

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

% **Decided on: 29th April, 2022**

+ **W.P.(C) 1538/2020 & CM APPL. 5372/2020**

T. N. HAOKIP Petitioner

Represented by: Mr. Karan Gaur, Adv.

versus

REGISTRAR, CO-OPERATIVE SOCIETIES AND ORS.

..... Respondent

Represented by: Mr. Santosh Kr. Tripathy, Standing Counsel with Mr. Sidharth Krishna Dwivedi, Adv. for R-1/RCS.

Ms. Mrinalini Sen, Standing Counsel with Ms. Niharika Zauhari, Adv. for R-2/DDA.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

MUKTA GUPTA, J. (ORAL)

1. The petitioner became a member of the respondent No.3/Sapna Ghar Cooperative Society (in short the Society) on 30th September, 2003 bearing membership No. 409 and is in legal and lawful possession/ occupancy of Flat No. 1-7/2 in the Society. After completing a thorough verification process the name of the petitioner was forwarded by the Society to the Registrar Cooperative Society along with 122 members. The respondent No.1 thereafter conducted another round of thorough verification of the relevant and necessary documents before proceeding to clear the petitioner's name in June 2008 as is evident from the notings of the file of the

respondent. It is also noted that the Society had free strength of 150 members and 130 dwelling units. The last election of the Society was held on 26th September, 2004, however due to certain anomalies the Managing Committee was superseded by RCS and an Administrator appointed on 10th April, 2007. An auditor was also appointed to audit. The name of the petitioner was noted at serial No.81 in the administrative file.

2. As per the notings, the respondent No.3/Society had already published its list of resigned/existing members in the newspapers and the said list was also available on the website of RCS and the objections received therein have been disposed by the administrator. It was further noted that in view of the verifications conducted including from the audit reports, the proposal of clearing of membership from 122 members of the Society for draw of lots may be forwarded to the Screening Committee for taking a final decision. However, the proceedings took time and the noting dated 2nd March, 2009 further notes that status of the file of Sapna Ghar of the Society was submitted to the Committee constituted under Rule 90 of the Delhi Cooperative Society Rules (in short the DCS Rules) which included the name of the petitioner as well at serial No.59 with membership No.409.

3. Since no action was taken, the petitioner along with others who were the members of the respondent No.3/society filed a writ petition being W.P.(C) 11304/2016 claiming that the petitioners were members of the Freeze List of the respondent No.3/society whose name had been cleared under Schedule VII of the DCS Rules 2007 submitted by the respondent No.3/society in February 2008 which was finally approved by the respondent No.1 after thorough verification and scrutiny of documents. It was stated that the validity of the said list has not been challenged in any Court of law.

Further, due to the rampant corruption in the office of respondent No.1, 26 Group Housing Societies including the respondent No.3 were forced to hold self-draw of their flats during the period 2010-2011. Even in the said self-draws, the petitioners in W.P.(C) 11304/2016 including the petitioner herein were found to be eligible. Further, vide the notification dated 17th October, 2011 the Hon'ble Lt. Governor in exercise of its power conferred under Section 127 of the DCS Act was pleased to regularize the self-draw conducted by 26 Societies including the respondent No.3/society granting one time exemption.

4. It is stated that after the dismissal of the Writ Petition No.519/2012 the respondent No.3 wrote a letter to respondent No.1 dated 5/6th November, 2015 forwarding the list of self-draw to DDA for regularization, however the office of respondent No.1 forwarded names of 92 members out of 128 members submitted by the respondent No.3 and no intimation as to why the balance 36 names were withheld were kept back.

5. W.P.(C) 11304/2016 was disposed of by this Court on 30th November, 2016 directing the Registrar Cooperative Societies to look into the assertions and allegations made by the petitioner and take appropriate action in accordance with law after hearing office bearers of the Cooperative Society. Liberty was also granted to the petitioners to revive the writ petition if required action was not taken within a period of two months. Since the respondent No.1 failed to take any action, the petitioners filed an application for restoration of W.P.(C) 11304/2016 which was restored.

6. As regards the present petitioner who was petitioner No.10 in W.P.(C) 11304/2016 as noted in the order dated 12th December, 2019, learned counsel stated that they have no instructions from him and his name has not been

cleared either by the DDA or Registrar Cooperative Societies. Another counsel appeared on behalf of the petitioner herein when the petitioner was granted liberty to file a separate writ petition for appropriate reliefs in accordance with law notwithstanding the disposal of W.P.(C) 11304/2016. As regards plea of latches it was pointed out that if such a petition is filed, the petitioner would be at liberty to advert to the fact of pendency of W.P.(C) 11304/2016.

