authorise occupants unless there is an agreement inter se the parties that the new flat constructed is acceptable to the entitled members who are out of possession and they agreed to the valid members who are in possession but lower in seniority to continue to occupy the flats.

The RCS and the Society to act expeditiously in this matter".

(v) In CAS (C) 721/2011 and CM no. 20581/2011 vide order dated 15.11.2011, the Court had directed the administrator "to provide the relevant record to the RCS in relation to these other members. The Case No.176, 177, 178, 179 & 180 of 2015

other members (apart from the 85 members aforesaid) are also directed to cooperate with RCS and produce the document on which they wish to place reliance, to establish their inter-se seniority. In case documents are not produced by these members, RCS may draw adverse inference. The seniority list be complied positively within next two months.

(vi) In WP (C) 5785/2012 vide order dated 26.08.2013 the Court directed that the "RCS shall place scanned copies of the documents received from the administrator as well as objection received on its website inviting the attention of the public at large to the above. This exercise shall be completed within two weeks.

The decision on all the objections which may be received as well as those received shall be taken within a period of four weeks and thereafter, the seniority list of the members shall be finalized. This seniority list shall also be posted on the website of the RCS".

(vii) In WP (C) no. 5785/2012 vide order dated 18.09.2014, the Court held that " The RCS shall ensure that the representation of the applicants are considered and a hearing is accorded to them in accordance with the law. Copy of the orders which may be passed by the RCS shall be promptly furnished to the applicants".

(viii) In WP (C) no. 5785/2012 vide order dated 06.05.2015, the Court has directed that "The Registrar of Co-operative Societies shall undertake the exercise of identifying the category-wise seniority position of persons who have to make way for the petitioners in the respective categories. This exercise shall be completed by the Registrar of Co-operative Societies within a period of eight weeks from today".

It appears that office of the RCS has completed the process of verification so far as the entitlement of the petitioner to allotment of flats in the society is concerned. A seniority list of members for allotment of flats is also been prepared. The allotments have to abide by the seniority.

The allotment have to be effected as per the respective category. As against the petitioners, allotment appear to have been effected to persons who are below petitioners in order of seniority in their respective categories. It cannot be disputed that the persons who are at the bottom of the seniority list, would have to make way for persons above them who are awaiting allotments in their respective categories".

The Hon'ble High Court further stated that "The Society and the MCD shall place before us a list of persons who have made the unauthorised encroachment and constructions in the setbacks. A copy of this order shall be circulated by the Society to all the encroachers."

(ix) In WP (C) no. 6906/2012 vide order dated 06.05.2015 the Court had held that "it is expected that if the Financial Commissioner is approached with an application for an expedited hearing, the same shall be favourably considered".

(x) In WP (C) no. 5785/2012 vide order dated 19.11.2015, the Court directed that "these revision petitions shall be listed before the Financial Commissioner on 24th November, 2015. The matter shall be heard and adjudicated upon in any case before the next date of hearing before this court".

3. **The RCS** in pursuance of the directions of Hon'ble High Court of Delhi in its orders dated 18.09.2014 and 19.01.2015 passed in CM No.15181-84/2014, CWP No.5785/2012 and 6906/12 respectively, disposed of the review petition under section 115 of the DCS Act, 2003, after hearing both sides, with the observation that "**certain facts have emerged after the orders of the Hon'ble High Court, directing the RCS to hear the review petition, no verification at this stage was possible as the instant matter was pertaining to the preparation of final inter-se seniority list. Nevertheless this aspect will be looked into at the verification stage when the proposal of the society will come under Schedule VII as per provisions of DCS Act and Rules, in respect of 33 members (from seniority nos.76 to 108)**".

RCS further held that "in view of the provision of Section 91 of DCS Act, 2003, the GPA holder/petitioners who have filed this review petition have been rightly placed at the slot shown in the inter-se seniority list dated 03.02.2014. The position of those 69 members is different from the other members as their draw was held by the DDA. Hence, there is no question of disturbing the seniority list dated 03.02.2014".

