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

\+ W.P.(C) 5942/2013

VEENA MAHAJAN ..... Petitioner

Through: Mr. Jitendra Kumar, Mr. Alok Kumar and Mr. Ranjith Nain, Advocates

versus

THE REGISTRAR, OFFICE OF THE REGISTRAR OF COOPERATIVE SOCIETIES AND ORS ..... Respondents

Through: Mr. Sanjoy Ghose and Ms. Urvi Mohan, Advocates for R-1/RCS.
Mr. Dilip Singh, Advocate for R-2/Society.
Mr. Sunil Sabharwal, Advocate with Mr. Rahul Sabharwal, Advocate for R-3/DCHFL Ltd.

\+ W.P.(C) 8094/2013

MANU CHOPRA AND ANR ..... Petitioners

Through: Mr. Jitendra Kumar, Mr. Alok Kumar and Mr. Ranjith Nain, Advocates

versus

THE REGISTRAR, OFFICE OF THE REGISTRAR OF COOPERATIVE SOCIETIES AND ORS ..... Respondents

Through: Mr. Sanjoy Ghose and Ms. Urvi Mohan, Advocates for R-1/RCS.
Mr. Dilip Singh, Advocate for R-2/Society.
Mr. Sunil Sabharwal, Advocate with Mr. Rahul Sabharwal, Advocate for R-3/DCHFL Ltd.

\+ W.P.(C) 2737/2014

DR. V.M. SURWADE AND ORS ..... Petitioners
Through: Mr. Jitendra Kumar, Mr. Alok Kumar and Mr. Ranjith Nain, Advocates

versus

THE REGISTRAR, OFFICE OF THE REGISTRAR OF COOPERATIVE SOCIETIES AND ORS ..... Respondents
Through: Ms. Neelam Singh, Advocate for R-1/RCS.
Mr. Dilip Singh, Advocate for R-2/Society.
Mr. Sunil Sabharwal, Advocate with Mr. Rahul Sabharwal, Advocate for R-3/DCHFL Ltd.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **11.09.2017**

1. By this common order, we propose to dispose of the present petitions filed by the petitioners, who are not the original members of the respondent No.2/Society, but have purchased flats in the said Society on second sales from the original members. In each case, the petitioners have sought quashing of demand letters issued by the respondent No.2/Society, calling upon them to pay their respective share of the apportioned amount under the individualization scheme. For ready reference, the dates of the demand letters issued in respect of each of the petitioners and the amounts demanded, as per the documents filed with the petitions, are set out as

below:-

Sr. No.	Petition No.	Name	Date of the Demand Letter	Amount demanded
1.	W.P.(C) 5942/2013	Smt. Veena Mahajan	01.08.2013	Rs.1,22,871/-
2.	W.P.(C) 8094/2013	Smt. Manu Chopra	01.08.2013	Rs.1,22,871/-
		Shri Vinod Kumar Chabra	10.08.2013	Rs.1,94,901/-
3.	W.P.(C) 2737/2014	Dr. V.M. Surwade	No document filed	Rs.1,41,951/-
		Shri Krishan Kumar Chopra	- do -	Rs.1,41,951/-
		Smt. Saroj Malpani	- do -	Rs.1,41,951/-
		Smt. Veena Mahajan	- do -	Rs.1,41,951/-
		Sri Vijender Kumar	-do-	Rs.1,41,951/-
		Shri Ajay Batra	-do-	Rs.1,41,951/-
		Shri Deepak Kapoor	10.09.2013	Rs.1,41,951/-
		Smt. Renu Chhabra	10.08.2013	Rs.1,41,951/-

2. Mr. Jitender Kumar, learned counsel for the petitioners argues that the individualization scheme is applicable only to those members of the Society, who had obtained loans from the respondent No.3/Delhi Co-operative Housing Finance Corporation Ltd. (in short '**DCHFC Ltd.**') but the petitioners having not obtained any loan, cannot be called upon to pay any amount under the individualization scheme.

3. Mr. Dilip Singh, learned counsel for the respondent No.2/Society states that several rounds of litigation have taken place between different members of the Society and the Society and the first round of litigation had commenced somewhere in the year 2000-2001. In December, 2000, the respondent No.3/DCHFC Ltd. had filed a petition under Section 60 of the Delhi Cooperative Societies Ltd., 1972 against the respondent No.2/Society and the loanee members, for recovery of Rs.15,26,354/-, as on 31.12.2000.

Vide Award dated 24.01.2001, the learned Arbitrator had referred to the following four categories of members as drawn by the Society:-

(1) those who have paid fully
(2) those who are paying according to schedule
(3) those who are dead
(4) those who are defaulters.

4. The members falling under categories (1) and (2) were excluded from the arbitration proceedings on the ground that they had not committed any default and should not be harassed for the wrongdoings of others. As far as the members in category (3) are concerned, the Arbitrator observed that the Society had to complete certain formalities in consultation with DCHFC Ltd. and therefore, no order was passed on the disputes raised in respect of the said members. This left the members in category (4), who were defaulters. The Arbitrator held that the pending loan money of the DCHFC Ltd. is recoverable from the members in the said category as also the office bearers, who had misappropriated amounts collected from the members for payment to the DCHFC Ltd. but had diverted the said funds for undertaking construction activity in the Society.

