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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 08.02.2016

Decided on: 08.04.2016

+ W.P.(C) 363/2015 & CM No. 594/2015

H K MADHIA

..... Petitioner

Through: Ms. Kajal Chandra and Ms. Swati
Sinha and Ms. Prerna Chopra,
Advocates.

versus

THE FINANCIAL COMMISSIONER & ORS. Respondents

Through: Mr. Naushad Ahmed Khan, ASC
(Civil), GNCTD alongwith
Mr. Nigam, Advocate for R-1.
Mr. Sunil Dalal, Advocate for R-2.
Mr. Dhruv Sharma, Advocate for R-3.
Mr. Siddharth Dutta, Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

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1. The petitioner claims to be a valid member of the second respondent (Subhash Cooperative Housing Society, "the society") impugns an order dated 17.02.2012 of the Registrar of Cooperative Societies (RCS) and order dated 23.12.2014 of Financial Commissioner (FC). These had declared cessation of his membership of the society from the date of enrolment, i.e.,

03.03.1996 and he was required to vacate flat No.58 as well as a plot admeasuring 300-400 square feet on the rear side of the flat, and hand it over to the Society. He also seeks a declaration that the order of RCS dated 27.03.1996 whereby expulsion of Mr. S.G. Vaswani was confirmed should be declared valid order and made final and absolute.

2. The petitioner's claim is that he was a fresh member of the society and was not made a member against any vacancy. And, he paid all the dues in terms of the demands raised from time to time and that the total amount paid by him was ₹ 8,50,000/-. He also says that his name has all along been shown in the list of members issued from time to time by the Society. It is further contended that the society's allegation against him that at the time when he became member of the Society, he owned a property in Paschim Vihar is incorrect because the authorities failed to appreciate that he never owned any DDA flat or plot in any other cooperative society. An LIG flat measuring less than 71 square feet, secured on power of attorney basis was owned by his wife at that time. Therefore, his affidavit to the effect that he owned no property at that time was true. One Mr S.G.Vaswani another member of the society had been earlier expelled. That expulsion had been challenged. The order (dated 27.03.1996) was held to be bad in law. The

petitioner contends that even while holding the expulsion illegal, the FC had issued the directions to the LR's of the said deceased S.G. Vaswani to deposit the entire amounts due within 35 days. As they failed to comply with those directions (and did not deposit the dues), the expulsion order which had been approved by the RCS on vide 27.03.1996 automatically stood. S.G. Vaswani, therefore, stood expelled from the Society. This led to a vacancy in the membership of the Society.

3. A plot admeasuring 300-400 square feet behind flat No.58 was allotted to the petitioner against the payment of an amount of Rs.75,000/-. Although he had already vacated the plot, yet the money paid by him towards that plot is not returned to him by the Society. This was, complains the petitioner, totally overlooked by the lower authorities. The proceedings conducted by the Registrar under Section 41 of the Delhi Cooperative Societies Act, 2003 read with Rule 19 and 25 of Delhi Cooperative Societies Rules, 2007 and the Rules as amended on 12.01.2007 are further challenged on the ground that his case is governed by the old Delhi Cooperative Societies Act of 1972 (1972 Act) and the Delhi Cooperative Societies Rules of 1973 (1973 Rules) since he was granted membership before the new Act came into force. Reliance is placed on Section 141 of new, Delhi

Cooperative Societies Act, 2003 which protects the acts done under the previous Act and clause (b) clearly stipulate so:-

“141. Repeal and Savings

On the day on which the Delhi Cooperative Societies Act, 2003 comes into force, the Delhi Cooperative Societies Act, 1972 (35 of 1972) in force in the National Capital Territory of Delhi shall stand repealed.