4. Further, while issuing the list dated 03.02.2014, **Asstt. Registrar (NW-II)** also noted that "**the above list has been prepared taking into account the date of receipt of membership and date of payment made by them to the Society. Date of applications have not been taken into consideration as the same has not been produced in original nor record of MC resolution, original ledger account of the society and original membership register in original has not been produce by the Administrator/society. Receipts no. of Share money receipts have not been taken also as some members receipts are missing and in some, the date of receipts and serial no. of receipts are contradictory to each other. It is also pertinent to mention here that as per the Administrator vide his letter dated 28.7.2013, the GPA holder of self-allottees are consider below the name of original self-allottees.**"

5. **The Petitioners** aggrieved by this order, filed the revision petition under rule 116 of DCS Rules 2007 with the following submissions:

(a) GPA holder who purchased the flat either from the original 69 members or from the subsequent members have to be accorded equal treatment in view of section 91 of DCS Act, 2003.

(b) RCS in her order considered the GPA holders of self-allottees below the name of other self-allottees in violation of DCS Act & Rules. Petitioners said it is highly iniquitous to keep different GPA holders and self draw allottees on different footing in the seniority list.

(c) Society enrolled the 22 members on 02.03.1988, approved by the GBM on 02.03.1988 in accordance with provision of Act and Rules and informed the RCS on 02.03.1988 itself. No objection was raised by the RCS within 60 days of receiving the proposal. Thus, proposal for enrolment should be deemed to have been cleared by the RCS.

(d) The new members including the petitioners contributed to the cost of land and cost of construction which ultimately led to completion of apartment of the Society. Petitioners stated that the inequity was writ large in the list dated 03.02.2014 in that people who had paid were at a disadvantage to some members who had not paid all the dues.

(e) In pursuance of the order dated 21.07.2010 of Hon'ble High Court of Delhi, RCS vide letter dated 11.03.2013 had drawn a draft seniority list of 107 members. This list was prepared on the basis of law settled by Hon'ble High Court of Delhi in the case of Sh. S K Gambhir Vs Union of India i.e. on the basis of date of application of the members.

(f) RCS published another list dated 21.06.2013 on the basis of first payment by members subsequent thereto another seniority list dated 03.02.2014 was prepared by RCS, in which GPA holder were placed at just above 3 members who were ordered to be placed at tail end.

(g) In the case titled as S. K. Gambhir Vs. UOI, Hon'ble High Court of Delhi held that "A person becomes a member only when his application is accepted and not before. It does not at all depend on the date of payment of the money or the date of submission of the application form. This is the first principle on which the order of membership must be determined." It is an admitted fact that a number of persons were admitted on the same day then they all are placed at par. However, their inter-se seniority is determined on the basis of the application submitted by them as per the provisions of Rule 30 of the DCS Rules, 1973. This according to petitioners was also highly iniquitous.

(h) RCS did not consider the fact that even amongst 69 flat allottees and another 6 allottees, there are approximately 45 occupants who are GPA holders and not the original allottee and their names also should be treated as those of the petitioner in case.

(i) On the Petitioners' application for modification of seniority list dated 03.02.2014, Hon'ble High Court of Delhi vide order dated 02.04.2014 directed the petitioner to approach the RCS. Accordingly, a review petition under Section 115 of DCS Act, 2003 was filed before the RCS.

(j) Petitioner raised the following objections also before the RCS:-

- i. Seniority should be prepared on the basis of date of application.
- ii. If the petitioner, as GPA holders are to be put at lower end of seniority list then the same treatment should be given to all GPA holders.
- iii. Claim of the five members at Sr. No.76 to 81 were not verified by RCS office so far and should not be considered as they are not eligible.

But the RCS without consideration of above facts, passed the impugned order.

6. During the proceedings before this Court, Counsel for Petitioner in case No.179/2015 states that the society has 108 members and 99 flats and the only issue is seniority on the basis of which the nine members cannot be accommodated. The draw of lots was held by the DDA in 1988 with respect to 69 members whose seniority is not in doubt. After 69 members, 12 further members were inducted in the society, whose seniority is not in doubt. Therefore the seniority (69+12), i.e. 81 members is not in doubt. Out of the remaining 27 members, High Court directed 3 members to be kept at the tail end. Therefore, only 24 members are still left and the *inter-se* seniority of these 24 members is an issue. Petitioner assailed the issue of stand

taken by the RCS in her order regarding date of payment and GPA holder.

