

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.333/2011

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

**In the matter of :-
Smt. Nirmala Sharma
W/o Sh. Roshal Lal
R/o EC-64, Maya Enclave,
New Delhi-110064**

**....Petitioner
(Represented by Shri B. S.
Randhawa, Counsel for
Petitioner)**

VERSUS

**1. Registrar, Cooperative Societies
Govt. of NCT of Delhi
Parliament Street
New Delhi.**

**2. Gulab Vihar Coop. G/H Ssociety Ltd.
Plot No.17, Sector 9,
Rohini, Delhi-110085
Through its President/Secretary**

**3. Shri Jagdish Chander
S/o Sh. Khem Chand
R/o B-1757/3
Shastri Nagar, Delhi**

**4. Shri Krishan Kumar Sachan
S/o Shri R. S. Sachan
R/o A-649, Shastri Nagar
Delhi**

**.... Respondents
(Represented by Shri
Sandeep Kumar, Counsel
for R-3 and R-4)**

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 10th September, 2015.

1. This order shall dispose of the Revision Petition under Section 116 of the Delhi Cooperative Societies Act, 2003 against the order dt. 11.08.2011 passed by Registrar of Cooperative Societies (hereinafter called RCS). Vide this order RCS dismissed the appeal of petitioner (herein) filed against the order dated 12.08.2010 of Secretary, Gulab Vihar CGHS Ltd. vide which the

petitioner (herein) was directed to surrender her share certificate and other documents and to collect the amount deposited by her with the society on the ground that she is the junior most member of the society and there is no vacancy of any flat available in housing complex of the Society.

2. Petitioner has filed this revision petition against the

RCS's order dated 11.08.2011 with the following submissions :

(a) The Society was to construct 90 flats of which 42 are MIG flats and 48 LIG flat. Before the construction of the flats the members enrolled were asked to give option of either MIG or LIG flat.

(b) Since there was a vacancy with respect to membership in the Society, the petitioner applied for and become the member of the said society after depositing Rs. 17,220/- on 30.03.1987 which included admission fee, share money of Rs. 110/- and land cost. The respondent No. 2 issued the Share Certificate dated 31.03.1987 to the petitioner.

(c) The Petitioner deposited the money as per the demand of the respondent no. 2 for the land and for the construction of LIG category flats from time to time and had made a total deposit of Rs. 1,78,220/- against the LIG flat.

(d) The respondent No. 1 has misinterpreted the order of the High Court passed in the writ petition, i.e. W.P. (C) No. 417/1995 and the W.P. no. 1646/1995. In the said order the Court held that the petitioners in the said writ petitions did not incur any disqualification under Rule 25 (1) (C)(i) as a result of which they will retain their ranking as per their original seniority list and the allotment shall be made according to the said seniority list. The Hon'ble High Court has nowhere stated that they should be allotted the flat of the category to which they have not applied for.

(e) RCS erred in holding that Sh. Jagdish Chander and Sh. K.K. Sachan are senior to the appellant and their claim is above that of appellant/petitioner having overlooked the basic fact that these person were registered for allotment of MIG category flat and not LIG Category flat.

(f) The basis of seniority is the date of payment and submission of documents and the petitioner had deposited the money and documents for allotment of LIG category flat, prior to the dates that Sh. K.K. Sachan and Jagdish Chander complied with the directions of the society.

3. Respondent No. 2, i.e. Society filed the reply to the revision petition and submitted the following :

i. That Smt. Nirmala Sharma applied for the membership of the society and she was enrolled as member in the said society.

ii. That the Petitioner, Smt. Nirmala Sharma opted of LIG category of flat and the society raised the demands of funds from the Petitioner as per the option given by the Petitioner to the Society.

iii. That Shri Jagdish Chander as well as Shri K. K. Sachan joined the Gulab Vihar Cooperative Group Society and opted for the class of MIG flat and the membership of these two members namely Shri Jagdish Sehgal (M. No.33) and Shri Krishan Kumar Sachan (M.No.176) were ceased by the authority under the Delhi Cooperative Act, 2003. It is also important to note that later on their membership were restored as per the Hon'ble High Court judgement.

iv. It is also important to note that the name of Shri K.K. Sachan was in the list of 19 members whose names were not included in the list prepared for draw of lots, but the name of Shri Jagdish Sehgal was not in the said list.

v. There were two vacant flats in hand of the Society for allotment and out of the said two flats one flat belongs to MIG

category and other is belonged to LIG category. That after receipt of copy of the judgments in the cases of Shri Jagdish Chander and Shri K.K. Sachan who are the applicant/opted for MIG, the society started the process for implementation of the judgments passed by the Hon'ble High Court of Delhi but it become difficult for the society to implement the said judgment being one MIG flat in hand for which two members were in the waiting list and in another class i.e. LIG one flat in hand and one member is in waiting list. The member namely, Shri Jagdish Sehgal and Shri K.K. Sachan themselves mutually settled between them that Shri K.K. Sachan will not press for class of MIG and in the light of this fact Shri K.K. Sachan changed his category from the seniority list of the MIG and joined the LIG and also filed a letter dated 09.10.2009 alongwith affidavit/undertaking 09.10.2009 to Respondent No. 2 i.e. Society.

vi. The Respondent No. 2 i.e. Society issued a notice in light of the above fact to the petitioner herein to submit the original papers to the Respondent No. 2 and to get the refund of the amount lying in her account in the books of the society.