PROVIDED that the repeal shall not affect -

- (a) XXX XXX*
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or”*

4. His membership into the Society was in terms of provision of DCS Act, 1972 and hence action taken by the Registrar under the new Act is *void-ab-initio* and liable to be set aside.
5. The respondents argue that on 03.03.1996 when the petitioner was enrolled, there was no vacancy of a member in the Society and that he had been enrolled in a fraudulent manner. Share certificate No.24751 was issued to him even though he did not pay any admission fee/share money (which was reflected in the Audit Report of Society in the year 1995-96). Also, the possession of Flat No. 58 was handed over to him on 22.04.1996 without the approval of the Competent Authority. The Society in connivance with its then Secretary, N.K. Arora, also issued No Objection Certificate to him to

facilitate a sanction of loan from his employer BPCL despite the fact that the entire property of the Society was mortgaged to DCHFC which had given a loan for construction of the housing project. No Objection Certificate from the DCHFC was never secured. The rules were further blatantly violated and a mandatory declaration—to the effect that neither he nor any of his dependents owned any property in Delhi, (which was a condition *sine qua non* before the induction of any member in the Society) was not taken from the petitioner. It is also submitted that the Society did not have any right or authority to allot any plot or land to anyone since it was allotted to it on lease hold basis and it had no right to sell any part of it to anyone. Despite such restriction, in violation of the terms of lease deed, the Society fraudulently allotted a plot admeasuring about 300-400 square feet to the petitioner. It is further contended that any proceeding initiated after the passing of the new DCS Act of 2003 is to be dealt with in terms of the provisions as per the provisions of the said Act. It is not disputed that the validity of membership had to be dealt in accordance with the old law. It is also submitted that the enrolment of the petitioner into the Society as a member was in violation of provisions of Delhi Cooperative Societies Act,

1972 and, therefore it is not protected under Section 141 of Delhi Cooperative Societies Act, 2003.

6. It is further argued by the respondents that the petitioner has with the intention to mislead the Court, made false submissions on affidavits. The contention of the petitioner that the expulsion of S.G. Vaswani by Financial Commissioner by its order dated 19.08.1996 was set aside on the condition of payment of dues within 35 days and that since he (S.G. Vaswani) failed to deposit the dues, the expulsion order of RCS dated 27.03.1996 stood restored are false and were made to mislead the Court. The petitioner has played fraud on the Court. Since petitioner has made false averments and has submitted false affidavit before this Court, appropriate action has to be taken against him. It is also urged that the petitioner had urged the same plea before FC. The FC clearly held in the order dated 23.12.2014 that the plea was false. It is urged that despite these findings of the FC, the petitioner has again taken the same plea before this Court, knowingly and intentionally furnished false affidavits to that effect. It is submitted that the petitioner has thus committed Contempt of Court and is liable to be punished for it.

7. It is an admitted fact that the society was established in the year 1971 and was allotted land in the year 1977. The sanctioned plan of the Society

was approved by DDA in the year 1979 for construction of 58 flats for its 58 members. On 07.12.1980, allotment of the flats was completed through draw of lots. That was before the construction of flats. Flat No.13-A/SU-1 Ground floor which was so numbered initially and was subsequently numbered as Flat No.58 was allotted to S.G. Vaswani (the applicant member). Shri S.G. Vaswani was expelled by the Society in the Society's General Body Meeting (GBM) held on 11.12.1994. The Society sought the approval of the Registrar; that remained pending. During the pendency of the said expulsion S.G. Vaswani expired on 26.04.1995. His expulsion was confirmed on 27.03.1996, i.e., after his demise, by RCS. The said expulsion order of S.G. Vaswani was challenged by his wife Smt. Cheti Vaswani (a legal heir) and the expulsion order dated 27.03.1996 was set aside by FC by order dated 19.08.1996. That said order was not challenged by the Society and thus stood confirmed and became final. The result was that the expulsion by Society of S.G. Vaswani by its GBM held on 11.02.1994 was not approved and S.G. Vaswani continued as member of the society. It is also an undisputed fact that in the draw of lots held on 07.12.1980, he was allotted flat No.58.