7. The first seniority list prepared by the RCS dated 11.03.2013 is based on the date of application for membership to the Society and they had no grievance against this list as the date of application of membership is the only and correct method of determining inter-se seniority as per the Division Bench of Delhi High Court in the case *S.K. Ghambir Vs. Union of India*. A fresh list is then prepared by the RCS dated 21.06.2013 which is based on the date of payment of these 24 members which is disputed by the Petitioner. Subsequently, another list dated 3.02.2014 was prepared by the RCS on the basis of Section 91 of the DCS Act, wherein 6 GPA holder were placed at the bottom of the *inter-se* seniority list of 24 members.

8. The counsel for the Petitioner states that DCS Act, 2003 came into force on 01.04.2005 and Section 91 was added by way of amendment on 13.01.2007. Whereas the GPA and agreement to sell dated 14.11.2000 was prior to the coming into the force of the Act as well as Section 91 of the DCS Act. Counsel for the petitioner submitted the copies of Supreme Court judgment in the case of *Commissioner of Income Tax vs. Vatika Township Pvt. Ltd.* (2015) 1 SCC 1, wherein Supreme Court has held that "the obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported."

9. Counsel for petitioner further submitted that as per order of the High Court dated 29.01.2007 in *Kusum Lata Gupta and Ors. Vs. Registrar Cooperative Societies and Ors.* It has been held that "there is no bar on transfer of the flat by the allottee of a flat to a third party and when such a sale takes place by way of execution of transfer deed or agreement for sale, the purchaser of the flat steps into the shoes of the original occupier as he comes into the occupation of the said flat by virtue of the aforesaid transfer. By virtue of the aforesaid transfer, he also becomes entitled to use and occupy the flat and for

doing so, he is also entitled to use the common facilities including those facilities which are mentioned in Section 91 of the Delhi Cooperative Societies Act, 2003." He also files the judgement of Delhi High Court in case of *CSIR employees Cooperative H/B Society Vs. RCS in WP (C) no. 4982 of 2008* decided on 01.09.2008 wherein the High Court held that "the object and reason for amendment in Section 91 of the Act is to ensure that the rights of the persons who are living in housing societies are equally available to its occupants irrespective of the fact that they are original members or power of attorney holders". People who have purchased flats in these societies have invested their life savings and they should not be deprived of the privileges which are available to the members. If they are not allowed to become members of the society, they will not have any voting right and cannot even participate in the Annual General Meeting. Keeping in view this background, necessary amendment in Section 91 has been done.'

10. Counsel for petitioner further submitted that under RTI Act, RCS office supplied the information that the date of application, MC resolution and receipt of share money are the usual method applied by the RCS office for determining the seniority of members in a group housing society whereas power of attorney is not a basis of deciding seniority of members. The reply of the RCS does not speak about section 91 or GPA holders/agreement to sell as a method to determine seniority. In fact, R-3 & R-4 have not filed any objection to the seniority list based on date of application dated 11.03.2013.

11. Counsel for Petitioner in case No.179/2015 referred the letter dated 01.07.2013 wherein R-3 and R-4 (herein) opposed the criteria of depositing the money for determining the seniority of the members. For the list dated 11.03.2013, nobody objected to it. And by virtue of their objections dated 01.07.2013 & 19.07.2013 have in fact supported the case of the petitioner that the first list based on date of application is the only correct list. R-3 & R-4 are in fact estopped in raising this issue at this stage.

12. Counsel for Petitioners in case No.179/2015 stated that there were two orders of injunction passed by the High Court dated 16.12.1991 and 06.09.2006. The 2006 order is not applicable since the purchase has taken place in 2000. The 1991 order is applicable but the petitioner was not aware of the pendency of any legal proceedings or the 1991 injunction order and is bona-fide purchaser of the flat. However, violation of an injunction does not invalidate the purchase as per the Supreme Court order in the case of *Thomsan Press India Ltd. Vs. Nanak Builders & Investors Pvt. Ltd.* AIR 2013 SC 2389 wherein it has been stated the breach of any injunction does not render the transfer ineffective and the sale remains valid.

13. Counsel for Petitioner in Case No.176/2015 and No.178/2015 supports the arguments of the Counsel for Petitioner in Case No.179/2015.

14. Counsel for Petitioner in Case No.177/2015 and 180/2015 stated that the present petition does not challenge the seniority of 81 members who are above petitioner. The seniority of membership of GPA holder member has to be determined on the basis of membership of the original members from whom the GPA holder/subsequent purchaser has purchased the flat in the society.

