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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 24, 2023
Judgment delivered on: February 24, 2023

+ W.P.(C) 7273/2022

R.K. AGGARWAL

.....Petitioner

Through: Mr. Maninder Singh, Sr. Advocate
with Ms. Riya Gulati, Ms. Smriti
Ashmita, Mr. Imtiyaz Hussain and
Mr. Mukul Aggarwal, Advocates.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ORS...

..... Respondents

Through: Mr. Anupam Srivastava, ASC for
GNCTD with Ms. Sarita Pandey,
Advocate for R1.
Mr. Ramachandran, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. A Writ Petition under Article 226 and 227 of the Constitution of India has been preferred by the petitioner for setting aside order dated 28.04.2022 passed by the Financial Commissioner (FC) Delhi in Revision Petition No.57/2014 titled Alok Jain Vs. Registrar, Cooperative Societies and Ors. whereby the Financial Commissioner set aside the order dated 18.12.2013/26.12.2013 passed by the Registrar, Cooperative Societies, Delhi. Vide the impugned order, the Financial Commissioner held the

petitioner herein (Shri R.K. Aggarwal) to be disqualified under Rule 20 of the Delhi Cooperative Society Rules, 2007.

2. In brief, as per the case of the petitioner, he had applied for and had become member of the New Indraprastha Cooperative House Building Society Ltd. (respondent No.2) in the year 1968. Though the petitioner was expelled by the respondent No.2/Society but eventually the same was set aside by the Division Bench of this Court vide judgment dated 29.07.1991 in LPA No.97/1983. The judgment passed by the Division Bench in LPA No.97/1983 was challenged by the Society/respondent No.2 by filing of Special Leave Petition before the Hon'ble Supreme Court of India which was dismissed vide order dated 10.02.1992.

3. It is further the case of the petitioner that Shri V.K. Jain, a waiting list member of the Society/respondent No.2 filed a Writ Petition (CW No.1678/1992) before the High Court of Delhi seeking directions, inter alia, against respondent No.2/Society to give possession to him of Plot No.90 measuring 150 sq. yds. of the Society and to restrain the Society from giving possession of the plot to any other person including the petitioner herein. During the pendency of the said Writ Petition, said Shri V.K. Jain expired on 29.07.1996 and was substituted by his wife Ms. Sneha Lata Jain. The said Writ Petition was dismissed /disposed by the Division Bench of this Court vide order dated 16.08.2010.

4. It may be appropriate to refer at this stage itself that the Division Bench vide aforesaid judgment dated 16.08.2010 noticed that Shri R.K. Aggarwal continued to be a member of the Society and his entitlement would relate back to the year 1968 when he became a member of the Society

and would thus rank senior to Shri V.K. Jain. Further, as on said date only one plot of land which has to be allotted is Plot No.90 measuring 150 sq. yds. Further, if a member who expelled, regains the membership through a judicial order the person concerned regains his seniority and the person who is pushed out is not the one who was inducted against the resultant vacancy but the one who is at the bottom of the seniority list. It was further observed that it may have happened that since a single plot was left for allotment *inter se* Shri V.K. Jain and Shri R.K Aggarwal, the entitlement would be flowing seniority-wise and would go to Shri R.K. Aggarwal. Further, the Division Bench did not opine upon the third contention pertaining to Shri R.K. Aggarwal being otherwise disentitled to be allotted any plot since there were no pleadings to this effect. The issue as regards the same was accordingly not decided and left open, if permissible in law by filing of appropriate petition before the Registrar, Cooperative Societies.

5. Thereafter, Ms. Sneha Lata Jain filed an application under Section 41(1) and Section 87 of the Delhi Cooperative Societies Act, 2003 read with Rule 20, 35 and 100 of the DCS Rules, 2007 seeking cessation of the membership of the petitioner with respondent No.2 Society, claiming to be nominee of Shri V.K. Jain and on the basis of the Will left by the deceased. The disqualification was sought under Rule 20 of DCS Rules, 2007 on the grounds that the petitioner and his sons were the owner of House No.M-109, Block M, Saket, New Delhi; House No.88, Sainik Farms, Khanpur, Delhi and another Flat at N-1, NDSE-I, New Delhi.

