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

+ **W.P.(C) 4202/2014**

Date of decision: 31st January, 2017

RAKESH GROVER AND ORS

..... Petitioner

Through Mr. Venkita Subromoniam T.R, Mr. Rahat Bansal and Mr. Arjun Handa, Advocates.

Versus

REGISTRAR OF COOPERATIVE SOCIETIES & ORS. Respondents

Through Mr. Naushad Ahmed Khan, ASC, GNCTD with Mr. Manzar Anis, Advocate.

Ms. Archana Chibber, Advocate for Mr. Shashank Ahuja, Advocate for R-2.

Mr. Premtosh Mishra and Ms. Anvesha Dwivedi, Advocates for R-3 to 17.

W.P.(C) 8553/2014

UMESH KUMAR JAIN & ORS.

..... Petitioner

Through Mr. Premtosh Mishra and Mr. Anvesha Dwivedi, Advocates.

versus

REGISTRAR CO-OPERATIVE SOCIETIES & ORS Respondent

Through Ms. Niti Jain, Advocate for Mr. Anuj Aggarwal, ASC, GNCTD.

Ms. Archana Chibber, Advocate for Mr. Shashank Ahuja, Advocate for R-2.

Mr. Venkita Subromoniam T.R, Mr. Rahat Bansal and Mr. Arjun Handa, Advocates for R-3 to 12.

Mr. Dinesh Chander Yadav and Mr. A.S. Rishi, Advocate for respondent No.24.

Mr. Rahul Kumar Singh, Advocate for R-6.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

This common order would dispose of the aforesaid two writ petitions.

2. Writ Petition (Civil) No. 8553/2014, filed by Umesh Kumar Jain and 12 others impugns order dated 10th October, 2014 passed by the Financial Commissioner, whereby Revision Petition Nos.119/2012 and 151/2012 were dismissed.

3. Writ Petition (Civil) No. 4202/2014 filed by Rakesh Grover and 5 others, on the contrary seeks direction to the respondent-Registrar, Cooperative Societies to comply and implement the order dated 18th October, 2010 passed by the Supreme Court and that they should be given possession of the flat.

4. For the sake of convenience, we would refer to the petitioners in Writ Petition (Civil) No. 8553/2014 as Umesh Kumar Jain Group and the petitioners in Writ Petition (Civil) No.4202/2014 as Rakesh Grover Group. The Registrar, Cooperative Societies will be referred as the 'RCS' and the Modern Cooperative Group Housing Society Ltd. has been referred to as the 'Cooperative Society'. We would also clarify that the expression 'Rakesh Grover Group' would mean 14 members of the Cooperative Society, who were earlier expelled, but whose expulsion was set aside and treated as valid by the RCS.

5. In order to curtail prolixity, we would only refer to the relevant facts. Rakesh Grover Group, i.e. the expelled members, had approached the Supreme Court in Civil Appeal No. 9439/2003 asserting that they had paid subscription and all demands, yet the Cooperative Society vide resolution dated 27th April, 1987 had expelled 27 members. The RCS had never approved their expulsion. The Cooperative Society, on the other hand, had claimed that they had sought approval for expulsion of 27 members from the RCS on 20th February, 1988 and in the meanwhile, they had enrolled new members. The RCS had failed, when he kept quiet and did not pass any order on the application seeking approval of expulsion moved by the Cooperative Society. Subsequently, vide order dated 4th June, 1996, the RCS rejected and refused to grant approval for termination of membership. Consequently, the Cooperative Society had approached the Financial Commissioner in revision, which was dismissed vide order dated 30th July, 1996. The Cooperative Society filed Writ Petition (Civil) No.3325/1996 before this High Court in which an order of remand was passed for the RCS to reconsider. The RCS rejected the approval sought for expulsion of the 14 members who had appeared and had contested their expulsion vide order dated 26th August, 1997. Expulsion of others was accepted. The revision petition filed by the Cooperative Society before the Financial Commissioner, was dismissed vide order dated 3rd November, 1997. The Cooperative Society, however, succeeded in Writ Petition (Civil) No. 2/1998, which was allowed vide order dated 4th September, 2002. The decision holds that the RCS had digressed and diverted from the actual enquiry and overlooked the factum that the application seeking approval of expulsion had remained pending for about 8 years. Even if the Cooperative