15. Counsel for Petitioner stated that the membership of 22 members was approved by the MC of the society on 02.03.1988 and on the same date a reference was sent to the RCS for approval of the newly inducted members. Also as per CWP No.2402/1998 in which 22 persons filed the writ petition the name of R-3 and R-4 is at Sr. No.9 and 11. They categorically claimed to be members of the society and prayed for inclusion of their names in the electoral roll for elections to the Managing Committee. The Hon'ble High Court of Delhi vide order dated 19.03.1999 directed the inclusion of all the 22 members in the electoral roll and pursuant to the same, they participated in the election and one of the member was elected as President of the Society.

16. Counsel for Petitioner in case No. 176 and 178 of 2015 stated that the purchase of the flat took place in case no. 176 in the year 1995 and the petitioner was not a party to the petition and hence the injunction order 16.12.1991 did not apply. The second injunction order 06.09.2006 does not affect because it was purchase prior to the date of injunction and the matter was finally disposed 21.07.2010. In case 178 the sale took place 28.01.2011 through GPA and the injunction could not effect.

17. Counsel for Petitioner stated that if the seniority list is to be prepared on the basis of payment even then petitioners' seniority will be much higher in comparison to current seniority as per list dated 03.02.2014. On the basis of payment Sr. No.100 should go before Sr. No.87. Sr.No.102 Kanta, Rastogi should go before 95 or with 94 (Kalra). Sr. No.101 (Katyal) B.S. Sarna(Original) should go before 91 (H. R. Lamba). Sr. No.105 Vipin Mehra, GPA holder of Akshay Dogra should go before 98 (Banwari Lal Sharma). Sr.No.103(Mukesh Gupta should go before Promila before Sr.No.97 as per date of first payment.

18. During the proceedings, Counsel for R-1, RCS, submitted that Seniority list and membership are two different issues. 22 members are considered as members of the society. Hon'ble High Court of Delhi in various cases has laid down that where the date of application is not available then in that case, the seniority is to be decided on the basis of receipt of membership and the date of payment made by member to the society. Accordingly the office of RCS acted as per the said principle laid down by the Hon'ble High Court of Delhi.

19. **Administrator** of the Society (R-2) has filed short reply with the following submission :

a. In case of 69 members draw of lots was held by the DDA and Hon'ble High Court vide order dated 28.03.2012 in LPA No.128 and 179 of 2012 held that seniority of 69 members is not to be re-opened and the same has

attained finality and petitioners cannot be given equal footing with them.

b. The Society had enrolled 22 members who were allotted flats in self-draw. It is relevant to mention that out of 22 members, 6 have sold their flats and the purchaser had not been able to furnished the required documents. The answering respondent had submitted that in view of the provisions contained in Section 91 of DCS Act, 2003, the membership of the original member who sell the flat stands ceased. As far as seniority of the purchaser is concerned, the same can only be acceptable from the date of transfer of membership on regularization of the draw and till then 22 members cannot claim their right of the flat as well. However, the office of the Registrar appears to have acted independently and assigned the seniority to 22 members as per the original list. These members have been assigned seniority from No.82 to 105. The decision of the Registrar is binding on the Administrator.

20. **Counsel for R-2, Society** further submitted that 22 members enrolled in 1988 and self allotment was made in 1990. Out of 22 members, 6 sold the flat and placed at 100 to 105. As per Judgement of S.K. Gambhir, date of payment cannot be the criteria for seniority. Date of acceptance of membership is the criteria. Only solution is to build more flats.

21. **Shri J. C. Kohli, current Administrator** of the Society, present in person, submitted that the Society will construct 9 more flats for remaining 9 members. Members at Sr. No.76 to 81 have not paid any money towards cost and construction of flats. 106 to 108 have partly paid. But society failed to apprise this Court what steps were taken by the Society for sanctioning the plan, obtaining the necessary permission from the concerned authorities/ departments,

as the construction of flats and allotment of them to the eligible members cannot be prolonged for indefinite time.

