

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 220/2010

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

In the matter of:-

1. Smt. Ramandeep Kaur wife of Sh. Harjeet Singh
R/o 103, L&T Apartments, Shree Awas,
Sector 18-B, Dwarka, New Delhi.
2. Smt. Sangeeta wife of Sh. Ashwani Gupta
& Sh. Ashwani Gupta,
R/o B253, FF Lok Vihar, Pitampura, Delhi-11034.
3. Dr. A.P. Singh
Daughter of Sh. K. Mahender Singh,
R/o J-502, Somvihar Apartment,
R.K. Puram, New Delhi.
4. Smt. Girija Vishwanthan wife of Sh. S.Vishwanathan,
R/o A-403, Antrikish Apartments,
Sector4, Plot No. 26, Dwarka, New Delhi-110075.
5. Rajender Bhan son of Sh. B.K. Bhan,
R/o A-1/146, Mahavir Enclave, New Delhi.
6. Sachidanand Tripathi son of Sh. Ram Bhajan Tripathi,
R/o G-1/51 Sita Puri, New Delhi.
7. Ashok Kumar Sharma son of Sh. Sadhu Ram Sharma,
R/o 189, Sector 14, HUDA Rohtak-124001
8. Deepak Tyagi son of Sh. Prem Dutt Tyagi
R/o 4/2919, Lane No. 10, Behari Colony, Shahdara, Delhi
9. Smt. Sushma Balyan W/o Sh. K.P. Balyan,
R/o 8LF, Todar Mal Square,
Bengali Market, New Delhi-110001.
10. Sh. Nimit Gupta S/o Lt. Sh. I.C. Gupta
R/o 204/2, Neib Sarai, Mehrauli, N. Delhi.

Petitioners

Versus

DHARAM PAL, FINANCIAL COMMISSIONER

ORDER dated: 16.04.2015

1. This order shall dispose of the revision petition filed by the petitioner under Section 116 of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as DCS Act) against the Assistant Registrar(NW) order dated 23.08.2010, vide which he conveyed to the Society (Respondent No.2 herein) that the competent authority has declared the enrolment of ten members (Petitioner herein) as null and void *ab initio* as their enrolment has not been found in confirmity with Rule 24 of DCS Rules 1973 and directives/circular dated 09.11.2004. Society was further directed to take appropriate action for filling up the vacancies so created, as per DCS Act 2003 and Rules 2007.

2. Petitioners filed the revision petition against the order on the following grounds :

(i) That the petitioners are the bonafide members and shareholders of Pragya Coop. Gr. Housing Society Ltd. as they were duly enrolled under the prevailing provisions of the Delhi Cooperative Societies Act, the Delhi Cooperative Societies Rules and under the registered bye-laws of the society.

(ii) After depositing the required amount of admission fee and share money on 02.09.2007 and after sending the information by the society to the Registrar (received on 05.09.2007) since there was no disagreement of the Registrar to the enrolment of the petitioners as members of the society within 60 days, the petitioners acquired all rights and obligations of the society under the DCS Act, DCS Rules and under the registered Bye-laws of the Society which cannot be restricted or curtailed except by due process of law.

(iii) That the Returning Officer after verifying the entire records of the Society, sent his report vide letter dated 07.07.2009 to the registrar

for seeking permission to conduct election. It is further mentioned that though the Returning Officer in his said letter stated that 10 members were enrolled under Rule 24(2) of the DCS Rules, 1973 but no illegality or violation of Rule of any kind in enrolment of 10 petitioner members was pointed out by him.

(iv) That on 16.02.2010, the Registrar granted permission (Clause 1(iv) of Schedule II of Rules, 2007) to the Returning Officer to conduct election of Managing Committee of the Society. While doing so, no restrictions of any kind were imposed by Registrar.

(v) The respondent by the impugned order dated 23.08.2010 has on the other hand violated the provisions of law and has taken recourse to the repealed provisions of DCS Rules, 1973 and he has pointed out alleged discrepancy for the first time by the said impugned order that too without affording any opportunity to the petitioners thereby violating the principles of natural justice, equity and fair play.

