

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.209/2012

**Revision Petition under
section 116 of Delhi
Cooperative Societies Act,
2003**

In the matter of :-

**1. Ravi Prakash Chhajer
S/o Late Sh. Mangi Lal Chhajer,
R/o 2305, Hudson Lane,
First Floor, Kingsway Camp,
Delhi-110009.Petitioner**

**(Represented by Shri
Ankur Arora, Counsel for
the Petitioner)**

VERSUS

**1. Registrar Cooperative Societies,
Old Court's Building, Parliament Street,
New Delhi-110001.**

**2. Vikas Cooperative Group Housing Society Ltd.
(Through its President/Secretary)
WZ-149, Second Floor,
Street No. 2, Lajwanti Garden,
New Delhi-110046. Respondents**

**(Represented by Shri
Shyam Sunder, Counsel
for R-1 and Sh. R.K.
Gupta, Counsel for R-2)**

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 27.08.2015

1. This order will dispose of the revision petition filed under Section 80 of the Delhi Cooperative Societies Act, 1972
2. Brief facts of the case are as under :
 - a) Late Sh. Mangi Lal Chhajer was one of the original promoter member vide Membership No. 88 in 1984 of Respondent No. 2 society. Thereafter, regular payments to the society in pursuance

of his application for membership and allotment of flat were made by him. Shri Mangi Lal Chhajer died on 15.08.2004. The present petition has been filed on behalf of his son Sh. Ravi Prakash Chhajer. During his life time, late Shri Mangi Lal Chhajer made an application to the respondent society to make his son a joint member of the society and had furnished the requisite two affidavits in this regard.

b) Thereafter, on the basis of a complaint in the Office of RCS, a show cause notice was issued on 10.02.2004 to Late Sh. Mangi Lal Chhajer in which it was alleged that Late Sh. Mangi Lal Chhajer was liable to be disqualified since he is holding a property No. 2305, Hudson Lines, Kingsway Camp, Delhi-110009 in the name of his wife Smt. Parshanna Devi. The fact that his wife purchased the said property in November, 1995 is not denied by the petitioner.

c) However, Late Sh. Mangi Lal Chhajer could not have been disqualified under Rule 25(1)(c)(i) as his wife's share as a co-sharer in the land was less than 66.72 sq. mt. and she had separate income as is evident from the Income Tax Returns from 1991 onwards. Therefore, Late Sh. Mangi Lal Chhajer is not disqualified to become a member of the society.

d) However, the RCS vide his order dated 10.02.2012 agreed with the contention of the society that since Late Sh. Mangi Lal Chhajer expired on 15.08.2004 and his wife owned a property at Kingsway Camp (1st Floor), he ceased to be a member of the society during his life time as per Rule 25 of the DCS Rules, 2007.

3. Arguments were heard of both the sides on 13.08.2015. It is the contention of the Counsel for the Petitioner that even before his death in 2004 and even before the show cause notice was issued, Late Sh. Mangi Lal Chhajer had made an application for making his son Sh. Ravi Prakash Chhajer as a joint member which is not disputed by the respondents. It is also an undisputed

fact that the original member Late Sh. Mangi Lal Chhajer had made the entire payment for the flat.

4. Counsel for the Petitioner filed three citations :

i) *WP(C) No. 3913/2007 in the case of **Sanjiv Kumar Dixit Vs. Registrar Co-operative Societies**, decided on 24.08.2009 in the High Court of Delhi in which it has been held that as far as the nominee is concerned, no application under Section 26 of DCS Act, 1972 was necessary and the right to seek transfer could be crystallized on the death of the deceased member.*

ii) *WP(C) No. 686/1992 in the case of **Jasjit Kaur Vs. Registrar Co-op. Society**, decided on 08.07.2009 in the High Court of Delhi, in this case also it was held that the right to seek transfer was concerned stands crystallized when the petitioner moves his application for transfer of membership, in this case in favour of his daughter.*

iii) *WP(C) No. 1645/1984 in the case of **Sushila Devi Bhaskar Vs. Ishwar Nagar Cooperative House Building Society Ltd. and Ors.**, decided on 11.10.1991, it was held that it is not necessary to file an application within one month from the death of deceased member in case the transfer of shares and interest is being sought in favour of the nominee, heir or legal representative of the deceased member. In fact in the above mentioned case, it was held that the society had wrongly passed a resolution reverting back the plot of the society when there was a perpetual deed, duly registered, in favour of the deceased member.*

5. Counsel for the respondent society states that Late Sh. Mangi Lal Chhajer was rightly disqualified as a member of the society since his wife had acquired a property which was having the area more than 66.72 sq. mtr. However, the Counsel for the Respondent society could not counter the point of the petitioner that even if the petitioner's wife was an owner of a property, her

share as a co-sharer of the land was less than 66.72 sq. mtr. Also, it is the contention of the Counsel for the Respondent that in case of death of a member, according to Rule 40, a member of the society and the LRs has to file an application under Rule 35 of the DCS Rules, 1973.

6. Counsel for respondent society filed two cases citations bearing No. WP(C) 15654/2004 titled as R.L. Talwar Vs. Vikas CGHS & Anr. order dated 17.04.2009 upheld by the Supreme Court of India vide order dated 29.08.2012 and another case titled as Satish Chopra & Ors. Vs. Vikas CGHS bearing No. WP(C) 14052/2009 and C.M. No. 16106/2009 order dated 27.09.2010 upheld by the Supreme Court of India vide order dated 29.08.2012. In the case, bearing No. 15654/2004, membership could not be transferred to the legal heirs due to delay in intimation and in the case bearing No. 14052/2009 original member as well as his legal heirs defaulted in the payment and took no step to inform the society for a period of five years after the death of the member. The present case is not covered by these cases because membership in the present case has not been transferred to the legal heir as the original member was disqualified by the RCS and there was no default on payment by the original promotee member Shri Mangi Lal.

7. It is an undisputed fact that an application for joint membership has been filed in 2000, prior to the death of Sh. Mangi Lal Chhajer and subsequently, a request for transfer of membership of Late Sh. Mangi Lal Chhajer in the name of Sh. Ravi Prakash Chhajer was also made in 2004, duly supported by affidavit as "No objection from other legal heirs". However, the society did no take any action.

8. In view of the above and the facts as stated at para 5, there is no reason that Shri Mangi Lal Chhajer, incurred any disqualification and based on documents of a) application for joint

membership as well as b) request for transfer of membership of Late Sh. Mangi Lal Chhajer in the name of Sh. Ravi Prakash Chhajer duly supported by a "No Objection" by way of affidavit, the membership should have been transferred in the name of Shri Ravi Prakash Chhajer. Therefore, RCS order dated 10.02.2012 is set aside.

9. The non-responsive behaviour of the society has led to this prolonged litigation, therefore, a cost of Rs. 10,000/- is imposed on R-2, Vikas Cooperative Group Housing Society Ltd. to be paid to the petitioner. Accordingly, the Revision Petition is disposed of.

10. Pronounced in the open Court on 27.08.2015.

(NAINI JAYASEELAN)
Financial Commissioner, Delhi