22. **Counsel for R-3 and R-4** have filed the reply with the following submissions:

- a. Petitioners have no locus standi as they are not the members of the society. They have not paid any transfer fee and share money and made false averment in the petitions by stating themselves as members.
- b. That the Indresh Aggarwal, Smt. Kanta Anand, Smt. Promila Aggarwal and Smt. Sudesh Gupta, all predecessors in interest were not having any residence in Delhi therefore, they were not eligible for membership. This fact was admittedly not taken into account by the ARCS while preparing/approving seniority list. RCS even after admitting, RCS came to know of this, did not verify it as is clear from the impugned order itself.
- c. It is wrong and denied that GPA holders among the 69 members are to be treated at par with the petitioners as the 69 members who were allotted flats by the valid draw of lots as per Act. They are members of valid allotment and have right to transfer the flat whereas the said allottee members have not right to transfer flat as they are not the valid allottees.
- d. Directions contained in Circular dated 02.02.1996 has not been complied with by the Society till date and the DDA has not regularized the allotment.
- e. Judgement passed by Hon'ble High Court of Delhi on 04.08.1986 in the case titled as S. K. Gambhir Vs. UOI does not hold good in law in view of DCS Act, 2003.

23. Counsel for R-3 & R-4 further stated that High Court vide order dated 06.9.2006 in WP(C) No.3871/1991, directed that none of allottees in the society shall transfer or alienate or sell the flat. Therefore subsequent sale/purchase are illegal and subsequent

purchasers have no right of the flat/membership. This order was never modified by the High Court. In WP(C) No.5398/1997, High Court of Delhi vide order dated 21.07.2010 directed to RCS to carry out the necessary exercise of drawing up of the seniority list within 2 months, court also directed that "needless to say that if any persons have been put in possession of any flats in the mean time contrary to the aforesaid seniority list, they would have to surrender possession. The order of the High Court dated 21.07.2010 was never challenged thus it attained finality.

24. The final seniority list was prepared on 3.2.2014. The seniority list of members can only be challenged by a member and in this case, the petitioner is not a member of the society. The self draw conducted in 1990 has no legal validity as the self draw was conducted in the absence of the lessor, i.e. DDA. Therefore, at best the predecessor in interest of the petitioner had occupancy rights given by the Managing Committee of the said Society in the year 1990. Counsel further referred the decision of Hon'ble High Court of Delhi dated 21.7.2000 in the case Titled as *Ram Kishan Bhalla and Ors. Vs. RCS and Ors.* wherein the Court held that "date of approval of membership by managing Committee as the date of reckoning the seniority of members inter-se was approved by the Hon'ble Supreme Court of India in the case titled as H. C. Suman & Anr. vs. Rehabilitation Ministry Employees CHBS Ltd. and Ors.". In another decision dated 11.5.2001, in the case titled as *Smt. Urmil Suneja Vs. DCT & Ors.* Hon'ble High Court of Delhi held that 'once a member is admitted upon payment of admission fee and share money, his seniority has to be reckoned from the very date. Here inter se seniority has been determined on the basis of receipt no. which were issued on the same date. Introducing the criteria of seniority-cum-merit based on payments made towards actual construction cost could lead a number of complications'.

25. Counsel for R-3 and R-4 further submitted the copy of letter dated 02.03.1988 vide which membership of 22 members were approved. All 22 members who were enrolled on 02.03.1988 and all

have the same seniority but a distinction has to be made between those who have sold their occupancy rights and membership of the Society which is per-se illegal.

26. Counsel for R-3 & R-4 brought attention to the prayers of the Petitioner. In the prayer, petitioner requested to confirm the seniority list dated 11.03.2013 based on the date of first application by members in the society and on the other hand they also requested to confirm the seniority list dated 21.06.2013 passed on first payment by the members which itself is contradictory. As per law Date of enrolment is to be the criteria for seniority list. Petitioners are not members of the society. Draw of lots was not made by DDA, by self-draw not regularized by RCS. If not the member of the society, no right to challenge the seniority list. Counsel further submitted that the Hon'ble High Court of Delhi vide order dated 21.7.2010 in case no.5398/1997 held that there is only one authentic draw of lots held under the supervision of DDA and further directed the RCS to carry out necessary exercise of drawing up the seniority list. On the fresh seniority list being prepared and it being worked out as to how many flats are available for allotment, the RCS will forward the necessary papers to DDA for holding the draw of lots and DDA will carry out the exercise within one month thereafter.

Findings:

27. I have heard both the parties at length and considered all the facts on record. The RCS in its impugned order had held that seniority will remain as it is in the third list dated 03.02.2014 of ARCS.

