

**IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI**

Case No. 203/2011

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

In the matter of:-

Gaurav Cooperative Group Housing Society Ltd.  
Through its President/Secretary  
Plot No. 1, I.P. Extension  
Delhi-110092.

Petitioner

Versus

1. Registrar, Cooperative Societies  
Parliament Street  
New Delhi-110001.

2. Sh. P.S. Alop, Ex President  
Gaurav C.G.H.S. Ltd.  
Plot No. 1, I.P. Extension  
Delhi-110092.

Respondents

**DHARAM PAL, FINANCIAL COMMISSIONER**

ORDER dated: 16.04.2015

1. This order shall dispose of the revision petition filed under Section 116 of the Delhi Cooperative Societies Act, 2003 filed by the petitioner against the impugned order dated 22.07.2010 of the Registrar, Cooperative Societies, vide which the show cause notice issued to Sh. P.S. Alop under section 66 (2) of Delhi Cooperative Societies Act, 2003 was withdrawn.

2. Brief facts of the case are as under:

(i) that an enquiry u/s 55 of Delhi Cooperative Societies Act, 1972 was conducted by Shri P. C. Jain followed by surcharge proceedings u/s 59(1) of the DCS Act, 1972 by Shri P. N. Mishra. The report submitted by Sh. P.N. Mishra revealed that :-

(1) **Appointment of 2<sup>nd</sup> Architect** : A payment of Rs.10,816/- was made to the architect/engineer. Sh. P.N. Mishra has recorded

that appointment of the Architect was made without approval of the Managing Committee.

(2) **Payment of penalty of Rs. 9,000/- for late submission of audit report:-** The audit reports for the year 1991-92 were completed in August 2002 and for the year 1992-93 to 1999-2000 in October, 2002. However, the reports were submitted to the RCS office as follows:-

- (a) 1991-1992 - 09.09.2002
- (b) 1992 to 1996 - April 2003
- (c) 1999 to 2000 - 20.11.2003

This led to imposition of penalty of Rs.9,000/-.

(3) **Unauthorized retention of cash balances:** The I.O. Sh. P.N. Mishra pointed out that huge cash balances as detailed below were retained by the society :-

1997-98	Rs. 98,747.59
1998-99	Rs. 83,590.59
1999-2000	Rs.1,02,869.59

Further more, even after demitting the office accused continued to retain balances as follows:-

2000-01	Rs.1,00,379.59
2000-02	Rs.1,03,832.59
2000-03	Rs.1,07,927.59

(4) **Delay in payment of electricity bills:** A sum of Rs.19,827 had to be paid to the erstwhile DVB during the period February, 1998 to September, 99 as penalty for late payment of bills even though sufficient cash was available with the society for payment.

(5) **Appointment of Sh. D.P. Goel of M/s. Design Centre:** Sh. D.P. Goel of M/s Design Centre was appointed as architect by the Managing Committee. The Managing Committee did not appoint M/s V.P. Singh who had quoted Rs.20,000/- in lump-sum and

instead appointed M/s Design Centre who had quoted Rs.600/- per flat which is six time more than that of M/s V.P. Singh.

3. On the basis of this report RCS issued a notice under section 62(2) of the DCS Act, 2003 to Sh. P.S. Alop for personal hearing. RCS after considering the submissions of Sh. P S. Alop and the society held that the report of the I.O. is found to be defective as responsibility is sought to be fixed only upon Sh. P.S. Alop who was President/Secretary of the society during various periods. RCS observed that the Managing Committee has been given collective responsibility and unless specifically proved, responsibility can not be attributed to a single member alone. Further that the I.O. has given no grounds for attributing the lapse to a particular person to the exclusion of other members of the Managing Committee.