8. The present petitioner was enrolled on 03.03.1996 during pendency of

expulsion approval proceedings before RCS. One Shri Lal S. Vaswani, who was allotted flat No.57 in the Society and who was also expelled by the Society, (but whose expulsion was not approved by the authorities) filed a complaint under Section 61/62 of DCS Act, 1972 before the Registrar alleging about the illegal enrolment of allotment of House No. 58 and 57 to the petitioner and Shri. Virender Yadav respectively. The Registrar then ordered an inspection under Section 61(1) of DCS Act, 2003 and a report was submitted. On the basis of the inspection report, the Registrar ordered an enquiry into the matter and a detailed enquiry report was submitted by the Enquiry Officer on 19.03.2010. In the Report, the Enquiry Officer found that allotment of flat No. 58 to Shri. H.K. Madhia (the petitioner) was in violation of the society's rules and that the plot of land measuring 300-400 square feet too was illegally allotted to the petitioner by manipulating the Minutes Book of MC meeting. The findings also said that the vacancies did not exist at the time of enrolment and that the admission fee/share money was not deposited nor was the mandatory declaration obtained; even when the vacancies arose later, they were not publicized, to invite applications and no draw of lots was held.

9. The RCS considered these reports and by his order dated 17.02.2012

concluded that

“in view of the facts and circumstances narrated above and in view of the three judgments filed by the complainant, I am of the considered opinion that Shri H.K. Madhia was enrolled as a member of New Subhash Co-op, Group Housing Society Limited on 03.03.1996 when there was no vacancy in the society as the expulsion proceedings in respect of expulsion of late Sh. S.G. Vaswani were pending in this office which were confirmed by this office only on 27.03.1996. These were finally set aside by the Court of Financial Commissioner on 19.08.1996 and no appeal was preferred against this order by the society and, therefore, the order has attained finality and he is to be treated as a valid member of the society since 19.08.96. Therefore, the enrolment of Sh. H.K. Madhia without observing the mandatory formalities and provisions of rules 24 and 30 of the then DCS Act and Rules is void ab initio. Moreover the mandatory declaration that Sh. H.K. Madhia, his spouse and his dependent children did not possess any flat/plot in NCT of Delhi was not submitted/obtained at the time of enrolment of Sh. H.K. Madhia. Payment of Rs.3,00,000/- was also made by him before his enrolment on 03.03.96 and the balance of Rs.5,50,000/- paid on 26.03.96 also confirmed that at the time of his enrolment for membership only a part payment of money was made which shows undue haste on the part of the then management. Consequently, he acquired flat No.58 in the Housing Complex of the Society without the approval of competent authority and also entered into illegal purchase and acquisition of land measuring 300-400 sq. feet in a fraudulent manner in connivance with the then President/Secretary of the Society which is also against the cooperative rules.”

10. The said order was carried to FC by petitioner. Besides urging the pleas taken before the RCS, other pleas too were raised by him.

Furthermore, he had also challenged the power of the Registrar under Section 41 of the Delhi Cooperative Societies Act, 2003 read with Rule 19 and 25 of Delhi Cooperative Societies Rules, 2007 on the ground that they were inapplicable since he was enrolled as a member under old rules, and that the amended Act (Delhi Cooperative Societies Act, 2003) and Rules (Delhi Cooperative Societies Rules, 2007) was inapplicable and the proceedings under amended Act and Rules were *void ab initio*.

11. The FC, while dealing with this contention of the petitioner, has held as under:-

“The petitioner either through his written or oral submissions has not been able to challenge these findings in any substantial manner. One of the main contention of the petitioner is that RCS had no power u/s 41 of the DCS Act, 2003 and Rule 19 and 25 of the DCS Rules, 2007 to cease his membership. Further, that RCS has wrongly passed order u/s 41 of the DCS Act, 2003 read with Rule 19 and 25 of the DCS Rules, 2007 as these were not applicable when the petitioner was enrolled as a member of the society in the year 1996. On this aspect, it is a matter of record that the inspection was carried out by Sh. S.K. Chug u/s 71 of the DCS Act, 2003 and inquiry by Sh. P.C. Jain u/s 62(2) of the DCS Act, 2003 was ordered on 15/10/2009. Since both the inspection and subsequent inquiry was conducted under the provisions of the new Act, the subsequent action by the RCS was rightly taken under the provisions of the new Act and Rules. Further it is an established fact that there was no vacancy at the time of admission of the petitioner as a member. Therefore, his membership was void ab-initio. Since the membership was void ab-initio on the ground

mentioned above, it is immaterial whether the action was taken under the provisions of old or new Act.”