Society had not furnished relevant and necessary details, the RCS was not prevented from taking requisite action in accordance with law. Given these facts, doctrine of deemed or inferred approval of expulsion of members by the RCS was applicable. The Division Bench had observed:-

“17. Defaulting members cannot be allowed to enjoy the fruits and claim the allotment of those flats which have been constructed with the finance of the members enrolled in their slots. No society can be faulted or put in the dock for the delinquent act or remissness of the authority which in this case is the Registrar. It is the defaulting member who has to bear the brunt and not those who have been rule abiding and regular in making payments and who have accelerated the process of constructions of flats which is the ultimate goal of a Housing Society. Any lenity or sympathy towards a defaulting member is misplaced.

18. Even on merits the order of the Registrar cannot stand. The expulsion of 14 members was rejected mainly on the ground that the affairs of the Society were mismanaged by Mr. C.D. Garg who was father of the Secretary of the Society Mr. Sanjay Garg and as a consequence there was no development in the Society though turnover of members was large and the new members were waiting for enrolment after recommendation of expulsion.

19. It appears that the Registrar digressed and diverted himself from the actual enquiry i.e. whether the expelled members had committed persistent default or not. He was required to see whether the expelled members were discriminated against with a view to induct new members. The observations of the Registrar are based on surmises and conjectures

and not on the basis of the records produced by the Society nor on the aspect of alleged defaults committed by the members that entailed their expulsions. The Financial Commissioner also fell in error by upholding the same. It is surprising that the Registrar and the Financial Commissioner did not deal with the matter in a proper and desired perspective in spite of matter having been remanded by this Court to the Registrar for fresh consideration.”

6. The aforesaid decision was reversed by the Supreme Court and the expulsion of members was set aside observing that Rule 36 (3) of the Delhi Cooperative Societies Rules, 1973 did not postulate deemed or inferred approval. Unless there was specific approval by the RCS, the resolution passed by the Cooperative Society for expulsion remained inconsequential and unenforceable. Similar view as taken by another Division Bench of this Court in ***B.B. Chibber versus Anand Lok CGHS Limited and Others***, 90 (2001) DLT 652, holding that deeming approval was not legally permissible in terms of Rule 36(3) of the Delhi Cooperative Society Rules, 1973. On the question of delay and laches on the part of the RCS, the Supreme Court observed that this aspect was made subject matter of W.P. (C) No. 3325/1996, and would not affect rights of Rakesh Grover Group. On the question of demand from the expelled members, it was held as under:-

“27. So far as the issue of the expulsion of the members of the Society is concerned, the High Court has not recorded any finding of fact as to when the demands had been made from the members and as to whether there was any progress in the construction work of the Society. We have been taken through the entire judgment of the High Court. We cannot find any single iota which may be termed as a reason for the

judgment and we are at a complete loss and could not find out as what the High Court has decided.”

In other words, the Supreme Court did not agree with the findings recorded by the Division Bench quoted above for allowing Writ Petition (Civil) No.2/1998 filed by the Cooperative Society. Paragraph 30 of the order passed by the Supreme Court dated 18th October, 2010, reads:-

“30. In view of the facts and circumstances of the case and the manner in which the impugned judgment has been passed, appeal deserves to be allowed.”