6. The said application filed by Ms. Sneha Lata Jain was dismissed by the Registrar, Cooperative Societies, Delhi vide order dated

18.12.2013/26.12.2013 holding that the petitioner herein did not incur any disqualification from being a member of respondent No.2 Society.

7. Ms. Sneh Lata Jain passed away on 13.02.2014 and as such the order dated 18.12.2013/26.12.2013 could not be challenged during her lifetime and the Revision Petition under Section 116 of DCS Act, 2003 was preferred by Alok Jain/respondent No.3 herein before the Financial Commissioner, claiming to be the legal heir of Ms. Sneh Lata Jain.

8. The reasons recorded by the Financial Commissioner vide impugned order dated 28.04.2022 thereby setting aside the order dated 18.12.2013/26.12.2013 passed by the Registrar, Cooperative Societies, Delhi may be reproduced for reference:-

“8. Admittedly, the present revision petition emanates from the impugned order dated 18.12.2013/26.12.2013 passed by the RCS, after the Hon’ble High Court of Delhi vide its Order dated 16.08.2010 upheld the membership of Sh. R.K. Aggarwal, Respondent No. 3 herein in New Indraprastha Cooperative Housing Society Ltd., Respondent No.2 herein, but left the issue pertaining to the disentitlement of Sh. R.K. Aggarwal, R-3, open to be decided by the Registrar, Cooperative Society. Pursuant to the Order dated 16.08.2010 of the Hon’ble High Court of Delhi, the petitioner files an application/ petition for the cessation of membership of the present R-3 from the society. On adjudication of the said application/ petition the Registrar Cooperative Society passed the order dated 18.12.2013 which is under challenge in the present revision petition. Admittedly there are properties in the name of sons and spouse of R-3, Sh. R.K. Aggarwal. The impugned orders do not deal in any way whatsoever as to the sources of income of spouse of R-3 or the two major children of R-3 viz-a-viz properties in Sainik Farms and Saket. Although the petitioner’s claim is not that these properties are held by R-3 Benami, the lack of details of independent ownership of these properties by the spouse and adult sons of R-3 and their source of income were not put to any test or examination by the Registrar Cooperative Societies in the impugned orders. Even if the said properties are not alleged to be held benami, in terms of following Ruling of Apex Court in case titled as ‘Ishwar Nagar Cooperative Housing Building Society Vs. Parma Nand Sharma’ (2020) 14 SCC 230,

“A co-operative society may be defined as a voluntary association of individuals combined to achieve and improvement in their social and economic conditions through the common ownership and democratic management of the instruments of wealth. (Vide Row’s Encyclopedia of Co-operative Societies Law in India, Vol.2, page 1) Experience has shown that voluntary organizations like cooperative societies are the best system which can suit the needs of poor and weaker sections. The object of a co-operative society is not to earn profits but to enable the members to improve their economic conditions by helping them in their pursuits. Thus, the cooperative societies like the present one which seek to obtain the land at concessional rate from the government and to build houses must necessarily have a limitation in that only members who are in real need of houses should be permitted to become members and to take the benefit of land allotment. In the garb of a cooperative society, a person cannot be permitted to avoid the stress of market prices and take a concessional advantage in obtaining a plot. Thus Rule 25(2) does not in any manner go beyond the ambit of rule making authority given under Section 97(1) of the Act.”

It cannot be held that under the ambit of the Cooperative Societies, any such member of a society can have access to such discounted residential property.

9. *During the arguments, R-3 submitted that there are few Court rulings that support his case. The same were seen. The rulings pertain to matters of benami property and the ground of benami property not being taken in this case, the same were not truly relevant to the instant case.*

10. *Respondent No.3 also challenged the revisional jurisdiction of this Court. However, the provisions of law were seen and since the case is squarely admissible per law, the same is not being dealt with here. However to be fair, the R-3 did not press this point of jurisdiction during oral arguments.*

11. *In view of the above, the impugned orders dated 18.12.2013/26.12.2013 passed by the Registrar of Cooperative Societies are set aside and the Respondent No.3 is held to be disqualified in terms of Rule 20(1)(c)(i) of the Delhi Cooperative Societies Rules, 2007 especially in view of the ruling of the Apex Court as aforesaid.*

12. *Further, the Respondent No.2, Society is directed to hear and consider the claim of the Petitioner herein qua his entitlement, as per provisions of the DCS Act and Rules, as well as a consequence of Respondent No.3 being held as disqualified herein and decide the matter in*

the next six months since it is an old case. Accordingly the Revision Petition is disposed of. No order as to costs.