12. Learned counsel for the petitioner argued this aspect before this Court relies on Section 141 of the DCS Act, 2003 to say that all acts done under the repealed DCS Act, 1972 and DCS Rules, 1973 are protected. It is argued that since he had obtained membership under the DCS Act, 1972 and DCS Rules, 1973, his right cannot be challenged under the new Act. There can be no dispute with the proposition propounded that the protection of Section 141 is available. However, it extends to only those acts validly done under the provisions of the old Act and the Rules. The petitioner claims to have become a valid member of the Society in terms of the provisions of old Act and Rules. For the first time before this Court, the petitioner argues that his membership was a fresh one and was not against any vacancy. In other words, he states that though the society consisted of 58 members, it could have added a fresh member i.e. 59th member.

13. DCS Act, 1972 defines the member as under:

“2(k) “member” means a person joining in the application for the registration of a cooperative society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws, and includes a nominal and an association member and the Central Government when it subscribes to the share capital of a society.”

The Act recognizes two kinds a member, one who joins in the application for the registration of the cooperative society and the other admitted to membership after such registration in accordance with the Act, Rules and Bye-laws. Admittedly, the petitioner was not an original member of the Society, i.e., not an applicant for the registration of the Society. This Society consisted of 58 members and all members were allotted flats by draw of lots. He, therefore, could have acquired membership only if he were admitted in terms of the rules, byelaws and the Act. The petitioner has failed to show any provision of the Act, Rules or byelaws, which empowers a Group Housing Society to add any new member to its fold in the absence of any vacancy. A Group Housing Society is an association of individuals aiming to secure a residential plot or unit for which purpose they incorporate it. Such an association cannot increase its membership without sanction of its bye-laws and permission of the authorities who have to allot land to it. In this case, the society consisted of 58 members and all 58 flats were allotted to them. There was no 59th flat therefore, no new member could have been inducted. Also, the fact that he was given flat No. 58, which was initially allotted to S.G. Vaswani, belies his contention that he was added as a new member.

14. The scheme of the Act furthermore shows that a person can be admitted into a Society as the member against an existing vacancy. A vacancy of a member in the Society can be said to have arisen when a member is either expelled, resigns or ceases to be member for other reasons. The membership of the petitioner, therefore, could have been given only against a vacancy. It has all through however been his claim that he was inducted as member against the vacancy of Shri. S.G. Vaswani who was earlier expelled on 11.02.1994.

15. The petitioner was enrolled on 03.03.1996 and the expulsion of S.G. Vaswani was confirmed by Registrar only on 27.03.1996 (which was subsequently set aside by order of FC on 19.08.1996). A vacancy can be said to have arisen only when the expulsion of a member was in conformity with the Act, Rules and the Bye-laws of the Society.

16. The Rule 36 of DCS Rules, 1973 lays down the procedure of expulsion of a member and clearly postulates that expulsion of one's membership is only valid once it is approved by the Registrar. Here, learned counsel relies on Rule 99 of DCS Rule, 2007 and urges that since Society had referred the matter of expulsion of S.G. Vaswani to Registrar for his approval on 20.12.1994 and the Registrar had failed to grant approval within

six months, the approval can be deemed to have been granted by the Registrar and therefore, his enrolment dated 03.03.1996 was a valid enrolment. The petitioner cannot rely on Rule 99 of DCS Rules, 2007 as it was not in force in 1996 when the matter of expulsion of S.G. Vaswani was before the Registrar for consideration; he had to consider it in the light of the Act and Rules applicable at that time.

17. Rule 36 (3) of DCS Rules, 1973 reads as under:-

“36(3) When a resolution passed in accordance with sub-rule (1) or (2) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under sub-rule (1) or (2) give his approval and communicate the same to the Society and the member concerned within a period of 6 months. The resolution shall be effective from the date of approval.”

