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

+ W.P.(C) 5377/2014, CM No. 10705/2014, CM No. 17209/2014 & CM No. 20072/2015

ARCHIT SHUKLA & ORS

..... Petitioners

Through: Sh. A.K. Singhla, Sr. Advocate along
with Mr. Sajan Arora, Advocate.

versus

THE REGISTRAR COOPERATIVE SOCIETIES, GOVT. OF NCT
OF DELHI

..... Respondent

Through: Mr. Anuj Aggarwal, ASC for GNCTD
along with Ms. Niti Jain, Advocate for
RCS.

Ms. Iti Sharam, Advocate along with
Mr. Puneet Sharma, Advocate for
Society/Administrator.

And

+ W.P.(C) 1797/2015 & CM No. 3200/2015

SHRI KHIYA RAM KHILWANI & ANR

..... Petitioners

Through: Sh. A.K. Singhla, Sr. Advocate along
with Mr. Abhimanyu, Advocate.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ANR

..... Respondents

Through: Mr. Anuj Aggarwal, ASC for GNCTD
along with Ms. Niti Jain, Advocate for
RCS.

Ms. Iti Sharam, Advocate along with
Mr. Puneet Sharma, Advocate for
Society/Administrator.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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27.07.2017

1. The present petitions have been filed by the petitioners praying *inter alia* for quashing of the third para of the impugned notice dated 17.07.2014 issued by the respondent no. 1/RCS, containing directions to the Returning Officer to restrict the membership of the respondent no. 2/Society to the original 600 members and for seeking direction to conduct the elections on the basis of a list of 720 members including the petitioners herein, which list was duly approved by the respondent no. 1/RCS and on the basis whereof, previous elections of the respondent no. 2/ Society were held in the year 2011.
2. The parties to the present petitions have a long and chequered history of litigation. The respondent no. 2/Society was registered with 600 members, had raised the construction on the allotted plot and had allotted 552 flats to its members under a self-draw conducted by it during the period between 1986 to 1999. In view of the availability of FAR and two vacant plots measuring about one acre each, the respondent no. 2/ Society enrolled 120 additional members in the year 1993-94.
3. The claim of the petitioners is that the list of the additional members was duly approved by the respondent no. 1/RCS and the list of these 120 additional members was forwarded by it to the DDA vide letter dated 22.02.1994, for obtaining clearance for construction of additional flats. Their contention is that the Society, in the year 1994, approved the total membership of 720 members and vide public notice dated 06.04.2005, the total membership of 720 members of the Society was duly verified by Sh. S.M. Aggarwal, Retired Additional District Judge, Delhi, who was appointed as an Election Officer vide order dated 19.01.2005 passed in W.P. (C) No. 3326-32/2004 titled **“Ram Chand Balani & Ors vs. RCS & Ors.”**. The Election officer had allowed 663 members out of the total 720 members to

participate in the elections. 57 members were excluded on the ground that they had not completed the mandatory one year period as per Rule 59 (k) of DCS Rules.

4. The decision taken by Sh. S.M. Aggarwal, Retired ADJ, Delhi was challenged by some members/residents of the respondent no. 2/ Society in W.P.(C) No. 6859-61/2005 and the said challenge was dismissed by the Court vide order dated 20.04.2005.

5. Eventually, out of the 120 additionally enrolled members, 57 vacancies arose due to cancellation/resignation of the membership against which 55 members including the petitioners herein were enrolled as members of the respondent no. 2/ Society on 02.11.2008 and they claim to have paid the membership fee and the equalization charges. Another 34 GPA holders were enrolled as members under Section 91 of DCS Act.

6. For conducting the elections in the year 2011, Sh. M.P. Singh was appointed as an Administrator. He also published the list of 720 *bonafide* members including the petitioners and overruled the objections raised by one member, Sh. Ram Chand Balani.