13. *Pronounced in the open Court on 28th April, 2022.*”

9. In the reply filed on behalf of respondent No.2/Society, the factual position as per records referred to by the petitioner is not disputed. It is stated that wife of Shri V.K. Jain was a nominee of late Shri V.K. Jain as per the records of the respondent. The petitioner, as per documents on record, is stated to be individually or jointly holding the properties as detailed in order of Financial Commissioner, which is in violation of the statute and bye-laws of the Society. Hence, the petitioner under the provisions of DCS Act, 2003 and Rules framed thereunder is stated to be disqualified and ceases to be member of the respondent Society. It is further submitted that on disposal of petition before the Financial Commissioner, the respondent Society received letter dated 01.05.2022 and 10.06.2022 from respondent No.3/Alok Jain for handing over the possession of plot to him and accordingly DDA was requested to initiate steps for execution of sub lease in favour of respondent No.3. The respondent No.2 also vide letter dated 14.07.2022 requested respondent No.1/Registrar, Cooperative Societies to implement the judgment passed by the Financial Commissioner, which disqualifies the petitioner and upholds the membership of respondent No.3. Further, accordingly the respondent No.2 sought approval of respondent No.1 in consonance with order of Financial Commissioner for approval of membership of respondent No.3 for Plot No.90, Inder Enclave, New Delhi. It was also stated that father of Alok Jain was a confirmed member and his wife being the nominee became the member as per bye-laws of the Society after the death of Shri

V.K. Jain. In nutshell, the decision passed by the Financial Commissioner was supported by respondent No.2/Society.

10. In the reply filed on behalf of respondent No.3/Alok Jain, it was submitted that as per by-law 5(i)(e) of the Society, any person shall be eligible to be a member of the Society provided that he or his wife (she or her husband in case of a woman), dependents do not own a plot or a dwelling house. Further, a declaration to this effect is required to be given which shall also incorporate that the concerned person is not a member of any other cooperative house building society. It is further submitted that the action of the Society in refusing membership to a person has to be tested on the anvil of the provisions of the Act, Rules and bye-laws of the Society. Reference is also made to Rule 20 of the DCS Rules, 2007 which provides for disqualification for membership. It is also stated that vide resolution dated 27.02.1977, the father of respondent No.3 was inducted as a member of respondent No.2 Society and was entitled for 150 sq. yds plot on account of vacancy on expulsion and resignation of few persons. Respondent No.3 is stated to have been inducted against vacancy of one Satish Kumar Sabharwal who resigned but not against the vacancy of the petitioner and accordingly a share certificate was issued to respondent No.3 on 22.07.1979. The petitioner is stated to have incurred disqualification from being a member of the Society under Rule 20((1)(c)(i) of DCS Rules, 2007 because of ownership of residential property either in his name or in the name of his minor son or on account of ownership of residential property by his wife. The application is claimed to have been filed by respondent No.3 under Section 42 of DCS Act, 2003 read with Rule 20, 35 and 100 of DCS Rules,

2007 for seeking expulsion of petitioner under Section 41(1) and 87 of the DCS Act, 2003 on the ground that the petitioner and/or his dependents owned other residential properties in Delhi as detailed under:

- i) M-109, Saket, New Delhi; (in the name of his sons)
- ii) 88, Sainik Frams, Khanpur, New Delhi-110062 (in the name of his wife)
- iii) N-1, G/F, NDSE-I, New Delhi (in the name of the petitioner); and
- iv) DDA flat (in the name of the petitioner)

The benefit is stated to have been wrongly extended to the petitioner by the Registrar, Cooperative Societies vide order dated 18.12.2013. Further, the order dated 28.04.2022 passed by the Financial Commissioner setting aside the aforesaid order dated 18.12.2013 is stated to be passed in accordance with law relying upon *Ishwar Nagar Cooperative Housing Building Society Vs. Parma Nand Sharma*, (2020) 14 SCC 230.