RCS did not find it appropriate to go into the merits of the decision of the MC which is required to take bonafide decision as per prevailing circumstances at that time and withdrew the notice u/s 66(2) of Delhi Cooperative Societies Act, 2003, issued to Shri P. S. Alop. RCS in his order further observed that the other two points in the enquiry report regarding non handing over of records and persistent defaulter on the part of Sh. P.S. Alop do not fall in the orbit of section 66(2) of Delhi Cooperative Societies Act, 2003.

4. Society (Petitioner herein) has filed the present revision petition against the RCS order dated 22.07.10 primarily on the following grounds:

(i) The impugned order date 22.07.2010 is without jurisdiction and contrary to the provisions of law. No proceedings could have been conducted under section 66 (2) in the absence of a report under section 66 (1) of Delhi Cooperative Societies Act, 2003.

(ii) Ld. Registrar has simply brushed aside the objection filed by the petitioner by saying that the society has generally contested the stand taken by Sh. Alop without pointing out any specific issues. Registrar based his judgment on the submissions of the defendants in their letter dated 25.08.2009 which were never raised earlier. The society was not called to explain its stand against the submission made by the defendants. As a matter of fact, all facts were placed on record but Ld. Registrar did not take the said facts into consideration and has proceeded to pass the impugned order.

(iii) The interpretation of the minutes of the managing committee (MC) held on 22.08.2002 that a decision was taken to empower the President /Secretary for appointment of a counsel is quite erroneous

and beyond any stretch of the imagination. What the MC had decided was that cost of relatable items be assessed by the competent authority before it was counter signed by the President/Secretary. It does not mean that President/Secretary could appoint anybody and as per his wishes.

(iv) Ld. Registrar did not appreciate that the then management had obtained the permission from the RCS for getting the audit for the period from 1991-1992 to 1999-2000 done on 04.01.2001. The audit reports were required to be submitted in the office of RCS within 120 days from the date of appointment of the auditor, i.e. by 03.05.2001 as per directive of RCS. But the Respondent no. 2, who was the then Secretary (01.01.1997 to 19.10.2002) failed to deposit the audit reports within the stipulated times.

(v) The RCS erroneously held that non-handing over of records do not fall in the ambit of section 66 (2) of Delhi Cooperative Societies Act, 2003. It can be seen from the provision of Section 66 (1) of Delhi Cooperative Societies Act, 2003 that causing of any deficiency in the assets of the Cooperative Society comes within the preview of this section.

(vi) RCS erroneously held that “the delay in payment of electricity bills has been reasonably explained by the respondent”. It is unbelievable that all bills were received late even if some of bills had been received late, the matter should have been taken with the DESU and waiver of penalty on account of late payment.

5. Sh. P.S. Alop, Respondent No. 2 on the other hand in his reply has submitted that:

(i) An appeal against the order of the RCS dated 22.07.2010 was preferred in the Tribunal Cooperative Society Delhi under section 112 (h) of DCS Act, 2003. The judgement dated 06.07.2011 clearly states that “since there is no surcharge we are of the opinion that the appeal is not maintainable here and is within the jurisdiction of Financial Commissioner, so that appeal should be filed before the F.C.

(ii) The first suit i.e. appeal filed before the Tribunal Cooperative Society Delhi, was filed by Sh. P.S. Kamal in the capacity of the secretary and the present petition has been filed by Sh. N. Lal in the capacity of the President. It was decided in the case of Hussain Vs. Asha Devi AIR 1924 Rang 123 that “where the plaintiff and another

person has brought the previous suit in one capacity and the plaintiff alone brought the present case in another capacity no deduction of time spent in the previous suit can be made”. Secondly the section 151 CPC deal with omissions of ministerial officer, therefore, this section is not effective in this case.