Thereafter, the Supreme Court held as under:-

“31. Be that as it may, we have been informed by learned counsel for the parties that the Society has been taken over by the Administrator and a large number of flats remained un-allotted. The appellants have filed the information sought by them under the Right to Information Act, 2005 on 23.4.2008 which makes it clear that 15 flats bearing Nos. 14, 23, 217, 324, 325, 327, 418, 421, 426, 513, 516, 619, 623 and 726 category-‘B’ and 737 category-‘A’ remained unallotted. In order to meet the ends of justice it is required that appellants be adjusted against the said un-allotted flats. However, the Society shall put a demand, if any, and the appellants are directed to make the payment with interest in accordance with law.

32. In view of the above, appeal is allowed. Judgment and order of the High Court dated 4.9.2002 in Civil Writ Petition No. 2/98 is hereby set aside and the judgment and order of the statutory authorities dated 26.8.1997 and 3.11.1997 are restored. There shall be no order as to costs.”

A reading of paragraph 31 would show that the Supreme Court had after allowing the appeal and holding that the expulsion of Rakesh Grover Group was contrary to law and they continue as members, had proceeded to record a second or another reason and, therefore, had used the words “be that as it may” in the beginning of paragraph 31. The Supreme Court observed that the management of the Cooperative Society had been taken over by the Administrator and a number of flats were yet to be allotted. The appellants, i.e., Rakesh Grover Group had relied upon information received under the Right to Information Act, 2005 that 15 flats bearing Nos. 14, 23, 217, 324, 325, 327, 418, 421, 426, 513, 516, 619, 623 and 726 in category-‘B’ and Flat No. 737 in category-‘A’ were yet to be allotted. To meet the ends of justice, the Supreme Court had directed that the appellants therein, i.e., Rakesh Grover Group would be adjusted against the said un-allotted flats. The Cooperative Society would make a demand, if any, and the appellants were directed to make the payment with interest in accordance with law. The last paragraph specifically holds that the orders passed by the RCS and the Financial Commissioner that the Rakesh Grover Group continued to remain members of the Cooperative Society had been upheld and would bind.

7. Notwithstanding the aforesaid contest and proceedings, the newly enrolled members had participated in what was called the self draw-of-lots conducted on 20th October, 2002 and were allowed to occupy the aforesaid flats mentioned by the Supreme Court, after making payments to the Cooperative Society. Obviously, the Cooperative Society had felicitated these newly enrolled members. Approval from the RCS and the Delhi

Development Authority were not taken. The occupation and possession was unauthorized and contrary to law.

8. These newly enrolled members then approached the Supreme Court by way of IA Nos. 6-7/2011, which were disposed of vide order dated 3rd March, 2011, recording as under:-

“The applicants are permitted to move the Administrator/Registrar, Cooperative Societies, Delhi to vindicate their grievance and it is for them to substantiate and establish their rights. It is made clear that the applications shall be disposed of after hearing the parties as well as Society.”

9. Umesh Kumar Jain Group thereafter raised the issue before the RCS and thus started the second round of litigation. The submission was that the Rakesh Grover Group had obtained the order dated 18th October, 2010 from the Supreme Court by concealing facts and playing a fraud, for they had failed to state that the flats had been allotted in draw-of-lots held on 20th October, 2002 to the newly enrolled members, who were in physical occupation of the said flats. The RCS after considering all aspects passed the following order on 24th February, 2012:-

“08. Meetings with Administrator were held on a number of occasions to discuss the issue of allotment in the light of the Apex Court orders dated 18.10.2010 and dated 04.03.2011 and as a consequence of those meetings, the Administrator in continuation of his letter dated 31.10.2011 sent another letter dated 11.01.2012 informing that in view of the direction of this office which were sent on 01.04.2011 for complying the orders of Hon'ble Supreme Court dated 18.10.2010, the demand letters were sent to the 14 members who were ordered to be admitted by the RCS vide his order dated 26.08.1997. Thirteen persons have deposited the amount demanded from them, however, one person, namely,