11. Learned counsel for the petitioner challenges the impugned order dated 28.04.2022 passed by the Financial Commissioner being in violation of the parameters under Section 116 of the DCS Act, 2003. It is contended that the petitioner was a confirmed member and allottee of the plot since the year 1968 and could not be held to be disqualified by supervening events whereby he was illegally expelled of the membership of the Society which was restored in terms of the judgment dated 29.07.1991 passed by the Division Bench of this Court in LPA No.97/1983 and upheld vide order dated 10.02.1992 passed in SLP by the Hon'ble Supreme Court of India.

It is pointed out that in the year 1968 when the petitioner became a member of the Society, he did not own any property. Further, at the relevant time, the allotment was governed by Bombay Cooperatives Act, 1925 and Delhi Cooperative Rules, 1950 were enforced. Further, Section 141 of DCS Act, 2003 provides that the repeal shall not affect the rights, privilege, obligation or liability acquired, accrued or incurred under the Act. It is submitted that Rule 20(1)(c)(i) of DCS Rules, 2007 does not apply to the present case and has been wrongly interpreted by the Financial Commissioner. It is submitted that owning of any other property has to relate to the year 1968 at the time of enrolment of membership and an affidavit dated 26.11.1968 regarding not owning any property in NCT of Delhi was filed on 26.11.1968.

It is also contended that there was no reason or justification for the Financial Commissioner to hold the petitioner to be disqualified in terms of the provisions of Rule 20 of DCS Act, 2003 which was rightly considered by the Registrar, Cooperative Societies vide order dated 18.12.2013/26.12.2013. The judgment relied by the Financial Commissioner, namely, ***Ishwar Nagar Cooperative House Building Society Vs. Parma Nand Sharma, (2020) 14 SCC 230*** is stated to be inapplicable since in the aforesaid case, the member himself had 1/3rd share in the subject property which was measuring 1080 sq. yds., which was obviously more than the exemption limit of 66.72 sq. mtrs. (80 sq. yds).

The Registrar of Cooperative Societies is stated to have correctly held on the basis of judgment of Division Bench of this High Court in ***Navjivan***

Cooperative House Building Society Ltd. vs. Delhi Cooperative Tribunal, Delhi and Ors.

12. It is further contended on behalf of the petitioner that Ms. Sneha Lata Jain w/o late Shri V.K. Jain was only a nominee and never admitted as a member and as such the Revision Petition filed by respondent No.3 was not maintainable. Reference has also been made to bye-law no. 16 of the Society. Written submissions have been filed on record and reliance has been placed upon *Navjivan Cooperative House Building Society Ltd. vs. Delhi Cooperative Tribunal, Delhi & Others*, ILR 1987 Delhi 323; *Anil Gupta vs. UOI & Others*, DLT 913 (DB); *Waryam Singh & Another vs. Amar Nath & Another*, AIR 1954 SC 215; *Dera Gazi Khan Cooperative House Building Society vs. Registrar of Cooperative Society*, MANU/DE/3605/2017; *Alimuddin vs. Registrar Cooperative Society*, 1996 SCC Online Del. 190; *Krishna Kumar Sachan vs. Lt. Governor, Delhi & Others*, 2009 (112) DRJ 257 DB; *Dr. J.K. Gupta vs. Registrar Cooperative Societies & Ors.*, 2010 (116) DRJ 131 (DB) and *Daulat Ram Mehnidratna vs. Lt. Governor of Delhi and Ors.*, AIR 1982 Delhi 470.

13. On the other hand, learned counsel for respondent No.3 reiterates the contentions made before the Financial Commissioner and submits that the petitioner has been rightly held to be disqualified in terms of Rule 20(1)(c)(i) of the Delhi Cooperative Society Rules, 2007. Written submissions have also been filed on behalf of respondent No.3 and reliance has been placed upon *Ishwar Nagar Cooperative Housing Building Society vs. Parmanand Sharma and Others*, (2010) 14 Supreme Court Cases 230.

14. In order to appreciate the issues, reference may be made to the judgments relied by the learned counsel for the petitioner in the first instance.

