

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.220/2011

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

In the matter of :-

Madhuban CGHS Ltd.
Madhuban Apartment, Madhuban Chowk,
Pitampura, New Delhi-110034
(Through its president)

... Petitioner

Versus

1. Late Sh. Tara Chand Gupta
S/o late Sh. Jai Ram Das Gupta
7286 Prem Nagar, Delhi-110007
(Through LRs)
 - (a) Smt. Suraj Gupta
W/o Late Sh. Tara Chand Gupta
 - (b) Sh. Rakesh Gupta
S/o Late Sh. Tara Chand Gupta
 - (c) Sh. Alok Gupta
S/o Late Sh. Tara Chand Gupta
 - (d) Sh. Gaurav Gupta
S/o Late Sh. Tara Chand Gupta

All R/o 7286, Prem Nagar
Delhi-110007.

 - (e) Smt. Amita Gupta
D/o Late Sh. Tara Chand Gupta
R/o 41 Shakti Vihar, Pitam Pura
Delhi-110034.
2. Assistant Registrar (NW)
O/o of Registrar Cooperative Societies
Parliament Street New Delhi ... Respondents

DHARAM PAL, FINANCIAL COMMISSIONER

Order dated 3rd February, 2015

1. This order shall dispose of the Revision Petition filed by M/s Madhuban Cooperative Group Housing Society (hereinafter called Society) against the impugned order dated 03.06.2011 passed by the Assistant Registrar (NW).

2. Brief facts of the case are that as a dispute arose between the society and one of its member Sh. T.C. Gupta, Registrar of Cooperative Societies (hereinafter called RCS) referred the matter to the sole Arbitrator, Shri L. D. Gupta under section 61 of Delhi Cooperative Societies Act, 1972 for adjudication on the following points:-

i) Whether the Society had enrolled members including some of the defendants in accordance with the provisions of the Act and Rules and Bye-Laws of the Society;

ii) Whether these members were possessing any property at the time of enrolment;

iii) Whether the transferees were the blood relations of the original members of the Society;

iv) The circumstances under which the claimant could not be considered for allotment with particular reference to the allegations made by each of the parties; and

v) Whether the instructions issued with regard to the allotment of flats by the Registrar Coop. Societies, were complied with or not.

3. Ld. Arbitrator Sh. L.D. Gupta announced his award vide order dated September 21, 1987. Respondents no. 2 to 7 in the Award filed six appeals before the Delhi Cooperative Tribunal (hereinafter called DCT) and the same were disposed of vide single order dated 14/01/2009, dismissing the appeals and Arbitrator's award dated 21/09/87 was confirmed with the following observations :

a) The Arbitrator has given detailed reasons for this conclusion. The Arbitrator has referred to all the correspondence between the society and the RCS which shows that the society was very well aware of the RCS's decision from time to time but had deliberately ignored them because Sh. V.P. Gupta had his own axe to grind.

b) As regard the society's plea that no flat is available for allotment to Shri T.C. Gupta, it will be for the RCS as the execution authorities to find a way to implement the award.

c) That they may cancel the allotment of the junior most member and allot his flat to Sh. T.C. Gupta. The Hon'ble High Court has held in many cases that the lawfully enrolled member has a precedence /priority over an illegally enrolled member/or a member who was enrolled when there was no vacancy in the society.

d) That in case the authority concerned allots a flat to Sh. T.C. Gupta, such an allotment would be subject to his clearing all the legal dues to society in connection with that flat.

4. This award has attained finality as there is nothing on record to suggest that the order of DCT was further challenged in any competent Court of law.

5. Shri T.C. Gupta filed an execution application dated 19/02/09 before the RCS which was disposed off vide order dated 03/06/11 operative portion of which reads as under :

"It would be in the fitness of thing that a new flat having covered area of 1200 Sq. Ft. or more may be constructed by the society, as suggested by it, after taking necessary approval from all the concerned authorities in this regard. This exercise should be completed within a maximum period of six month i.e. by the end of 30.11.2011. Needless to say that the cost of the flat and other formalities is to be borne by the society and a decision in this regard may be taken by it in the Special General Body Meeting of the Society convened for this specific purpose only. In no case, the decree holder be compelled to bear the cost of the flat to be constructed by the society.