28. It has also been observed that the list dated 03.02.2014 admittedly was prepared without complete records. Admittedly crucial records related to date of application, MC Resolution, original ledger account of the Society and original membership register were not produced by the Administrator/Society. RCS in her order failed to justify that when such vital records were not available before the Assistant Registrar then how the crucial issue of seniority of membership was decided and RCS agreed with the list prepared in Case No.176, 177, 178, 179 & 180 of 2015

the absence of very basic records. There is nothing on record which may suggest that what kind of efforts were made by the RCS office to retrieve the basic records or any responsibility was fixed for the person who is supposed to be the custodian of the record. RCS cannot overlook the basic record because it would deprive the legitimate right of some members.

29. RCS in its reply, filed in July 2015, submitted that list was prepared after taking into account membership and 1st payment made by the member to the society and the dates of application have not been taken into consideration has the same was not produced by the Administrator. During the proceeding counsel for RCS stated that it was on recommendation of Administrator that the GPA holders of the self allottees were consider below the names of original self allottees whereas Administrator on the point of seniority, in its reply dated 14.09.2015 submitted that decision of the RCS is binding on the Administrator. This shows that while deciding the issue of seniority RCS failed to Act independently and on basis of all documents and facts.

30. RCS in her order itself mentioned that in the light of new facts brought to her knowledge the verification of documents in r/o certain members is still pending and the same will be done at time of draw of lots when the proposal from the society as per schedule VIII of DCS Act 2003 come to the RCS office. The list can not be left incomplete in light of the new facts and the admitted lack of complete/vitals records. The result would cause irreparable damage to affected people. The alibi that verification could not be done due to lack of time or time bound directions is also not tenable in the eyes of the facts of case and the RCS could have explained her predicament and sought more time to do a thorough exercise.

31. A list on the basis of unverified/incomplete/missing documents may lead to a situation when a ineligible person could continue in the seniority list at a position for which he is not entitled, much detriment of a valid/eligible person who could loose his seniority or right into

the flat and/or be evicted. **To avoid such situation RCS is directed in the interest of justice to check/pre-verify/verify/examine of all the documents of the remaining persons before reframing/confirming/finalising the seniority list. This needless to say would definitely help/shorten/quicker the final verification, she proposes at a future date and bring the multiplicity of litigation under control. Needless to say such a verification of facts on documents can not prejudice anyone.** It is suggested that in the interest of the justice, RCS may get this verification in two or three sessions of open hearing after due notice to all society members in an orderly manner in next one or two months, if further is considered expedient may do so under the supervisory watch a retired judge or officer on appropriate terms, and also consider videography, if she thinks fit. It is my belief that such a public hearing-cum-verification will help the truth to emerge and the verification and facts cannot be hurt any one. This verification/document checking by whatever name it is chosen to be called will help to end the litany of litigation and also help all authorities, Courts, tribunal to have a firm basis for decision making.

32. Considering the above facts, the RCS's impugned order dated 30.01.2015 is stayed till the verification of all documents and the case is remanded back to RCS with the directions to retrieve the basic record related to application, MC resolution, ledger account, membership register.

33. Thereafter RCS will verify all the documents of all the persons whose verification is still pending for their eligibility to become the member of the Society as per the law provisions of DCS Act and Rules and also directions given by the Hon'ble High Court of Delhi in the matter from time to time.

34. RCS is further directed to investigate the matter and fix the responsibility of the concerned members/persons of Managing Committee/Administrator for not maintaining and providing the relevant records required as per law. RCS is also directed to inquire

the matter how 108 persons have been enrolled against the 99 flats in the society and the subsequent delay in construction as also their action not in consonance with the corporate principles, and consider if administratively expedient to fix the responsibility of the concerned persons/members, who have destroyed the cooperative spirit in this Cooperative Society.

35. RCS is further directed to keep a close watch on the compliance of the order of Hon'ble High Court regarding construction of additional '9' flats in a time bound manner and designate an officer for the same because once the new flats are in place the continuous heart burning and litigation amongst the members of this Cooperative society will end, and hopefully the cooperative spirit will be restored.

36. Accordingly, petitions are deposited of, no order as to cost.

37. Pronounced in the open Court on 15.01.2016.

(JITENDRA NARAIN)
Financial Commissioner, Delhi
15.01.2016.