In *Dera Gazi Khan Co-operative House Building Society Ltd. Vs Registrar of Co-operative Societies and Anr.*, Review Petition 498/2013 decided on 17.03.2017, one Shyam Lal Sehra was admitted as a member of the Society on 26.12.1960. Between May 1964 and April 1987, Shyam Lal Sehra owned another property No. F-54 Kirti Nagar, New Delhi, which was in his name. The membership was transferred from Shyam Lal Sehra in favour of one Om Prakash Bhutani, husband of Saroj Bhutani as a member of the said Society on 20.01.1973, which was thereafter transferred on his death on 20.04.1989 in favour of Saroj Bhutani on 10.04.1991. After effecting the transfer in her name the possession of plot was handed over on 20.04.1991.

A question was raised before the Registrar Co-operative Societies as to whether Shyam Lal Sehra had incurred a disqualification under Rule 25(2) of the Delhi Co-operative Societies Rules, 1973. The contention raised was that since the original allottee Shyam Lal Sehra had become disentitled to membership having incurred a disqualification under Rule 25 of the DCS Rules, the name of Saroj Bhutani could not be cleared.

The said contention was rejected by the RCS in the light of judgment of *Ishwar Nagar CHBS Ltd. Vs. Parma Nand Sharma and Ors.* (2010) 14 SCC 230. It was held that Rule 25(2) of DCS Rules had no retrospective operation and it was prospective. Further, applying the ratio of the said judgment, RCS was of the view that Shyam Lal Sehra, the original member

at the time of allotment did not suffer from any disqualification. It was also observed that between 26.12.1960 upto 20.01.1973, neither the DCS Act, 1972 nor the DCS Rules, 1973 were in force in NCT of Delhi which is the period when Shyam Lal Sehra became a member of the Society in 1960 or even when his membership was transferred to Om Prakash Bhutani on 20.01.1973. Further, the Bombay Cooperative Societies Rules, 1950 (which were then in force) had no disqualifying provision on this count. As such, Rule 25(2) of DCS Rules could not be invoked retrospectively and Saroj Bhutani was well entitled for membership in her name in the record of the Society.

The aforesaid order passed by the RCS was upheld by the High Court of Delhi on 09.04.2013 as observed in para 6 of the Review Petition 498/2013 as under:

“The crux of the dispute is that the petitioner/Society has been refusing to clear the name of Mrs. Saroj Bhutani for execution of the documents though she has been enjoying the property. The basis of the same is that Sh. Shyam Lal Sehra was disentitled to membership from which the claim of Mr. O.P. Bhutani and Mrs. Saroj Bhutani respectively flowed on account of having allegedly incurred a disqualification under Rule 25 of the Delhi Cooperative Societies Rules, 1973. It is this aspect which has been analyzed by the RCS in the impugned order. The RCS has noted that neither the Delhi Cooperative Societies Act, 1972 nor the Delhi Cooperative Societies Rules, 1973 framed therein were in force in National Capital Territory of Delhi when Mr. Shyam Lal Sehra became a member in the year 1960 nor were they in force when the membership of Mr. Shyam Lal Sehra was transferred to Sh. O.P. Bhutani. It is the Bombay Cooperative Societies Act, 1925 which was applicable along with the Delhi Cooperative Societies Rules, 1950, both of which did not contain any provision for disqualification of an individual member because of owning a residential property in National Capital Territory of Delhi. In this behalf, a reference has been made to the judgment of the Supreme Court in Ishwar Nagar CHBS Ltd. V. Parma Nand Sharma and Ors.; (2010) 14 SCC 230 where the aforesaid Rule 25(2) of the Delhi Cooperative Societies Rules, 1973 has been held to be applicable only

prospectively. We find no infirmity with the finding of the RCS in relation to the aforesaid. The legal position is crystal clear. There was no disqualification of Mr. Shyam Lal Sehra as per the then existing Rules at the time of his enrolment or at the time of transfer of his membership to Mr. O.P. Bhutani. The succeeding parties therefore acquired a valid membership”

Against the aforesaid order, an SLP was preferred by the Society which was disposed of on 14.08.2013 and directed the petitioner to seek a review before Delhi High Court.