(vi) The respondent has failed to adhere to the provisions of Bye-law 5(vi) of the registered Bye-laws read with Rule 30(4) of Rules, 1973, Rule 25(4) of Rules 2007. The Registrar during the period of last three years, never raised any objection to the membership of the petitioners till date. The illegality at the hands of the respondent cannot be allowed to be sustained in law and the same is liable to be set aside/quashed by this Hon'ble Court at its threshold.

(vii) That the petitioners have acquired all rights, obligations and liabilities by depositing the requisite amount as and when required by the Society and particularly under Bye-law 5(vi) of the registered Bye laws read with Rule 30(4) of Rule, 1973 under Rule 25(4) of Rules 2007 and as such their enrolment cannot be declared as void after lapse of three years and without affording any opportunity of being heard.

(viii) The petitioners complied with the provisions of Rule 30 of Rule, 1973 and have not acquired any disqualification since they were enrolled as members of the society. The petitioners cannot be penalized in case minutes of the Managing Committee meeting held on 02.09.2007 are not available in the society. The petitioners have made entire cost of construction including land money, share money etc. as and when it was demanded by the MC of the Society.

(ix) That the respondent while issuing the impugned order has referred to a Directive/Circular dated 09.11.2004, which in fact is beyond the scope of original Rules, 1973 particularly Rule 24. It is

well settled law that any Directive or Circular cannot supersede the provisions of law i.e. the Act or the Rules duly enacted/framed by Parliament or by the Legislative Assembly and as such the said Directive cannot be enforced legally and is of no consequence in the present case. It is submitted that Rule 24 of DCS Rules, 1973 neither lay requirement that the public notice should have registered address/site office address of the society nor there is any limitation of any time either of 15 days or otherwise.

(x) That the respondent having a report dated 07.09.2009 with him has failed to look into and consider the same and in the absence of considering the same the entire order is vitiated and is liable to be aside by this Hon'ble Court. In fact in the said report the registrar nominee has clearly stated that ten new members (present petitioners) were enrolled by the society under Rule 24(2) of DCS Rule, 1973 in the M.C. Meeting held on 02.09.2007 after publishing the vacancy in local dailies English/Hindi on 21.08.2007. Necessary information was also given to the RCS office in this regard on 05.09.2007. It was also reported by him that some records pertaining to the society including M.C. Proceedings Register have been reportedly lost for which an FIR was logged on 05.01.2009 with PS Kotla Mubarakpur, New Delhi. Under these circumstances it is patently wrong, illegal and arbitrary to hold that the Managing Committee of the Society did not pass any resolution admitting the said 10 applicants as members in violation of Rule 24(1)(ii) of DCS Rules, 1973.

3. RCS in its reply has submitted the following :-

(i) That enrolment of the petitioners by the society prior to implementation of DCS Rules 2007 and it was thus in clear cut violation of circular dated 09.11.2004 and Rule 24 (1) (ii) of DCS Rules, 1973. The Society issued a public notice in daily newspapers but in the public notice registered address/site office address of the society was not disclosed.

(ii) That in the public notice, 15 days period was given to submit the application but the society closed the process prematurely on 02.09.2007 in violation of the above public notice in the said circular dated 09.11.2004.

(iii) That managing committee of the society did not pass any resolution admitting the said 10 applicants (petitioners) as members in violation of rule 24 (1) (ii) of DCS Rules 1973.

(iv) That RCS by office letter dated 10.09.2007 to society by citing discrepancies regarding filing up of vacancies of members, the society was directed not to pursue the matter of enrolment of the members (present petitioners) as per advertisement in newspaper published on 21.08.2007.

(v) That the committee failed to hold election within 90 days, so the Registrar appointed a Returning Officer to hold election of Society, so appointment of Returning Officer u/s 31 (1) of DCS Act, 2003 is not illegal.

(vi) That petitioners have violated Rule 24(2) of DCS Rules, 1973. The enrolment of present petitioners was void as there has been violation of DCS Act and Rules in their admission as members.

4. Petitioners filed the rejoinder to the reply filed by the RCS and submitted as under :

(i) The RCS not placed any copy of alleged circular dated 09.11.2004 which is stated to have been violated by the Society.

(ii) If there was anything wrong on the part of the society or its management, it is well settled that the members cannot be allowed to suffer nor their membership can be declared as null & void *ab initio* from the date of their enrolment.