Shri Naurang Ram (Membership No.160) has not deposited the demanded amount. The Administrator was also called in this office, who had apprised the undersigned about the possession of society flats and the matter of occupancy of flat and other related issues were discussed thereafter in the light of subsequent order of Hon'ble Supreme Court on 04.03.2011. In consequence thereof, the Administrator met the persons occupying the 15 flats which were allotted to them in an un-authorized draw, on 01.10.2011 and 10.10.2011. On 20.10.2011 those members have also submitted documents in their possession to the Administrator in support of their claims of being the bonafide members of the society. All these documents have been forwarded by the Administrator to this office apart from forwarding the details of cheques deposited, by the 13 members. These documents were examined and thereafter, as per the direction of the Hon'ble Supreme Court, 15 unauthorized occupants of the flats in the society were called for personal hearing by the undersigned on 14.02.2012. The Administrator of the Society Shri D.K. Mishra, IAS was also called to represent the society. All 15 person or their representatives as also the Administrator were present during the hearing on 14.02.2012. The applicants re-iterated that they were allotted flats and living in the society since 2002. There are 06 persons who are still occupying flats and 09 have sold those after getting possession on 20.10.02.

09. On the basis of the records available in this office, orders passed by the various courts as well as the Apex Court, report of the Administrator and submissions made by the appellants and the unauthorized occupants of the flats in I.A. No.6-7 of 2011, I am of the considered opinion that the self draw held on 20.10.2002 was illegal and this was never organized or regularized by this office. The Hon'ble Supreme Court of India vide its order dated 18.10.2010 upheld the order dated 26.08.1997 of the RCS. The operative part of the order dated, 26.08.1997 of the then

RCS in this regard is given below:-

“in the circumstances the proposed expulsions are rejected against 14 persons. The society is directed to readmit the 14 person whose names are given below:

- | | |
|------------------------|----------------------------|
| 1. Sh. Mithlesh Jain | 2. Sh. Sant LaL Gupta |
| 3. Sh. Naurang Ram | 4. Sh. Virender Kumar Jain |
| 5. Sh. Raghbir Singh | 6. Sh. Om Prakash Gupta |
| 7. Sh. Rakesh Grover | 8. Sh. Vijay Grover |
| 9. Sh. Narender Kumar” | 10. Sh. Ram Saran |
| 11.Sh. Vinod Kumar | 12. Sh. Shyam Lal |
| 13.Sh. Kashmiri Lal | 14. Sh. Shiv Prasad |

10. In view of the aforesaid order of the Hon’ble Supreme Court, I direct the Society to readmit the above 14 persons as members of the Society. They should be issued share certificate by the Administrator of the Society immediately. With respect to the flats being occupied by the applicants, who had filed I.A. No.6-7 of 2011 in Civil Appeal No.5439 of 2003, these persons were admitted as members by the Society in utter violation of the provisions of law since there was no clear vacancies at that moment. Accordingly, their admission as members and consequently allotment of flats to them, cannot be recognized and same is therefore set aside.”

10. The order dealt with and rejects the contentions raised by the newly enrolled members i.e. Umesh Kumar Jain Group. Six newly enrolled members were in occupation of the flats and whereas 9 of them had sold their flats after taking possession on 20th October, 2002 and third persons were in occupation. The RCS held that the self draw-of-lots held on 20th October, 2002 and taking over of possession by the newly enrolled members was contrary to law and illegal. Reference was specifically made to the order of the RCS dated 26th August, 1997, which was upheld by the

Supreme Court vide order dated 18th October, 2010.