The society is also directed to ensure that all the directions of the award dated 21.09.1987 so far as they relate to other matters than that of Sh. Tara Chand Gupta should also be complied with immediately to avoid further unpleasant action against the concerned office bearers of the Society as per the provisions of the DCS Act, 2003 and DCS Rules 2007 in order to safeguard the residents of the Society from further avoidable litigation and action against them by RCS and DDA.

6. The Society through the present Revision Petition u/s 116 of Delhi Cooperative Societies Act, 2003 has partly challenged this order on the following grounds :

a) That the society could not have implemented the award to allot the flat as no flat was available.

b) That in order to settle the long standing dispute, the society proposed to allow it for increase in strength of membership by one member for the Respondent-1 and construction of one flat of 1200 sq. ft. and the proposal has been accepted by the Assistant Registrar (NW). However, direction of Assistant Registrar (NW) to the effect that the cost of the flat and other formalities is to be borne by the society and in no case the decree holder be compelled to bear the cost of the flat to be constructed by the society, is wholly illegal, arbitrary and without jurisdiction as there was no such finding in the award. The respondent had paid only a sum of Rs. 16,000/- upto allotment of flat and needless to say is required to bear the cost of the flat proposed to be constructed.

c) That during the pendency of the ongoing litigation, there had been a material change in the provisions of the Act and the Rules and some of the finding in the award had become infructuous and unsustainable in law, particularly Rule 100 of the Delhi Cooperative Societies Rules, 2007.

d) That Ld. Asstt. Registrar failed to appreciate that he had no jurisdiction to go beyond the directions given in award by the Ld. Arbitrator.

e) That the directions other than the proposed allotment of the flat of 1200 sq. mt. and that too subject to the condition that the society be allowed to construct one more flat and the requisite payment is made by Respondent No. 1, cannot be implemented in changed scenario.

f) Society cited a decision of Hon'ble High Court of Delhi in the matter of Swayan Sidha Cooperative Group Housing Society Ltd. Vs Financial Commissioner wherein it was held that :

“membership inheritance- mere membership of deceased member of Cooperative Group Housing Society cannot be inherited by his nominee who is otherwise ineligible to be a member of that society-where deceased member has not been allotted any plot or flat and is merely a member of Society. There is no interest of deceased member that can devolve on nominee.”

7. In its written submission dated 08.10.2012 Society further submitted that against the cost of the flat amounting to Rs. 1 lack plus interest for the period of default, Sh. Gupta had paid only a sum of Rs. 20,001/- . No flat was allotted to late Sh. Tara Chand Gupta as such the

legal heirs have no claim for allotment of the flat and they can only claim refund of the amount deposited with interest as per provisions of the Delhi Cooperative Societies Rules, 1973/2007.

8. In its clarification dated 16.08.2014, Society further submitted that:

- a. Society had placed reliance on the judgments of the Hon'ble High Court W.P. (C) no. 5027 of 2001 in the matter of Parwana CGHS Ltd vs RCS. Copy of the judgment was placed on record earlier in which it was held that :

“ It is well settled principle that executive agency cannot go beyond the award and shall have to follow the terms of the awards. In this case the execution Officer has transgressed his jurisdictional limit. Hence order is set aside. The respondent members may seek their rights before appropriate forum under the law ”.

- b. That Late Sh. Tarachand had died during the pendency of the proceeding and in view of the provisions contained in rule 40 of DCS Rules 1973 the membership of late stood ceased and as no flat was allotted the legal heirs had not right to inherit any flat not in existence.
- c. That one flat for office was constructed in addition to 51 flats for 51 members. The 52nd flat was meant for office. A flat was kept vacant for about 10 years(1983 to 1992) but late Tara Chand refused to take possession of the flat and the society was constrained to allot the flat to another member.
- d. As per records maintained by the society Late Sh. Tarachand Gupta had made the payment of Rs.20,000 upto 30.06.1984. It is therefore follows that at the time of allotment of the flat the total payment was only Rs. 20000/- as on 30.06.1983 which was much less than the cost of the flat payable by a member for allotment of any category of flat. Subsequently he deposited Rs. 30000/- on 05.09.1984 against demand of Rs. 50000/- when the allotment of the flat was already over and possession given to the members. He deposited later on a sum of Rs.50000/- without any demand. The society decided to refund the amount by cheque/pay order which was done.

e. The then management of the society allotted the flat in self draw. It is pertinent to mention that due to delay in verification of the membership and recommendation for draw of lot, a number of societies had conducted self draw by the general body due to the pressing demand from the members. A policy decision was taken by the Registrar to regularize such draw subject to the condition laid down in the directive no. F.36/Policy/RCS/1289 dated 13.03.1996.