7. Pursuant to the order dated 12th December, 2019 the petitioner preferred the present petition seeking directions to respondent No.1 to include the name of the petitioner in the list dated 21st October, 2016 forwarded to the respondent No.3 and to not take any coercive action including expulsion regarding the membership of the petitioner in respondent No.3/society.

8. In response to the present writ petition, a counter affidavit has been filed by the respondent relevant portion whereof reads as under:

“3. It is respectfully submitted that the Petitioner has filed the above mentioned Writ Petition inter-alia seeking direction or Respondent No. 1 /RCS to include the name of Petitioner in the list dated 21.10.2016 forwarded to the Respondent No.3 and/or by a separate communication addressed to Respondent No.3 include name of Petitioner in the list approved members of the Society thereby recognizing Petitioner as a legitimate member of Respondent No. 2 Society.

4. It is respectfully submitted that the allotment of flat in a cooperative group housing Society is governed by the provision of section 77 of DCS Act 2003, read with Rule 90 of DCS Rule 2007. Relevant paras of section 77 of DCS Act 2003, and Rule 90 of DCS Rule 2007 are reproduced as under:

Allotment of plots, flats or houses through draw of lots.

77. (1) Allotment of plots of land, flats, houses or other dwelling units shall be made by the committee of a cooperative housing society to the members strictly on the basis of draw of lots only in respect of such members whose enrolment as a member of a co-operative housing society is found proper in accordance with the provisions of this Act, rules framed thereunder and the bye-laws of the cooperative housing society * by the Registrar with the prior approval of a committee as prescribed and such a draw of lot shall be conducted by the lessor of the land in accordance with the terms and conditions of lease.

90. Allotment of plots, flats or houses through draw of lots –

(1) The Registrar shall recommend the name of such members to conduct draw of lots whose enrolment as a member of the cooperative society has been found proper as per provisions of the Act, these rules, and byelaws of the co-operative society after obtaining the information mentioned in Schedule VII. Provided that the Registrar shall recommend the names of members to conduct draw of lots after seeking prior approval of the following Committee:

Secretary (Cooperation)	Chairman;
Registrar Coop. Societies	Member;
Dy. Secretary (Finance)	Member;
Dy. Secretary (law)	Member; and
Jt. Registrar/ Addl. Registrar Coop. Societies	Member.

5. It is respectfully submitted that the Respondent no 2/Sapna Ghar CCGHS Ltd. had conducted self draw of flats during on mentioned 03.01.2010 in contradiction to the above procedure laid down in DCS Act, 2003. & DCS Rules, 2007.

6. It is respectfully submitted that vide order dated 17.10.2011, Hon'ble Lt. Governor of Delhi has regularized the self draw conducted by the 26 Societies including Sapna Ghar CGHS Ltd. giving one time exemption from operation of Section 77 (1) of DCS Act, 2003.

7. *It is respectfully submitted that the matter was processed in this office for clearance of membership and regularization of self draw conducted by the society. However, the Petitioner Sh. T.N Haokip failed to submit proof of residence of NCT of Delhi for a period of three years prior to applying for enrolment in Sapna Ghar CGHS Ltd. Deficiencies memo in this regard was issued vide this office letters dated 20.02.2017, 12.12.2017. Further, this office vide letters dated 19.05.2017, 01.06.2017, 26.06.2019, 28.10.2019, 02.03.2020, 01.03.2021 and 22.07.2021 has requested the society as well as member/Petitioner to appear in the Office of RCS for verification of records so that further necessary action towards clearance of membership and regularization of self draw conducted by the society may be initiated. However, the Petitioner failed to appear before Competent Authority for verification of records. Copy of above said letters dated 20.02.2017, 12.12.2017. Further, this office vide letters dated 19.05.2017, 01.06.2017, 28.10.2019, 02.03.2020, 01.03.2021 and 22.07.2021 are enclosed herewith as Annexure- R-1.*

8. *It is respectfully submitted that this office is unable to take any action due to above said factual position in the matter.”*

9. A perusal of this affidavit would reveal that the only ground why the matter of petitioner is not being processed for clearance of membership and regularization of self-draw conducted by the Society is that the petitioner has failed to submit proof of residence of NCT of Delhi for a period of three years prior to applying for enrolment in Sapna Ghar CGHS Ltd./respondent No.3-society for which memos have been given to him. This plea taken by the respondent No.1 cannot be substantiated as the petitioner had become a member of respondent No.3/society on 30th September, 2003 when the requirement of being a resident of NCT of Delhi three years prior to applying for enrolment was not there. It may be noted that before coming into force

of the Delhi Cooperative Societies Act 2003, which received the assent of the Hon'ble President of India on 3rd March, 2004 and came into force on 1st April, 2005 and the Rules framed thereunder were made applicable from 2007, various circular were issued which governed the allotment of the flat in group housing societies.