(iii) The appellant as president is not legally authorized president at present, as per the RCS letter no. 457-58 dated 14.03.2007, wherein it has been mentioned that permission for conducting the Audit from 2000-2001 to 2005-2006 was granted subject to Audit fee charged from the delinquent officers of the society and also debarred for contesting election of the society under Section 35(7) of the DCS Act, 2003. Accordingly Sh. N. Lal president vide his letter No. G/CGHS/170/2007/15 dated 15.04.2007 debarred only the following persons for contesting election of the society:-

Sh. Suchet Singh	President	04-2000 to 11-2002
P.S. Alop	President Secretary	11-2002 to 12-2004 04-2000 to 11-2002
P.L. Dolas	Secretary	11-2003 to 12-2004
Sh. S.N. Ram	Cashier	11-2003 to 12-2004
Smt. Usha Gautam	Cashier	04-2000 to 11-2002

(iv) As per para (a) (III) of the adopted bye-laws in existence “Committee members shall be elected and hold office for three years and shall be eligible for re-election, but no member shall be eligible for holding the office of the President, Vice-President, Chairman, Vice Chairman, Managing director, Secretary, Joint Secretary and Treasurer for more than two consecutive terms whether full or part. Sh. N. Lal and Sh. P.S. Kamal President and Secretary respectively remained from Dec 2004 to feb’2006 and from Feb 2006 to 21 Feb 2009 complete for two terms, therefore should not be allowed to continue for the third term coming from 22 Feb, 2009 and hence are not legal president and secretary to file this appeal.

(v) The respondent No. 2 has been taken as a single responsible person for the lapses, if any whereas the MC has been given collective responsibility and therefore, the only one person who has been president/ secretary of the society at various times can not be made responsible as only single person, leaving the other officials president, secretary and cashier.

(vi) It is not correct to say that appellant was not called for while proceeding under section 66 were started by the RCS. The notices dated 23.04.2009 and dated 08.10.2009 were issued to society. It appears that the appellant has not come before the court with clean hand. The appellant alongwith the other MC member attended the court from 23.12.2008.

(vii) As per para 66 (1) of the DCS Act, 2003 the conditions already were completed by the RCS by holding inquiries under section 54,55 and 59 of DCS ct, 1972 hence the order passed under section 66 (2) are correct and within the jurisdiction for the RCS.

(viii) It is matter of record. However the audit report submitted during 09.09.2002 to 02.11.2003, he was secretary for the period October 2002 to November 2003 and was responsible to submit the audit report. The cheque for audit and education fund were signed by the appellant himself therefore he is hiding the fact and shifting the responsibility on the respondent no. 2.

(ix) It is matter for reconciliation of Bank Account viz. Syndicate & Bank of Baroda as also given by the auditor in his audit report 2000-2001, so is given in the impugned order dated 22.07.2010 stating "In respect of the charges of unauthorized retention of cash balances, it has been stated that the Managing committee was elected and came into existence w.e.f. 01.01.1997 and that is was required to open 2<sup>nd</sup> account in Indian Overseas Bank, Madhu Vihar since the earlier account of the Managing Committee with Syndicate Bank, R.K. Puram an Bank of Baroda, Shakarpur had been attached by Court order. The Inquiry Officer has not pointed out any discrepancies between the bank account and cash book in respect of the new account.

6. Society in its rejoinder has further submitted as under :

(i) It is wrong and denied that the President of the Petitioner Society is not authorized person/President. The President of the Society is a duly elected office bearer and is holding his office as per law. The insistence on purported "Annexure-2" & "Annexure-3" which are letters dated 14.03.2007 and 15.04.2007 do not make any head or tail whatsoever. The said letters are completely out of context and totally irrelevant to the contents of the Petition.

(ii) It had been duly established in the successive Inquiry Reports and the Inspection Report that the Respondent herein and Shri

Suchet Singh, President and Smt. Usha Gautam, Treasurer were the delinquent persons in the facts and circumstances of the case who had been running the Society as their fiefdom and committed glaring irregularities, misappropriation etc.