9. LRs of Respondent in their reply has submitted :

- i) That no revision petition under section 116 is maintainable against the order passed by the Assistant Registrar in the execution proceedings. "Section 116 (i) Govt. may of its own motion or on application made to it, call for an examine the record of the Registrar, in respect of any proceeding not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 114 to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision passed or order made therein.
- ii) That the petitioner has concealed the material fact that Tara Chand Gupta during his lifetime has paid the cost of the flat to the Society.
- iii) That till date no allotment has been made by the Registrar in the Society even the self draw conducted by the Society has not been regularized by the competent authority.
- iv) Society has taken the wrong stand that inquiry under Rule 25 is time barred in view of the Rule 100 of the Delhi Cooperative Societies Act. In the present case, no legal allotment has been made till date. Hence the question of issue being time barred does not arise.
- v) In the award passed on 21.09.1987 by Sh. L.D. Gupta, Arbitrator, the claimant's (Shri T.C. Gupta) right for a flat of 1200 Sq. Ft. having been admitted and established. It has also been held that he shall also be entitled to be considered for flat of 1800 Sq. Ft. if and when such a flat of that category become available. The Ld. Tribunal in its order dated 14.01.2009 has confirmed the award dated 21.09.1987.
- vi) The total strength of the Society was 51 but the Society constructed 52 flats but has not allotted any flat to the respondent

no. 1. No allotment has been done by Delhi Development Authority and Registrar so far till date. The Managing Committee has allotted the flat itself. There is no legal allotment. Hence, the Rule 100 is not applicable.

vii) It is wrong to say that the claimant has only deposited Rs. 16,000/- whereas the deceased respondent Sh. Tara Chand had paid about Rs. 1,20,000/- to the Society. It is wrong that the respondent no. 1 will have to bear the cost of construction etc. at the current rates.

10. In its written submission dated 23.7.2013, LRs of Shri Tara Chand has submitted that Shri Tara Chand Gupta has paid Rs.1,18,000/-. In support of their claim, LRs of Sh. Tara Chand Gupta have submitted the copy of letter dated 24.09.1989 from society in which Society has admitted that as per record Rs. 1,18,501 has been deposited by Sh. Tara Chand Gupta upto 31.03.1989.

11. I have considered all the facts and circumstances of the case, heard the concerned parties at length and have perused the available record on file. Society's argument that award could not be implemented as no flat was available, has already been considered and rejected by DCT by stating that it was for RCS as execution authority to find a way to implement the award. Further, Ld. Arbitrator in his award had directed that admission of all members be got re-verified and scrutinized critically. No such action appears to have been taken. Ld. Arbitrator further specified series of measures to rectify the irregularities committed by the Society in admission of members and allotment of flats. Strangely Society has not taken any step to implement this part of the award. Ld. Arbitrator has admitted, established and protected claimant's (Sh. T.C. Gupta) right for a flat of 1200 sq ft. It was further held that he shall be further entitled for flat of 1800 sq ft. if and when flat of such category become available. The Society did not clarify whether any vacancy had arisen till date and what procedure was followed while filling up any such vacancy, and whether claimant was ever considered for allotment against any such vacancy. Further, DCT's suggestion that "*they may cancel the allotment of the junior most member and allot his flat to Sh. T.C. Gupta. The Hon'ble High Court has held in many cases that the lawfully enrolled member has a precedence /priority over an illegally enrolled member/or a member who was enrolled when there was no vacancy in the society*" has been completely ignored both by the Society and the RCS. The society is, therefore, in no position to say that award cannot be implemented as no flat was available. The society cannot be allowed to take benefit of its wrong doings and illegalities committed by it. Further I

have carefully perused the order passed by Ld. Assistant Registrar (NW), Sh. Ved Prakash dated 03.06.2011 and find that instead of implementing the award sequentially, alternative method of constructing a new flat has been directed which is clearly not part of the Award.

12. I further find that Society's proposal to allow it to increase the strength of membership by one member is nothing but a move to evade the implementation of award and to protect the interests of illegally admitted members at the cost of *bonafide* members. This is a travesty of justice and cannot be allowed to happen. Award dated 21.09.1987 has attained finality and the same has to be implemented in letter and spirit.