11. Umesh Kumar Jain Group thereafter filed a revision petition before the Financial Commissioner, which has been dismissed by the impugned order dated 10th October, 2014. The Financial Commissioner has examined the contentions raised and after elaborate discussion and for cogent reasons has rejected the contention that the newly enrolled members had a better and superior right as they were in possession of the flats and had paid the towards cost of the flats. The Financial Commissioner held that the self draw-of-lots conducted on 20th October, 2002 was not in accordance with law and was never regularized by the RCS. The contention that the Supreme Court would not have passed the order dated 18th October, 2010, if they were told and informed that possession of flats had been given to the newly enrolled members was rejected observing that the contention was hypothetical. The RCS had rightly followed the directions given by the Supreme Court in their order dated 18th October, 2010. The operative portion of the order passed by the Financial Commissioner reads as follows:-

“7. I have considered the petitioners averment on the issue of submission before the Supreme Court of India that the petitioners are already in the possession of the flats. Rule 24 of Delhi Cooperative Societies Rules, 1973 clearly defines the allotment procedure for filling up any vacancy created on the expulsion of the members. RCS in his order dated February 24, 2012 has aptly observed that “I am the considered opinion that the self draw held on October, 20, 2002 was illegal and this was never recognized or regularized by this office”. In view of this, the contention of the petitioners is not tenable. Petitioners’ contention that had the correct position been told to Supreme Court the outcome might have been different is a hypothetical contention. The RCS followed the directions of the Hon’ble

Supreme Court of India and provided full opportunity to the petitioners to vindicate their grievances and after considering all the facts and circumstances order dated February 24, 2012 was passed.

8. Petitioners in their petition referred the decision of the Hon'ble LG on the issue of enrolment of members by Society. However, it is important to emphasize that the present case relates to expulsion of members and allotment of flats without following the procedure as prescribed under the law.

9. Petitioners in their petition also submitted that they have not suffered any disqualification as per section 24 of Delhi Cooperative Societies Act 1972 therefore cancellation of petitioners as member of the society is illegal. This averment is also not tenable because RCS passed the order on the issue of the allotment of the flats to those members whose expulsion was not approved.

10. Petitioners also submitted that since RCS in its order dated August 26, 1997 had directed the society to readmit the expelled members therefore it cannot be equated with their original membership hence cancellation of membership of the petitioners herein has nothing to do with the readmission or allotment of any flats thereof. It is important to emphasis that the expulsion of the respondents (3-12) was never approved/ratified by the RCS, therefore, the respondents (3-12) have every right to retain their original membership.

11. Petitioners have agreed that respondents have obtained the order dated October 18, 2010 by playing fraud upon the Court but they have failed to establish as to how and what kind of fraud was committed by the respondents. Further Hon'ble Supreme Court in its order did not mention the word "vacant flats". Apex Court only referred to the "un-alloted" flats as intimated by RCS in response to RTI

query. Therefore, this averment is also not tenable.

12. Petitioners also submitted that allotment by self draw has been regularized by the RCS vide an undated notification. I considered this averment also but petitioners did not submit any notification issued by the RCS by which scheme of self draw has been regularized. Petitioners also failed to submit the decision of the RCS on the application dated January 11, 2012 for the regularization of the self draw of flats.

13. I also considered the averment of administrator regarding deemed approval wherein it has been observed that although the Rule 36 (3) of the DCS Rules, 1973 states that the six months time to RCS on the decision of the application from society but it does not states anything about deemed approval as interpreted by the Administrator. Hence the proceedings or enrolling new members were void ab-initio. Without any vacancy, no new members could have been enrolled. Moreover, if there is a vacancy, the procedure to fill-up that vacancy is also defined in Rule 24 of Delhi Cooperative Societies Rules, 1973.

14. In view of the above facts and circumstances, I am of the considered view that since the expulsion proceedings in respect of respondents no.3-12 were not approved by the RCS and those vacancies were never created due to these expulsion proceedings, I do not find any infirmity in the order of the RCS. Accordingly, petitions are hereby dismissed.”