(iii) It is a matter of record that no notice was served upon the Petitioner Society while the Respondent No.1, Registrar Cooperative Societies was conducting proceedings under Section 66(2) of the Delhi Cooperative Societies Act, 2003. The action of the Respondent No. 1 was in violation to the principles of natural justice. It is wrong and denied that the Petitioner Society has not come before this Hon'ble Court with clear hands. It is apparent that the notice dated 18.11.2008 was issued only on the Respondent No.2 and the Society was not served a notice for the said proceedings. It is otherwise submitted that the Respondent No.1 could not have conducted the proceedings under Section 66(2) of the DCS Act, 2003 on the basis of the enquiry proceedings initiated and concluded under the old Act and Rules.

(iv) The Respondent herein has not answered to the material contentions with respect to cash in hand held by the then President, Secretary and Treasurer of the society.

7. RCS (respondent No. 1 herein) has also filed its reply to revision petition and submitted the following :

(i) The above titled case is a revision petition. The scope and ambit of a revision petition is very narrow and the same is supervisory in nature. It is also submitted that in exercise of its supervisory powers, this Hon'ble Court would not enter the arena of re-appreciation of evidence and findings returned by the lower authority. However, vide the above titled petition, the Petitioner is seeking a plain and simple re-appreciation of facts and evidence and also asking this Hon'ble Court to come to a conclusion of the said facts and evidence on a conclusion which is otherwise than the one arrived at by the lower authority. Same is clearly impossible in the exercise of power of revision and is solely within the domain of appellate powers. Admittedly, neither the appellate powers lie with this Hon'ble Court nor the same have been invoked.

8. Petitioner Society has filed the rejoinder to the reply filed by the RCS and submitted that :

(i) It is wrong and denied that the Petitioner Society is seeking a simple re-appreciation of facts and evidence. It is provided under Section 116 of the DCS Act, 2003 that in case there is any infirmity in the order as passed by Respondent No.1, this Hon'ble Court can exercise its jurisdiction and set aside/quash the same. The impugned order, on the face of it is wrong, illegal, mala fide and without jurisdiction. Further the Respondent No. 1 did not adhere to the provisions of law and the proceedings conducted by Respondent No.1 were also contrary to the principles of natural justice since no opportunity was given to the Petitioner Society to join the proceedings, despite being a necessary party.

9. I have considered the contentions made by the parties and facts documents on the record. One of the main contention of this Petitioner is that RCS conducted the proceedings under section 66 (2) of DCS Act, 2003 without an inquiry under section 66(1) of DCS Act, 2003. I have considered the record and it has been observed that initially an inspection report was submitted by Sh. Narinder Kumar on 11.08.2004 with the suggestion to conduct an inquiry under Section 55 of the DCS Act, 1972. Thereafter an inquiry was conducted by Sh. P.C. Jain under Section 55 of the DCS Act, 1972 and submitted his report dated 06.09.2006. After that an inquiry was also conducted by Sh. P.N. Mishra under Section 59(1) of DCS Act, 1972. Considering this report RCS thereafter conducted the proceeding under Section 66 (2) of DCS Act, 2003 and passed the impugned order dated 22.02.2010.

Perusal of relevant documents available on record reveals that initial inquiry was conducted by Sh. Narender Kumar and inspection report was submitted on 11/08/2014. On the basis of inspection report, inquiry u/s 55 of DCS Act, 1972 was initiated and completed in 2006 followed by inquiry by Sh. P.N. Mishra u/s 59. It is clear that all proceedings were being conducted till 2007 under the provisions of old Act, i.e. DCT Act, 1972. On this issue, 141 (d) of the new Act i.e. DCS Act, 2003 is relevant and the same is reproduced below :

*“any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.”*

It is clear that proceedings should have been continued and concluded under the provisions of old Act.



10. In view of the above facts, the order dated 22.07.2010 is set aside and case is remanded back to the RCS with the direction to conclude the proceedings as per law under the provisions of old Act i.e. DCS Act, 1972 after giving fresh opportunity of being heard to the concerned parties.

11. Announced in the open Court.

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**(DHARAM PAL)**  
Financial Commissioner,  
Delhi.  
16<sup>th</sup> April, 2015