10. The first circular in this regard was issued on 18th May, 1990 which reads as under:

*“No. F.47/1852/NGH/Coop. Dated the 18.5.90
Circular*

The Bye-Law 5 have been amended by substituting a new bye- law to read as under:-

5(1) Any person shall be eligible to be a member of the society provided;

(a)He, at the time of enrolment as a member, is domiciled in the Union Territory of Delhi or has been resident of the Union Territory of Delhi for two years or more. Provided that this condition will not apply to officers of All India Services and employees of the Central Government and Public Undertakings of the Central Government & The Delhi Administration.

It is hereby clarified that this amendment will apply to all pending cases also. All cases of approval of memberships may be dealt with accordingly .

*(K S Mehra)
Registrar Coop. Societies ”*

11. As noted above, this circular exempts the Central Government and Public Sector Undertaking employees of the Central Government or the Delhi Administration from the condition of being the resident for two years or more of the Union Territory prior to applying for the membership. This circular was further modified by the next circular issued on behalf of the

Registrar Cooperative Societies dated 16th December, 1992 which reads as under:-

“it has been decided by the Government of National Capital Territory of Delhi to discontinue the requirement of proof of residence for membership of cooperative group housing societies with immediate effect . The cases which have been detained only on account of this reason may be examined in the light of these orders. In future the requirement of proof of residence in Delhi for clearance of membership of cooperative group housing societies will not be insisted upon.”

12. It may be noted that thereafter a further notification dated 22nd April, 1997 was issued by the Registrar Cooperative Societies in exercise of its powers under Section 97(1) of the DCS Act, 1973 whereby Clause IV was introduced by way of amendment in Rule 24 of the DCS Rules 1973. As per the said amendment, the requirement of being a resident of NCT Delhi, prior to applying for membership in Group Housing Society was re-introduced without any exception for the Central Government employees however the said notification was never gazetted and thus did not come into force.

13. During the arguments respondent no. 1 has further relied on a notification dated 5th December, 2001 which reads as under:-

*“(TO BE PUBLISHED IN THE DELHI GAZETTE
PART IV EXTRAODINARY)*

*GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI (COOPERATIVE DEPARTMENT)
NOTIFICATION*

*NO. F. 47/LEGAL/POLICY/COOP./92/2305-2316
DATED: 05/12/2001*

*In exercise of the powers conferred under Section 88
of the Delhi Cooperative Societies Act, 1972, the Hon'ble Lt.
Governor of the National Capital Territory of Delhi is*

pleased to exempt the operation of the condition of Model Bye-law No. 5(1) (a) during the period from 16.12.1992 to 22.04.1997 with regard to the proof of residence in respect of the members of Group Housing/ House Building Societies.

By order and in the name of the Lt. Governor of the National Capital Territory of Delhi

*(N. Diwaker)
Special Secretary (Cooperation)''*

14. Since the notification dated 22nd April, 1997 was never gazetted and thus did not come into force, the notification dated 5th December, 2001 clarifying the notification dated 22nd April, 1997 cannot have any force. The Delhi Cooperative Societies Act, 1973 was repealed by the Delhi Co-operative Societies Act 2003 and received the assent of the Hon'ble President of India on 3rd March 2004, however, it came into force on 1st April, 2005 and the Rules thereunder were made applicable from 2007 which re-imposed the condition of being a resident of NCT Delhi prior to applying for membership in terms of Sub-Clause 6 of Rule 19(1).

15. As noted above, when the petitioner became a member of respondent No.3/society i.e. on 30th September, 2003 the circular dated 16th December, 1992 was applicable as the notification dated 22nd April, 1997 was never gazetted and did not come into force. Further, the DCS Act 2003 and the Rules framed thereunder had also not come into force nor could the DCS Rules notified under the DCS Act 2003 could have been given a retrospective application. Thus, the rejection of the claim of the petitioner based on the requirement of being a resident of NCT of Delhi for a period of three years prior to applying for enrolment in the respondent No.3/society, as

being insisted by the respondent No.1, is contrary to law.

16. Consequently, the respondent No.1 is directed to consider the case of the petitioner de-hors the requirement of being a resident of the NCT of Delhi for a period of three years prior to applying for enrolment in the respondent No.3/society and submit the case of the petitioner to the Committee constituted under Rule 90 of the DCS Rules which will forward the case of the petitioner to DDA within four weeks. On receipt of the recommendation by the respondent No.1, the DDA will take necessary action within eight weeks thereafter.

17. Petition and application are accordingly disposed of.

18. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 29, 2022
‘ga’