13. I do agree with the submission of society thoroughly that Assistant Registrar (NW) has no jurisdiction to deviate from the award, therefore, question that "who will pay the cost of additional flats" does not arise, as there was no direction to construct additional flat in the award.

14. Society in its submission has stated that due to pendency of the ongoing litigation award has become infructuous due to the Rule 100 of Delhi Cooperative Societies Rules, 2007. In the instant case, it is established beyond doubt that some members were admitted in gross violation of existing rules and procedures prior to the commencement of Delhi Cooperative Societies Rules, 2007 and flats were allotted in a self draw held by the society and the same was never got approved from Delhi Development Authority as required under RCS order No.F.36/Policy/RCS/1289 dated 13.3.1996. Further claimant's right for flat of 1200 sq.ft. was admitted, established and protected vide award dated 21.09.1987, much before the coming into force of Delhi Cooperative Societies Rules 2007. The petitioner society therefore, at this stage cannot be allowed to take benefit of Rule 100 especially in those cases where members were admitted and allotted flats in violation of all laws, rules and procedures.

15. Petitioner has also raised the issue of payment by the Respondent towards the cost of flat. This issue (default in payment by Late Sh. T.C. Gupta) has already been considered and analyzed in depth by Ld. Arbitrator. He after giving opportunity of being heard to all the parties, has held that claim of Sh. T.C. Gupta is fully established and is to be protected. In view of this finding, I see no reason to go further in this issue.

16. Society cited the decision of Hon'ble High Court in the matter of Swayam Sidha CGHS Vs. Financial Commissioner where it was held that – "mere membership of deceased member of CGHS cannot be inherited

by his nominee who is otherwise ineligible to be a member of that society". This issue in my opinion should have been raised before the Ld. Arbitrator and or before DCT with relevant supporting documents. Further, there is nothing on record to suggest that inheritor of late Shri T. C. Gupta are ineligible to become the member of the society.

17. Society further contended that Late Sh. Tara Chand had died during the pendency of the proceeding and in view of the provisions contained in rule 40 of Delhi Cooperative Societies Rules 1973 the membership of late Sh. T.C. Gupta stood ceased and as no flat was allotted the legal heirs had no right to inherit any flat not in existence. Bare perusal of Rule 40 of Delhi Cooperative Societies Rules, 1973 reveals that this rule does not prohibit the inheritance of membership. Further, Sh. T.C. Gupta died during the pendency of this revision petition. His claim by this time (i.e. at the time of his death) for allotment of flat was fully established and is to be protected as per award dated 21.09.1987.

18. Society further contended that RCS vide letter No.F.36/Policy/RCS/1289 dated 13.3.1996 has issued direction to regularize the self draw vide which one time relaxation was given to the societies who conducted draw without verification subject to forwarding of the case to Delhi Development Authority for regularization of allotment of flats. This means that regularization of allotment of flats by the Delhi Development Authority was mandatory. However in the present case a self draw of flats by society has never been got regularized from Delhi Development Authority.

19. Vide award dated 21.09.1987 which was confirmed by the DCT vide order dated 14.01.2009, Ld. Arbitrator Sh. L. D. Gupta (vide para 49) has held that :

"(a) the society did not follow provision of the Act, Rules framed there under, bye laws as adopted by it, and directives/ instructions issued by the Registrar in general;

(b) the society illegally admitted respondents no. 3 to 7 as members and made allotments in their favour in total disregard of the provisions of law and the directives issued by the Registrar under Rule 77 of the Rules;

(c) the society failed to obtained prescribed declarations regarding owning/having share in the properties and further to conduct needed verification and made allotments without fulfillment of prescribed conditions;

(d) that the transfers accepted were without jurisdiction and suffered disqualification in terms of Rule 25 of the Rules;

- (e) *that the claimant, Sh. Tara Chand was left out in the matter of allotment of flat on unjustified and arbitrary grounds rather motivated by prejudice ; that he has been discriminated against other members similarly placed;*
- (f) *that the claimant being a bonafide member and the delay in making payment having been condoned by the Society, the claimant was entitled to be considered for allotment of a flat alongwith others;*
- (g) *that the instructions issued by the Registrar Coop. Society with regard to allotment of flats were not followed and the allotments so made, were invalid as already held by the Registrar.”*