5. Aggrieved by the aforesaid Award, the respondent No.3/DCHFC Ltd. had filed an appeal before the Delhi Cooperative Tribunal. The said appeal was partly allowed vide order dated 17.11.2006 and the claim of DCHFC Ltd. for Rs.21,21,190/- was allowed with interest and insurance but the direction issued by the Arbitrator for recall of the entire loan amount, was disallowed.

6. In between, due to various malpractices committed by the then Managing Committee of the Society, the respondent No.1/RCS had

appointed an Enquiry Officer, who was directed to conduct an enquiry against some of the delinquent office bearers, who had caused a loss of Rs.76,15,673/- to the Society. The Enquiry Officer submitted a report dated 29.04.2004, stating *inter alia* that the office bearers mentioned in the said report had diverted an amount of Rs.74,66,367/- received by the Society from loanee members towards return of the DCHFC Loan but instead of depositing the said amounts with the DCHFC Ltd., the same was diverted towards construction and other heads. The said report had however clarified that the above amounts had not been embezzled by the office bearers, but were diverted into construction heads keeping in view the urgency in undertaking construction of the flats at that point in time. The Administrator of the Society was directed to recover the amounts from the other defaulters by filing arbitration cases so that the DCHFC Loan could be cleared. Further, the office bearers of the earlier Managing Committee were held responsible to the extent that they had diverted the amounts received from the members of the Society for paying back the DCHFC loan, for the purpose of construction and on other heads without making any effort to clear the said loan.

7. It is an undisputed position that the respondent No.2/Society had defaulted in refunding the loan amount to the DCHFC Ltd. As a result, DCHFC Ltd. had to approach the respondent No.1/RCS by filing an application under Section 84(1) of the Delhi Cooperative Societies Act, 2003, for issuance of a Certificate for a sum of Rs.1,34,79,105/- alongwith the interest. Accordingly, the Assistant Collector, Cooperative Societies had issued a Certificate dated 26.05.2008, certifying *inter alia* that a sum of Rs.1,34,79,105/- was outstanding as arrears as on 30.09.2006, including

recall of the loan amount against the debtors, jointly and severally.

8. In the year 2010, one of the members of the respondent No.2/Society, Mr. M.S. Chawla had filed a writ petition in this court against the respondent No.2/Society, registered as W.P.(C) 3384/2010 wherein an order dated 18.05.2010 was passed by the Division Bench, as below:-

> *"The Society lost an arbitration award and contested the same right till the High Court unsuccessfully. The consequence is that certain amounts have to be paid to the finance company and the amount to be so paid is being apportioned between different members who are occupants of flats.*
>
> *In the aforesaid position the petitioner, a member of the Society and occupant of a flat cannot be permitted to claim that he is not entitled to pay his share of the apportioned amount because he had earlier cleared all the dues.*
>
> *Dismissed."*

9. After about three years, six other members of the respondent No.2/Society including the petitioner in W.P.(C) 5942/2013 and the petitioner No.1 in W.P.(C) 8094/2014 had jointly filed a writ petition in the High Court, registered as W.P.(C)281/2013 praying *inter alia* that the respondent No.2/Society be called upon to come up with the correct amounts payable by individual members towards the liability of the Society and thereafter, release the mortgage of the flats of the members, who had paid their shares. The aforesaid petition was disposed of by the Division Bench on 06.05.2013, by passing the following order:-

> *" The petitioners, who are members of R-2/Society, are claiming that there continues to be a clog on their property on account of the loan availed of by R-2/Society from R-3/Bank even though the petitioners have cleared their loans and / or are willing to clear any outstandings. It was in these*

circumstances that we had called upon R-3/Bank to find out as to whether the individualization scheme can be applied to the members of the R-2/Society.

We are informed that, in fact, the said Scheme has already been availed of by the Society and the individual outstandings have been communicated to the members on the clearance of which they can get a No Due Certificate.

To put an end to the controversy, we once again call upon the R-2/Society to intimate the outstandings qua the petitioners as per the individualization scheme to the learned counsel for the petitioner within a week from today."

10. It was after the aforesaid order came to be passed that the respondent No.2/Society had issued the impugned demand letters, calling upon individual members to pay the amounts as specified therein.

11. Learned counsel for the respondent No.2/Society states that the amounts demanded from the individual petitioners in the present case are not only towards the shortfall of the money payable to DCHFC Ltd., but also on account of diversion of the loan amounts received by the Society from various members for payment to the DCHFC Ltd., but utilized towards construction activity/development purposes of the Society.

12. In view of the fact that the petitioner in W.P.(C)5942/2013 and one of the petitioners in W.P.(C) No.8094/2013 had themselves approached the Court on an earlier occasion, seeking directions to the respondent No.2/Society to come up with the correct amounts payable by individual members and vide order dated 06.05.2013 passed in W.P.(C) 281/2013, appropriate directions were issued in this regard, the petitioners herein cannot be permitted to re-agitate the issue and try to unsettle matters that

have been satisfactorily resolved. The order dated 6.5.2013 has attained finality and is binding on all similarly placed members of the Society.

13. Given the above background, we are not inclined to interfere in the impugned orders passed by the respondent No.2/Society, calling upon the individual members to pay quantified amounts, as demanded from them. However, in the interest of justice, the petitioners are granted a period of six weeks to clear the said amounts, failing which the respondent No.2/Society and the DCHFC Ltd. shall be at liberty to seek legal recourse against the defaulting petitioners and/or the Society.

14. The petitions are dismissed. No orders as to costs.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 11, 2017
rkb/ap