This rule does not contain any deeming provision. The Registrar was under obligation to make an enquiry and give his approval which was to be communicated within six months and the resolution of expulsion can be said to have become effective only from the date of approval. The language clearly shows that the resolution of expulsion does not become operative without approval of the Registrar. There is no deeming provision under Rule 36 of DCS Rules, 1973 unlike Rule 99 of DCS Rules, 2007 where if the

Registrar fails to convey approval within 180 days, it is deemed to have been granted. In this case, the approval was given on 27.03.1996. The petitioner was enrolled as a member on 03.03.1996. Indisputably, there was no vacancy of a member in the society on 03.03.1996. Even otherwise there were other factors that rendered him ineligible to a membership of a Group Housing Society. The Enquiry Report and the order of Registrar also reveal that the petitioner did not fulfill the eligibility criteria since he did not furnish the mandatory information that his wife or his dependent children did not own any flat/house within Delhi at the time of enrolment. Subsequently, however on 15.09.1997, he furnished to the society an affidavit wherein declared (in para 5) *“that neither I nor my wife and dependent children residing with me own in full or in part or lease hold or free hold basis any residential plot of land or a house or have been allotted or hire purchase/cash down basis, a residential flat in Delhi.”* A copy of the said affidavit was placed on record by the petitioner along with the writ petition as Annexure P-4. The petitioner has not disputed, in the writ petition that at that time his wife owned an LIG Flat in Paschim Vihar. Thus, not only that he made a false declaration in his affidavit on 15.09.1997, he was also not eligible to become the member of Society, since admittedly his wife

owned an LIG flat in Paschim Vihar.

18. The petitioner had urged that the FC while deciding the while deciding the challenge to the expulsion order of Mr. S.G. Vaswani in a separate revision petition, by his order dated 19.08.1996 had directed the said Shri Vaswani's legal heirs to clear his entire dues within a period of 35 days and in case of default directed the revival of the expulsion order. It is contended that since Shri Vaswani's legal heirs failed to comply with the directions, the order of his expulsion stood restored, resulting in a vacancy. This was to justify his membership with the Society.

19. The respondent urged that the petitioner's contentions are false and he made attempts to mislead the Court. It is contended that the petitioner was aware that no conditional order, while setting aside the expulsion order of Mr S.G. Vaswani was in fact made by the Financial Commissioner. It is further urged that the same plea was taken by the petitioner before the FC in his Revision Petition. The FC in the impugned order dealt with it and clearly held that the order on which petitioner relied was actually passed in another revision petition, of one R.V. Vaswani. Nevertheless, he again took the same plea before that Court. The relevant para 10 of the order of Financial Commissioner is hereby reproduced as under:-

“10. Petitioner has further stated that Ld. Financial Commissioner vide order dated 15/08/1996 directed the legal heirs of the deceased member Sh. S.G. Vaswani to clear the entire dues in a period of 35 days failing which their expulsion shall stand restored. It has been further stated that since there is no proof on record whether legal heirs of Sh. S.G. Vaswani had cleared the dues in 35 days or not, therefore, the expulsion order as approved by the Registrar stand restored. I have gone through the order dated 19/08/1996 passed in Case No. 133/93-CA titled as Smt. R.V. Vaswani Vs. New Subhash CGHS Ltd. & Ors. and it has been observed that the order was passed in a totally different case filed by Smt. R.V. Vaswani through her attorney Shri R. V. Vaswani, 61, Greylands, Railway Officers Flats, Flat No.1, First Floor, New Marine Lines, Mumbai. It is pertinent to note that RCS vide order dated 27/03/1996 had approved the expulsion of following two members:

*(i) Sh. S.G. Vaswani, D-6, Hospital Campus, Udaipur;
and*

(ii) Ms. R.V. Vaswani, 61, Greylands, Railway Officers Flats, Flat No.1, First Floor, New Marine Lines, Mumbai.

