

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

Case No.236/2012

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

In the matter of :-

**Sh. Sandeep Saxena,
S/o Late Sh. S.C. Saxena,
R/o H.No. E-7, Mukhram Garden,
Chaukhandi, Tilak Nagar,
New Delhi-110018.**

....Petitioner

VERSUS

- 1. Registrar of Cooperative Societies
Office of Registrar of Cooperative Societies,
Parliament Street, New Delhi. Respondent**
- 2. Entrepreneurs Cooperative Group
Housing Society Ltd.
Plot No.9, Sector-22, Dwarka,
New Delhi.
Through its President/Secretary**
- 3. Mahalaxmi Cooperative Group
Housing Society Limited,
Sector-2, Plot No. 4, Dwarka,
New Delhi-110075
Through its President/Secretary
....Proforma Respondents**

Presented by Shri Sandeep Kumar, Counsel for Petitioner and Shri D. V. S. Yadav, Counsel for R-2.

NAINI JAYASEELAN, FINANCIAL COMMISSIONER
Order dated 27.08.2015.

1. This order shall dispose of the Revision Petition under Section 116 of the DCS Act, 2003, against the order dt. 27.01.2012 passed by Registrar of Cooperative Societies (herein after called RCS). Vide this order RCS held that Flat No. A-712 in Mahalaxmi Cooperative Group Housing Ltd., Plot No.

4, Sector-2, Dwarka, New Delhi-110075 has been purchased by Sh. Sandeep Saxena and as such Sh. Sandeep Saxena's membership in Entrepreneurs Cooperative Group Housing Society Ltd. is liable to be ceased as per provisions of Rules 20(1)(c)(i) of the DCS Rules, 2007. Accordingly Sh. Saxena's membership was ceased with immediate effect.

2. Petitioner has filed the present revision petition under Section 116 of the DCS Act, 2003 with the following submissions :

(a) The petitioner became the member of the Entrepreneur CGHS Ltd. vide membership No. 334 on 14.11.2002.

(b) As the flat in the Respondent No.2/Society was taking considerable time, the family decided to purchase the flat in the R-3/Society and the same was purchased in January, 2003 through GPA from Smt. Alka Singh. As only the petitioner was entitled to avail loan facility from the bank, the said flat was purchased in the name of the petitioner by taking the loan of Rs. 8,00,000/- jointly with his wife from a Bank.

(c) The petitioner sold the flat in the R-3/Society in the year 2005 as the petitioner was short of funds to pay the R-2/Society and therefore under compelling circumstances, the petitioner sold the flat in the R-3/Society. Thereafter the petitioner again shifted to the rented premises with the hope of getting a flat in R-2/Society. Thereafter the petitioner regularly paid all the demands raised by the R-2/Society. But the name of the petitioner was not forwarded by R-1 i.e. RCS to DDA for the draw of lots which was held on 10.12.2008.

(d) It is further submitted that the carpet area of the flat purchased in R-3/Society was 78.88 sq. mt. which is situated on 7th floor of the building. Thus, on land co-sharing basis, the total share of the aforesaid flat in the land of the plot comes only to 11.268 sq. mt. which is less than 66.72 sq. mt. and the

same is covered under the proviso Rule 20(1)(c)(i) of DCS Rules, 2007.

(e) Thus, it is clear that neither at the time of joining membership of R-2/Society nor at present i.e. at the time of allotment of flat in R-2/Society, the petitioner had any other plot or flat in his name or in the name of his wife or dependent and also the actual share in land as co-sharers of aforesaid flat in R-3/Society which he had sold, was only 11.268 sq. mt. therefore the case of respondent falls in the exception of Rule 20(1) of DCS Rules, 2007 and he cannot be disqualified from membership of R-2/Society.

(f) Registrar of Cooperative Societies has failed to consider that the petitioner had already sold the flat in the R-3/Society in the year 2005 itself and the said flat was purchased after taking the membership in the R-2/Society and when the membership of the R-2/Society was taken by the petitioner, the petitioner has not incurred any disqualification under the DCS Act and Rules.

3. Mahalaxmi CGHS, R-3 in its reply dated 23.11.2012 submitted that as per society's record the petitioner Sh. Sandeep Saxena, was never a bonafide member of our society.

4. RCS, R-1 in its reply submitted that :-

a) The petitioner is already in possession of a flat bearing No. A-712, Mahalaxmi CGHS Ltd. which amounts to disqualification under Rule 20 of DCS Rules, 2007 and therefore the RCS had rightly passed the order impugned herein.

b) As per provisions of Rule 20(1)(c)(i) of DCS Rules, 2007, no person shall be eligible for admission as a member of Cooperative Society if he owns residential house or plot of land for construction of residential house in any of the approved or unapproved colonies or other localities in the National Capital

Territory of Delhi in his own name or in the name of his spouse or dependent children on leasehold or freehold basis or on Power of Attorney or on Agreement of Sell. However, this clause shall not be applicable in case where the area of the property of the concerned share does not exceed 66.72 sq. mtrs. Thus in case of the petitioner, he had already a residential house in his name and he is disqualified to become a member of the society.

5. Entrepreneur CGHS, R-2 filed its reply with the following submissions :

- a) The petitioner becomes member of the society (Entrepreneur CGHS Ltd.) whereas he was already holding flat in another society.
- b) The petitioner was fully aware that he was holding membership of another society whereas he should have not taken membership of other society as per the DCS Rules.
- c) Complaint from Sh. Neeraj Aggarwal was verified from the Sub-Registrar Office and was found correct. A show cause notice was issued to the petitioner and the same was considered and rejected by the RCS.

6. I have considered all the facts on record and heard both the sides. RCS vide order dated 27.01.2012 ceased the membership of the petitioner under Rule 20(1)(c)(i) of the DCS Rules, 2007 which reads as under :

“20. Disqualification of membership

- (1). *No person shall be eligible for admission as a member of a co-operative society if he:-*
 - (a) *has applied to be adjudicated an insolvent or is an undischarged insolvent; or*

(b) *has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence, or*

(c) *In the case of membership of a co-operative housing society,*

(i) *owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of dependent children, on lease hold or freehold basis or on power of attorney or on agreement for sale:*

Provided that above clause shall not be applicable,

(a) *in case of co-sharers of property whose share is less than 66.72 sq. metres of land; or if the residential property devolves on him by way of inheritance;*

(b) *in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the transfer of membership of the housing society concerned;*

(ii) *deals in purchase or sale of immovable properties either as principal or as agent in the National Capital Territory of Delhi; or*

(iii) *his spouse or any of his dependent children is a member of any other cooperative housing society.*

Perusal of Rule 20 reveals that as per Rule 20(1) eligibility of a member should be checked at the time of admission. Whereas in this case it is an admitted fact that at the time of admission as member in Entrepreneur CGHS, petitioner was not having any other property, therefore, his membership in Entrepreneur CGHS does not suffer and disqualification under Rule 20(1)(c)(i) of DCS Rules, 2007.

7. In view of the above, RCS order dated 27.01.2012 is set aside and membership of petitioner is restored to the original position. Petition is disposed of with the above directions.

8. Pronounced in open court on 27.08.2015.

(NAINI JAYASEELAN)
Financial Commissioner, Delhi