7. The Administrator, thereafter, constituted a High Level Committee and the Committee endorsed the validity of the list of 720 members including the petitioners. However, the said decision was challenged in W.P.(C) No. 5082/2011 titled **“Ram Chand Balani & Ors vs. RCS & Ors”** and the matter was remanded for passing appropriate orders on the representations received.

8. Again, vide order dated 20.07.2011, the Administrator uploaded the list of 720 *bonafide* members including the petitioners. Finally, the elections of the respondent no. 2/ Society were held on 24.07.2011 on the basis of said list of 717 members excluding 3 vacancies. The petitioners herein also cast

their votes in the said elections.

9. Despite this, on 30.10.2012, the respondent no. 1/RCS appointed Sh. Dayal Singh, Asstt. Labour Commissioner (Retd.) as an Inspecting Officer under Section 61 of DCS Act 2003 to look into various issues including the validity of 55 members enrolled during the year 2008-09. He submitted his report dated 27.12.2013 verifying the list of 720 members which was accepted by the respondent no. 1/ RCS on 06.01.2014. Sh. Ram Chand Balani and seven others filed complaints with the respondent no. 1/ RCS claiming irregularities in the list of members. After considering the said complaints, the respondent no. 1/RCS issued a letter dated 23.06.2014 declining to review the list of 720 members of the respondent no. 2/ Society and advising the complainants to avail of their remedies under Section 70 of DCS Act.

10. On these contentions, it is submitted before us that the impugned order whereby the electoral roll is restricted to the original 600 members, is bad in law.

11. During the course of arguments, it transpired that, while dealing with the approval of 120 additional members of the Society, the respondent no. 1/ RCS wrote to the respondent no. 2/ Society vide its letter dated 22.02.1994 stating, inter alia, that the additional enrolment of 120 members would be subject to no objections from the DDA for the construction of additional flats in respect of these members.

12. The DDA vide letter dated 05.08.1997, rejected the request for issuance of NOC for raising the construction of additional 120 dwelling units for the additional 120 members stating that the same was not permissible under the provision of the MPD-2001. As a result, the request for constructing 120 units was turned down.

13. The respondent no. 2/ Society again requested the DDA for increase of the membership of the Society from 600 to 780 as per new FAR, in its letter dated 20.09.1999. The DDA wrote back to the respondent no. 2/ Society vide letter dated 29.03.2000, informing it that the request of increase of membership of the Society from 600 to 780 would be subject to deposit of composition fee of Rs. 1,59,65,415/- upto 31.12.1994 and ground rent upto 14.07.2000 at Rs. 7,20,959/- and interest on ground rent upto 14.01.2000 of Rs. 4,94,032.21/- and also called upon the Society to get the unauthorised draw regularised, as it was conducted by the Society itself.

14. None of the parties have been able to state before us as to whether the Society has laid a challenge to the letter dated 29.03.2000 issued by DDA or the conditions therein have been complied with. It is not out of place to mention that the initial allotment done by the respondent no. 2/ Society in respect of its original members was itself improper and the DDA had asked the Society to get it regularised and the same has not been regularised by the Society till date. Also, in view of the letter dated 29.03.2000 and the earlier letter dated 05.08.1997 issued by the DDA, the enrolment of additional 120 members has yet to be confirmed.

15. Mr. Mahindro, learned counsel for the petitioner in W.P.(C) No. 1674/2015 intervenes and hands over a copy of the order dated 08.02.2013 passed by the North Delhi Municipal Corporation, where under the building plans submitted by the respondent no. 2/ Society, initially for construction of 600 flats and subsequently, for 120 flats has been rejected on several grounds. A copy of the aforesaid order is handed over by the learned counsel and is taken on record.

16. At this stage, learned counsel for the petitioners states on instructions that they may be permitted to withdraw the present petition while reserving the rights of the petitioner to take legal recourse against the RCS/DDA/ Society, as per law.

17. Leave as prayed for is granted. The petitions are disposed of along with the pending applications.

HIMA KOHLI,

DEEPA SHARMA,

JULY 27, 2017/ss