Both of them filed separate revision petitions before the Financial Commissioner. In the case of Sh. S.G. Vaswani in Revision Petition No. 140/96-CA, RCS order dated 27/03/1996 was set aside on the ground that impugned order, being against a dead person, is perverse, non-est and non sustainable. However, in a revision petition filed by Smt. R.V. Vaswani in Revision Petition No. 133/96-CA, RCS order was set aside by the Financial Commissioner vide order dated 19/08/1996 with the direction to Ms. R. V. Vaswani to clear the entire dues within a period of 35 days failing which the expulsion order shall stand restored. It is thus clear that this order

was passed in a case relating to Ms. R.V. Vaswani and not in the case of Sh. S.G. Vaswani.”

20. From the above order, it is clear that no condition of clearance of any dues was imposed upon Mr. S.G. Vaswani’s legal heirs while setting aside his expulsion order (dated 19.08.1996). In spite of this, the petitioner has reiterated the factually false plea before this Court. Also, although he urged this plea in the writ petition, despite the respondents clarifying the correct position in their counter-affidavits, he again reiterated those facts in his rejoinders. In support of the writ petition and the rejoinder, the petitioner has also filed his affidavits. The petitioner in his writ petition, in para (L) has averred that expulsion of Mr. S.G. Vaswani was set aside on condition to clear the entire dues, which is reproduced as under:

“It is an admitted fact that Shri. S.G. Vaswani was a member of the Respondent No.2 Society and he was expelled by the General Body of the Society, being a defaulter and his expulsion was approved by the Registrar. As per the record, no stay was granted by the Financial Commissioner and finally the Ld. Financial Commissioner, Shri. Madan Jha held in his order dated 19.08.1996 that the petitioner shall clear the entire dues within a period of 35 days and in case of default or failure, the expulsion order shall stand restored and that the order dated 17.02.2012 passed by him is bad in law and is illegal. As per the information of the petitioner till date no payment was made by Smt. Cheti Vaswani or any legal heir within 35 days of the order passed by the Ld. Financial Commissioner or thereafter. Hence, the

expulsion order as approved by the Registrar stand restored and that the membership of the S.G. Vaswani stand expelled by the Respondent No.2 Society.”

21. This averment is duly supported by the affidavit of the petitioner. In the counter-affidavit, the second respondent had stated as under:-

“It is submitted that RCS vide order dated 27.03.1996 has approved the expulsion of two members, namely, Sh. S.G. Vaswani, the Respondent No.3 herein and Ms. R.V. Vaswani. Both of them filed separate revision petitions before the Ld. Financial Commissioner. In case of Sh. S.G. Vaswani, the Respondent No.3 in Revision Petition No.140/96-CA, RCS order dated 27.03.1996 was set aside on the ground that impugned order, being against a dead person, is perverse, non-est and non-sustainable. However, in the revision petition filed by Ms R.V. Vaswani in Revision Petition No.133/96-CA, RCS order was set aside by the Financial Commissioner vide order dated 19.08.1996 with the direction to Ms R.V. Vaswani to clear the dues within a period of 35 days failing which the expulsion order shall stand restored. It is thus clear that this order was passed in the case relating to Ms. R.V. Vaswani and not in the case of Sh. S.G. Vaswani, the Respondent No. 3.

22. Thus, the second respondent clarified that the petitioner’s contention was false and contrary to record, yet in his rejoinder he stuck to his contention and specifically denied and disputed the facts disclosed by the second respondent in his counter affidavit (as mentioned above) and has contended in Para L of rejoinder as under:

“The contents of para (L) are denied and disputed. Each

and every averment stated therein are denied and disputed and the contents of the corresponding para (L) of the writ petition are reiterated and reaffirmed. It is submitted that inspection report is itself is not valid and is bad in law because investigation can be called for by a compliant made by the member of the society. It is submitted that whether Respondent No.3 is the nominee or the legal representative of Late Shri. S.G. Vaswani has till date not been shown by the society that he is a member of the Respondent No.2 Society. The Respondent no.2 has till date not assigned any membership to Respondent no.3 and is still the member of the Respondent No.2 Society. It is further submitted that the action taken by the RCS is in contravention of section 41 of the DCS Act and further order of RCS of expulsion of Late Shri. S.G. Vaswani was passed beyond 180 days. It is submitted that as per rule 99 of DCS Act, if the Registrar does not pass any order within 180 days, then it is assumed and presumed that the member is expelled from the society. It is denied and disputed that the order to clear the dues was passed against R.V. Vaswani. The order was passed against Late Shri S.G. Vaswani and the dues had not been cleared till date by Respondent No.3. It is submitted that the Petitioner had paid Rs.5,00,000 towards the cost of the flat. The Petitioner had also taken loan towards repair of the house No.58 from Bharat Petroleum of Rs.3,00,000 and the Petitioner had spent a sum of Rs.2,00,000 towards wood work, flooring and temporary shed.”