(iii) The alleged Circular dated 09/11/2004 is in total departure and in contravention of the provisions of Rule 24 (2) of the DCS Rules, 1973 as the statutory Rule does not lay any responsibility on a housing society/its management notification about the vacancy in a housing society in leading daily newspapers of Delhi should be for 15 days and /or registered address/site office address of the society be also disclosed. As such the act of respondent is not only illegal, arbitrary, but smacks his malafide.

(iv) It is submitted that after passing resolution by the Managing Committee and admitting the petitioners as members of the society sent an information to the respondent RCS vide letter dated 05.09.2007 which was duly acknowledged and accepted by the Registrar as no objection of any information was sent till the impugned order was passed.

(v) It is emphatically denied that the respondent vide letter dated 10.09.2007 cited any discrepancy to the society regarding filing up of vacancies of members or that the society was directed not to pursue the

matter of enrolment of members as per advertisement in newspapers published on 21.08.2007 as alleged. It is submitted that the respondent has made a false statement on oath that respondent by office letter dated 10.09.2007 to the society, citing discrepancies regarding filing up of vacancies of members, the society was directed not to pursue the matter of enrolment of the members.

(vi) It is denied that if the committee failed to hold election within 90 days so, the Registrar can appoint a Returning Officer under Section 31(1) of the DCS Act, 2003 when the Society is to get the election of the Managing Committee conducted either under Section 36 or under Section 31 (5) of the Act.

5. Society vide letter dated 27.10.2013 submitted that "Society has no objection against allotment of respective category flats to the Petitioners."

6. I have considered all the facts and circumstances of the case, perused available record on file and have heard concerned parties at length. It is admitted fact that an advertisement for 10 vacancies of flats in Pragya CGHS was published on 21.08.2007 in which the address of registered office was not disclosed. It is also an admitted fact that the society closed the process for accepting the application for enrolment on 02.09.2007, i.e. 03 days prior to the last date of submission of this application. This fact has been further confirmed by the Society's letter dated 03.09.2007. In the absence of any address general public would not know as to where the applications are to be submitted. Pre-mature closure of submission of applications amounts denying of opportunity to apply to those who would have applied during the last three days. I find that both are serious lapses which have vitiated the entire enrolment process. In fact an advertisement for enrollment is to be considered no advertisement if it fails to specify unambiguously the following:

- (i) Complete postal address of the office of society from where the prescribed application form can be collected and duly filled application can be submitted by the applicants;
- (ii) Timings during which application are to be submitted;
- (iii) List of documents which are to be enclosed with the completed application;
- (iv) Amount required to be deposited along with completed application.

Disclosure of above information in the advertisement is necessary to maintain transparency in the process of enrolment. This is also necessary to prevent the possibilities of behind the doors management of the enrolment process by the Society.

In the instant case no address of the society was given and enrollment process was closed prematurely. Such serious violations can not be allowed to be condoned.

7. It is also a fact that the Society while submitting the list of 10 newly enrolled members on 02.09.2007 to the RCS Office did not enclose a copy of managing Committee resolution along with the letter dated 03.09.2007. Petitioners in their submission submitted that resolution actually was passed on 02.09.2007 but the record has been misplaced and an FIR has already been registered on 05.01.2009 in the Police Station, Kotla Mubarakpur. Since the society vide its letter dated 03.09.2007 did not annex any resolution for enrolling the 10 new members, then mere filing of an FIR after more than one year appears to be an afterthought and cannot establish that such a resolution was indeed passed.

8. Petitioner further submitted that they have paid the entire cost of land and construction of flats and after several years it cannot be said that enrolment was void *ab-inito*. Cost of constructions and land cannot validate their enrollment contrary to the prevailing rules and directions.

9. DCS Rule 2007 came into force vide notification dated 19.10.2007 and as per rule 170 of new rules, DCS Rule 1973 shall stand repealed on the day in which DCS Rule 2007 came into force. Therefore, direction issued vide circular dated 09.11.2004 under DCS Rule 1973 shall be effective till the notification of DCS Rule 2007. Therefore, I do not find any infirmity in the order of AR(NW) on this count.

10. Considering the above facts and circumstances, I do not find any infirmity in the order dated 23.08.2010. Accordingly, the petition is dismissed.

11. Announced in the open Court.

-SD-

(DHARAM PAL)
Financial Commissioner,
Delhi.
16th April, 2015