4. R-3 and R-4 filed a common reply to the revision petition and submitted the followings :-

a) The Respondents want to apprise this Hon'ble Court that the Appellant has obtained membership by concealing material fact that the Petitioner possessed a flat in Hari Nagar, Delhi. The Sale Deed and Payment receipts have also been executed and the Petitioner has concealed this material fact and in the light of this fact, the membership of the Petitioner is liable to be cancelled.

c) On 11.07.1990 the husband of the Petitioner made payment to Shri Sampat Kumar for the purchase of flat and various other documents have also been executed in respect of the said sale-purchase of the flat. But the Petitioner nowhere

disclosed this fact either to the Society or to the Registrar of Societies and thereby the Petitioner is not entitled for any flat in the society.

5. Facts of the case are that in the year 1989, the Respondent No.3 and 4 received a show cause notice from the office of Registrar of Cooperative Societies whereby the Respondent No.3 and 4 were alleged to be disqualified under Rule 25 (1)(c)(i) of the Delhi Cooperative Societies Rules, 1973 and aggrieved with the orders of the Registrar of Cooperative Societies, revision petitions were filed in the Court of Financial Commissioner, which were also dismissed by the Financial Commissioner vide orders dated 16.09.1994. Aggrieved by the orders of Financial Commissioner, the Respondent No.3 and 4 filed Writ Petition (C) Nos.1646 of 1995 titled as "Jagdish Chander Vs. Lt. Governor" and 417 of 1995 titled as "Krishan Kumar Sachan Vs. Lt. Governor". Both the Writ Petitions were allowed in favour of the Respondent No.3 and 4 vide orders dated 22.07.2009 and 10.08.2009 respectively. Hon'ble High Court of Delhi in both the cases held that "*Petitioner will retain his ranking as per original seniority list. The allotment shall be made according to the said seniority*".

6. RCS also submitted its reply to the revision petition and submitted the following :-

a) The record placed before the Court of the Registrar indicates that the petitioner's husband was having property in his name and thus she was disqualified to become a member of the society in terms of Rule 25(1)(i)(c) of the DCS Rules, 1973 which lays down that in order to become a member of the society neither the applicant nor her/his spouse/his dependent children shall own any residential house or plot for construction of house. In the present case, admittedly, petitioner's husband had a flat in his name and thus the petitioner was disqualified to become a member of the society. She became a member of the Society without disclosing true facts to the society. Had it been disclosed

that her husband is having property in his name, she could not have been enrolled as member of the Society.

b) Admittedly the husband of the petitioner is having a property in his name and thus the petitioner was disqualified to become a member of the society. Since the petitioner was not qualified to become a member of the society, paying the dues of the Society does not legalise her membership.

7. Petitioner in her written synopsis submitted that –

a) Respondent No.4, Shri K. K. Sachan on 10.09.2009, in collusion with the society made change of his category from MIG to LIG which is mentioned in the reply filed by the society. Shri K. K. Sachan is therefore junior to the Petitioner in this category.

b) The Petitioner had deposited full and final payment against demands for LIG flat by June, 1992 whereas, Shri K. K. Sachan after change of category from MIG to LIG has made payment in March/April, 2010 and as such it can be inferred that the LIG flat left for allotment was constructed by the society from the money paid by her till June, 1992.

c) RCS passed the impugned order wherein his findings were not based on any evidence but on the basis of mere assumptions that the husband of the petitioner owned a property (SFS Flat) in Delhi.

d) That husband of the Petitioner is merely a Power of Attorney Holder and not actual owner of the said flat.

e) That the said flat is occupied by Shri Raj Kumar Sharda who is residing therein with his family members, the petitioner is merely a licensee in one room of the said flat.

8. I have considered all the facts and circumstances available on record and heard both the sides. Vide order dated 11.08.2011, RCS dismissed the appeal of the petitioner herein on the following grounds -

1. Smt. Nirmala Sharma, Membership No.255 was enrolled as waitlist member.

2. Shri Jagdish Chand and Shri K. K. Sachan are senior to her and are held to be valid member of the society with original ranking by the Hon'ble High Court of Delhi hence, their claim is above that of the appellant.