23. In para G, again he contended as under:-

“G. The contents of para (G) are denied and disputed. Each and every averment stated therein are denied and disputed and the contents of corresponding para (G) of the writ petition are to be reiterated and reaffirmed. It is submitted by the petitioner that as per

the record, no stay was granted by the Financial Commissioner and finally the Ld. Financial Commissioner, Shri. Madan Jha held in his order dated 19.08.1996 that the petitioner shall clear the entire dues within a period of 35 days and in case of default or failure, the expulsion order shall stand restored. As per the information of the Petitioner till date the no payment was made by Smt. Cheti Vaswani or any legal heir within 35 days of the order passed by the Ld. Financial Commissioner or thereafter. It is further denied and disputed that the Respondent No.3 was therefore a member of the society and thus cannot make a complaint under Section 61 and 62 of the DCS Act.”

This rejoinder of petitioner is also supported by his affidavit.

24. The respondent No.3, i.e., Lal S. Vaswani, Legal Representative (LR) of Shri. S.G. Vaswani also clearly stated in his counter-affidavit that the petitioner's plea was false and was made with the intention to mislead the Court. In para (iii) of preliminary objections, he stated that:-

“That further, in ground L, the petitioner has once again with utmost malafide, made an attempt to take this Honourable Court for a ride. Here, the petitioner, while trying to make out a case in his favour has pleaded falsely and has stated that the Financial Commissioner had, while passing the order dated 19.08.1996 directed that the petitioner (reference is being made to Smt. Cheti Vaswani i.e. the wife of the original allottee who had preferred a petition before the Financial Commissioner challenging the order passed by the Registrar Cooperative Societies dated 27.03.1996) shall clear the entire dues within a period of 35 days and in case of default or failure, the expulsion order shall stand restored. The petitioner herein while adverting to the said order passed by the Learned Financial

Commissioner has, with a malafide intent, referred to an order which applied to one R.V. Vaswani and not Shri S.G. Vaswani. This aspect has already been dealt with by the Learned Financial Commissioner vide the impugned order. However, notwithstanding the said adjudication, the petitioner has once again mustered the courage to mislead this Honourable court. Even before the Financial Commissioner, the petitioner had twisted this fact. The petitioner herein, while contesting his revision petition before the Learned Financial Commissioner had referred to the above named R.V. Vaswani as the wife of Late Shri. S.G. Vaswani and had attributed the order which applied to Smt. R.V. Vaswani as one applying to the original allottee.”

It is also clear that despite the second and third respondents bringing to the notice of the petitioner repeatedly that the order of setting aside the expulsion of late Sh. S.G. Vaswani was unconditional and the order on which the petitioner was relying, was actually passed in the case of Smt. R.V. Vaswani, he repeated his false pleas. He had reiterated these facts in his rejoinder to Respondent No.3. The relevant portion of Para L is reproduced:-

“L. The contents of para (L) are denied and disputed. Each and every averment stated therein are denied and disputed and the contents of the corresponding para (L) of the writ petition are to be reiterated and reaffirmed.”