12. Some members of the Rakesh Grover Group had filed Contempt Petition No.8/2012 in Civil Appeal No. 9439/2003 before the Supreme Court. This contempt petition was dismissed vide order dated 12th March, 2012, recording as under:-

“On going through our earlier order dated

18.10.2010 and the subsequent order passed by us in I.A. Nos.6-7 in Civil Appeal No.9439 of 2003 dated 04.03.2011 as well as order passed by the Registrar, Cooperative Societies dated 24.02.2012, we are satisfied that no further adjudication is required. Petitioner has not made out a case for contempt as claimed. The contempt petition is dismissed. ”

The Supreme Court was informed that the RCS had passed an order dated 24th February, 2012. This order was challenged before the Financial Commissioner and had been affirmed by him vide order dated 10th October, 2014. In these circumstances, the contempt petition was dismissed.

13. Enrolment of Rakesh Grover Group (14 members) is valid and holds good. They being senior having been enrolled earlier would be entitled to allotment of flats, before allotment was made to those lower in the order of seniority. Umesh Jain Group, who were enrolled subsequently, albeit are in possession of flats would have to give up and vacate the flats. The principle ‘last to come, first to go’ has to be applied. The subsequent members, who were granted membership for the reason that enrolment of Rakesh Grover Group was cancelled by the Cooperative Society, would stand below and cannot be allotted flats, unless flats are first allotted to the Rakesh Grover Group. This was the mandate of the order of the Supreme Court dated 18th October, 2010. Any deviation, would directly or indirectly result in nullifying and reversing the order of the Supreme Court. As per the Delhi Development Authority, the superior lessor, the flats mentioned in paragraph 31 of the order dated 18th October, 2010 have not been allotted to anyone.

14. We would not follow the precept that members who had not made payment towards construction should be disqualified and not be allotted

flats, for the simple reason that in the present case the Cooperative Society had wrongly expelled and cancelled the enrolment of the Rakesh Grover Group. The said expulsion having been set aside by the Supreme Court, necessary consequences must follow. After all, it is the Cooperative Society who did not raise demands against the Rakesh Grover group towards cost of construction. First and foremost, Rakesh Grover Group (14 members) must be allotted their flats, before allotment is made to Umesh Jain Group. In case sufficient flats are not available, then the members who are last in the seniority list will have to surrender and forgo their right to allotment. This is the only just and fair. In any case, the order dated 18th October, 2010 passed by the Supreme Court must be implemented and complied.

15. Umesh Kumar Jain Group did approach the Supreme Court by way of I.A. Nos.6-7/ 2011, but as noticed above, the said applications were disposed of without recalling or reviewing the order dated 18th October, 2010. Permission was granted to Umesh Kumar Jain group to approach the RCS or the Administrator. It is obvious that neither the RCS nor the Administrator could have re-examined the issues and directions/findings of the Supreme Court. This was not the intent behind the order dated 3rd March, 2011. The intent behind the order dated 3rd March, 2011 passed by the Supreme Court was to enable the Umesh Kumar Jain Group to raise the issue before the Administrator and the RCS, who would examine whether any relief or benefit could be granted to them, without disturbing the rights of Rakesh Grover Group, affirmed in the order dated 18th October, 2010. The order of the Supreme Court dated 18th October, 2010 has attained finality and has become binding. It has to be only implemented. The only way it can be implemented is by allotting flats to the Rakesh Grover Group,

otherwise the order dated 18th October, 2010 would become a mere piece of paper and a useless direction.

16. We, therefore, dispose of the writ petitions with the direction to the RCS to draw out a seniority list of members after consultation with the Administrator. The members lower in the seniority will have to surrender and vacate the flats in their occupation in favour of the Rakesh Grover Group (14 members). We are given to understand that the members lowest in the seniority list are in occupation of flats mentioned and recorded by the Supreme Court in paragraph 31 of their order dated 18th October, 2010. This is apparently correct and this is the reason why they have filed W.P. (C) No.8553/2014. They would have to vacate and handover the possession of the flats to Rakesh Grover Group (14 members).

17. The RCS will complete the aforesaid exercise within a period of two months from the date a copy this order is received. With the aforesaid directions, the writ petitions are disposed of. All pending applications are also disposed of. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 31, 2017
NA/VKR