3. Shri Roshan Lal, H/o the appellant is owner of flat no.64, Pkt EC (Maya Enclave, SFS Flats, Hari Nagar), G-8 area, Rajouri Garden, New Delhi and therefore, she is not eligible to be a member of the society.

9. But the membership of a person in a society cannot be decided after considering all the above said three grounds, because if a person is disqualified for membership, then there is no point to consider whether he is a waitlisted member or not. RCS has to first decide categorically whether the petitioner is disqualified as it is alleged that the husband of the petitioner is the owner of another property but RCS did not decide this matter with a speaking order substantiated with the evidence. Instead, the RCS has just narrated the submissions of Counsel for R-3 and R-4 (herein) regarding the ownership of flats by the petitioner's husband and passed an order. Even the society has not started any proceedings to disqualify the petitioner in this regard.

10. Counsel for the RCS failed to substantiate his observation that Smt. Nirmala Sharma was enrolled as a waitlisted member and the members who were having seniority junior to the petitioner were allotted flats. List dated 31.03.2011 prepared by the society, records that members having the membership no. from 256 to 289 got allotments of flats. Member having membership no.282 also sold the flat. But in the same list, name of Smt. Nirmala Sharma is shown as extra/non-member. Vide letter dated 11.08.1994, Assistant Registrar informed that the name of members bearing membership No.251 and 255 could not be forwarded as they were enrolled against the vacancy

caused due to cessation of membership no.162 and 181 and an appeal against their cessation is pending before the Hon'ble Lt. Governor. But the list dated 31.03.2011 shows that member bearing the membership no.251 got the flat. Therefore, I do not agree with the view of RCS that Smt. Nirmala Sharma is waitlisted member. Further, the Hon'ble High Court of Delhi in respect of R-3 and R-4 has directed to retain their ranking as per original seniority list and allotment shall be made according to that seniority. It is an admitted fact that petitioner was enrolled for LIG category of flat and R-3 and R-4 were enrolled for MIG category flats. This Court has observed that Hon'ble High Court of Delhi in a case bearing No. WPC No.5787/2012 and CM No.1649/2014 and 5172/2015, titled as "Neeraj Jain Vs. RCS & Ors." vide order dated 06.05.2015 directed the RCS to '*identify the category-wise seniority position of person*'. Neither all the parties have any right to change/modify the direction given by the Hon'ble High Court of Delhi and have to follow all the directions 'in total'. Therefore, neither Shri Sachan has any right to change his category of his own wish/convenience nor the society has any right to suggest/allow Shri Sachan to change the Category of flat as the society has left only one LIG flat after allotment of MIG flat to Sh. Jagdish Chand.

12. Shri Sachan was enrolled as a MIG flat member and his membership seniority has been upheld by the Hon'ble High Court of Delhi vide order dated 10.08.2002 and no appeal was filed against this order, therefore, this order attained finality. The right of Shri K. K. Sachan for the MIG category flat needs to be protected and Shri Sachan cannot be compelled to change his category from MIG to LIG in any circumstances. Therefore, junior most member in the MIG category of flat should go and Shri Sachan should be allotted a MIG category flat. A LIG category member cannot be asked to surrender her membership for the allotment of a flat to a MIG category member. Letter dated 11.08.1994 also clarifies that Smt. Nirmala Sharma was

enrolled against the cessation of membership no. 162 & 181 and not against the membership of Shri K. K. Sachan.

13. In view of above, order dated 11.08.2011 is set aside and the matter is remanded back to RCS with the following directions:-

i. Decide the issue of disqualification of the Petitioner with well reasoned speaking order after providing due opportunity to all the parties. Both the facts i.e. Smt. Nirmala Sharma's enrolment as wait-listed member and her being not eligible to be a member are inconsistent. Reserve a LIG flat till the finalization of disqualification issue in respect of Smt. Nirmala Sharma.

ii. May ensure action in consonance with the Hon'ble Delhi High Court order dated 10.08.2009, which has attained finality, for allotment of a flat to Shri K. K. Sachan as per his original seniority.

iii. It is not clear as to how the Society has allotted flats to members who were junior in seniority to Smt. Nirmala Sharma. Also, the Society has changed the category of Sh. K. K. Sachan from MIG to LIG after the order of High Court in spite of the fact that the High Court had issued no specific directions for changing the category of flat for which Sh. K. K. Sachan originally enrolled. Therefore, the Society's role itself needs to be probed further by the RCS.

These directions should be complied with preferably within the period of eight weeks after the pronouncement of the order.

14. Pronounced in open court on 10.09.2015.

(NAINI JAYASEELAN)
Financial Commissioner, Delhi