25. Para 4.2 of his rejoinder to the third respondent’s counter-affidavit reproduced as under also shows his stand that the order of setting aside the

expulsion of S.G. Vaswani was conditional:-

“4.2 The contents of para (4.2) are denied and disputed. Each and every averment stated therein are denied and disputed and the contents of the corresponding para of the Writ petition are reiterated and reaffirmed. It is denied and disputed that the society had leveled false allegations against Late Shri S.G. Vaswani and the demand letter made by the society dated 19.12.1995 was not made with an intent to harass Late Shri S.G. Vaswani. It is submitted that Late S.G. Vaswani was expelled as a member by the Respondent No.2 Society on 11.12.1994 vide resolution passed by the GBM on the ground that Late S.G. Vaswani had committed financial irregularities in the Respondent no. 2 Society, stealing of the Society records and default in payment towards the flat, etc. Accordingly, the Respondent No.2 Society referred the proposal of confirmation of expulsion of Late S.G. Vaswani to the Ld. RCS vide its letter dated 20.12.1994. The Respondent no. 2 had sent a reminder letter dated 31.10.1995 to the Ld. RCS who confirmed the expulsion of Late S.G. Vaswani. The Respondent no. 2 made a demand vide its letter dated 19.12.1995 from Late S.G. Vaswani. The Ld. RCS issued a notice dated 02.02.1996 to Late S.G. Vaswani. The contents of para (4.2) of the writ petition to be reiterated and reaffirmed. Further, it is denied and disputed that Late Shri S.G. Vaswani was not in arrears to the society. This can be corroborated by the order dated 19.08.1996 passed by the Financial Commissioner that the petitioner (reference made to Late Shri S.G. Vaswani) shall clear the entire dues within a period of 35 days and in case of default or failure, the expulsion order shall stand restored. As per the information of the petitioner till date no payment was made by Smt. Cheti Vaswani or any legal heir within 35 days of the order passed by the Ld. Financial Commissioner or thereafter. Thus, it is made clear that Late S.G. Vaswani was in arrears to the society.”

26. This averment in rejoinder too is supported by his affidavit. It is noteworthy that the petitioner has urged this plea despite the fact that the Financial Commissioner, in his impugned order held that the order of clearance of entire dues within a period of 35 days was in fact passed in a petition of R.V. Vaswani which was registered as *Case No. 133/93-CA* and not in the revision petition of S.G. Vaswani numbered as *Revision Petition No.140/96-CA*. It will not be out of place to mention that the petitioner has himself in this writ petition placed on record the order passed in *Revision Petition No.140/96-CA* which relates to the revisionist Mr.S.G. Vaswani and this order does not contain any such stipulation of clearance of dues within 35 days. These facts clearly show that the petitioner was well aware of the fact that the condition regarding clearance of any dues had not been passed; yet he took this factually false plea in this writ petition. These facts were sought to be urged in support of his contention that a vacancy existed to which he was admitted as a member. Not only was that plea unfounded, but *prima facie* false. This Court, therefore, is of the opinion that it is expedient in the interest of justice that an enquiry should be made into the offences referred in Section 195 (1) (b) of Cr.P.C., since the petitioner has *prima facie* appears to have committed the offences under Section 193 and Section

196 of Indian Penal Code (IPC). We refer the matter under Section 340 of Cr.P.C. to the Registrar General of this Court to file a complaint before the concerned Court, which shall thereafter proceed with the matter in accordance with law.

27. Besides, we are also of the opinion, that the petitioner has, by his deliberate act (i.e. making false pleas to his own knowledge) with the intent to obstruct the administration of justice and to subvert the dispensation of justice and *prima facie* interfered with the due course of judicial proceedings by making *prima facie*, false pleas, induce the Court to pass orders. He, thus, is liable to be proceeded with for contempt of court too. For this purpose, the matter shall be referred to the appropriate Bench hearing criminal contempt actions, to be proceeded in accordance with law.

28. As regards the allotment of plot admeasuring 300-400 square feet, there is no dispute about the fact that DDA is the lessor of the land and the Society has no right to transfer any part of the common area in terms of drawings and approved plans. The land was not a freehold property of the society. We, therefore, find no fault in the concurrent findings of the Registrar dated 17.02.2012 and FC dated 23.12.2014.

29. The writ petition has no merit and it is hereby dismissed, subject to the above directions, to be complied with by the Registrar General.

**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

**APRIL 08, 2016
BG**