Vide clause (b) of para 49 of the award, a categorical finding has been given that respondent No. 3 to 7 (in the award) were illegally admitted and allotments made in their favour were in total disregard of the provisions of law. Vide clause (d) it has been further held that the transfers accepted were without jurisdiction and suffered disqualification in terms of Rule 25 of the Rules. I have carefully perused impugned order dated 03.06.2011 passed by the Ld. Assistant Registrar (NW) to see whether any attempt was made to deal with such serious violations committed by the society. To my utter surprise, no such attempt is apparent or visible. Further Ld. Arbitrator has recommended a series of measures to rectify the illegalities committed by the society. Again no attempt has been made till date to implement such measures in the award which has attained finality after DCT's order dated 14.01.2009. Instead an alternative method of constructing a new flat has been recommended which clearly is not part of the award.

20. Considering all the facts and circumstances it is ordered that :-

- (a) Order dated 30.06.2011 passed by the Assistant Registrar (NW) is set aside.
- (b) Assistant Registrar (NW) in the impugned order has explicitly stated that the self allotment of flats has been made by the then office bearers of the Society and the approval of the RCS and Delhi Development Authority has not been taken till date despite clear cut directions in this regard. The audit of the Society is also reportedly pending since long. Thus, the present Managing Committee is also running the society in violation of the provision of the Delhi Cooperative Societies Act and Rules. RCS is hereby directed to initiate appropriate steps against the society as per law.

(c) Ld. Arbitrator in his award dated 21/09/87 vide para 49 has considered the fact and documents relating to the membership in respect of Shri Laxmi Narain Goel, Shri Sunil Daruka, Smt. Vimla Devi Rungta, Smt. Kanta Kumar Aggarwal and Shri Vijay Bhardwaj (respondents 3 to 7 before the Arbitrator) and after giving them due opportunity of being heard has held that the society had illegally admitted these persons as members and made allotments in their favour in total disregard of the provisions of law and the directives issued by the Registrar Cooperative Societies under Rule 77 of the Delhi Cooperative Societies Rules, 1973. I find that this finding in the award has not been acted upon till date. RCS is hereby directed to take action as per law to cancel their membership forthwith.

(d) Ld. Arbitrator vide para 49(d) has also returned the finding that transfers accepted were without jurisdiction and suffered disqualification in terms of rule 25. RCS is hereby directed to identify all such transfers and take action as per law to cancel all such illegal transfers.

(e) Further in the final award, Ld. Arbitrator has recommended following actions to rectify the wrong doing/illegalities committed by the society :

- “(i) the admission of all members on the list be got re-verified and scrutinized critically with reference to laid down provisions of law and the rules and instructions prescribed by the D.D.A., the land allotment agency;*
- “(ii) after the verification, disqualifications be determined by the Registrar in terms of rule 25(4) of the rules and members found ineligible and disqualified, be removed from the membership of the society, their allotments cancelled as per the provisions of law and a fresh list of eligible members be drawn;*
- “(iii) the society should then be required to determine the cost of land and the cost of construction and development on realistic basis according to the size of the flats and the same be recovered from the members found eligible by a target fixed by giving a reasonable notice and then steps taken to complete the project work without loss of time;*
- “(iv) the allotment of flats be made afresh by “DRAW OF LOTS” in the presence of the representatives of the D.D.A. and Registrar. Only such members who have made payments in full by the target date, be considered to be included in the draw;*

- v) *the Claimant's (Sh. T.C. Gupta) right for a flat of 1200 sq ft. having been admitted and established be protected. He shall also be entitled to be considered for allotment of 1800 sq. ft. flat if and when such a flat of that category becomes available ;*
- vi) *the Society may also be required to ascertain and identify, cases of sub-letting, illegal transfer, if any, and take immediate action to rectify the same;*
- vii) *the Society be required to complete all codal formalities as per requirements of provisions of law and instructions issued by the Registrar from time to time. ”*

RCS is hereby directed to implement these measures in the same sequence as given above.

- (f) RCS is further directed to consider allotment of flat of appropriate size (as per entitlement of late Sh. T.C. Gupta established in the award) out of the flat that may become available after implementation of above directions.
- (g) Let above directions be complied within a period of three months.

21. The revision petition is disposed of with the above directions and observations.

22. Announced in open Court.

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(DHARAM PAL)
Financial Commissioner, Delhi
3rd February, 2015