It was observed by the High Court in Review Petition 498/2013 that the question before the Hon’ble Supreme Court in ***Ishwar Nagar*** (supra) related to disqualification of a member from a group housing society as the allottee owned a residential property in the name of HUF, of which he was a coparcener. Further, while dealing with Rule 25(2) of DCS Rules, the Court was of the categorical view that Rule 25(2) did not have a retrospective operation and was prospective which came into force w.e.f. 02.04.1974.

In the aforesaid background, the Division Bench held that Rule 25(2) not being retrospective but prospective, the question of Shyam Lal Sehra being disqualified in the year 1960 when this allotment was made in his favour would not arise and as such the objection had no force. It was further observed that the objection relating to bye-law 5(1)(e) of the bye-laws of the Society was never raised before the RCS and was neither argued at the time the judgment dated 09.04.2013 was delivered.

Further, there is nothing on record to show that alleged violation of bye-law 5(1)(e) was ever communicated to the respondent by any show-cause notice.

It was also observed that in *Ishwar Nagar* (supra), after the allotment, the petitioner being a persistent defaulter and having not paid their dues was expelled from the membership which was approved by the RCS and notice of alleged violation of bye-law 5(1)(e) had also been communicated to the party. The factual position in *Ishwar Nagar* (supra) and in Review Petition 498/2013 was stated to be totally different and as such inapplicable to the facts. As such, since Rule 25(2) was not retrospective but prospective, the question of Shyam Lal Sehra being disqualified in 1960 when allotment was made in his favour would not arise. The Review Petition was accordingly dismissed.

15. Reference may next be made to *J.K. Gupta, Dr. Vs. Registrar of Co-op. Societies & Ors., 2010 (116) DRJ 131 (DB)*. In the aforesaid case, a petition under Article 226 of the Constitution of India was preferred for quashing of order dated 15.05.2008 passed by the Financial Commissioner, Delhi upholding the order dated 05.07.2001 passed by respondent No.1 Registrar of Cooperative Societies ceasing the membership of petitioner with respondent No.2 Society. The petitioner therein was enrolled as a member of respondent No.2 Society vide decision of Managing Committee dated 25.10.1990. A show-cause notice was issued to the petitioner alleging that his wife owned a property at Multani Dhanda, New Delhi which was a disqualification under Rule 25(1)(c) of DCS Rules, 1973. It was claimed by the petitioner that the same was purchased by his wife from her own funds in her own name and the said property was commercial and of small size and as such disqualification under Rule 25 was not attracted. However, the respondent ceased the membership of the petitioner vide order dated

05.07.2001, against which a revision was preferred under Section 80 of the DCS Act, 1972 before the Financial Commissioner on 23.08.2001. The Financial Commissioner dismissed the revision petition vide order dated 17.08.2007 upholding the finding of RCS.

It was contended on behalf of the petitioner that membership of the petitioner could not have been ceased under Rule 25(1)(c)(i) of the Rules, had the property at Multani Dhanda been owned by the petitioner in his own name or in the name of his wife. It was further contended that the phrase “in the name of” as stated in Rule 25(1)(c)(i) means ownership must be of the member though it may stand benami in the name of his wife or child and reliance was placed upon *Alimuddin Vs. The Registrar of Co-operative Societies & Ors.*, C.W.P. No.5551/1993 reported in 63 (1996) Delhi Law Times 655 (DB).

The said contentions were opposed on behalf of the respondent contending that bye-laws of the Society did not permit the petitioner to become its member. The observations of the Division Bench in para 6 & 7 may be beneficially reproduced:

“6. We have considered the submissions made and perused the record. The relevant portion of Rule 25 of the Rules under which petitioner is sought to be disqualified is reproduced as under:- “Rule 25: Disqualification of membership

(1) No person shall be eligible for admission as a member of a co-operative Society if he.....

(a)

(b)

(c) In the case of membership of a Housing Society:

(i) He owns a residential house or a plot of land for the construction of a residential house in any of the approved or unapproved colonies or other localities in the Union Territory of Delhi in his own name or in the name of his spouse or any of his dependent children on lease hold or free hold basis:

provided, disqualification as laid down in Sub-rule (1)(c)(i) shall not be applicable in case of persons who are only cosharers of joint ancestral properties in congested localities (Slum Area) whose share is less than 66.72 sq. meters (80 sq. yards) of land.”

Rule 25(1)(c)(i) has been interpreted in three decisions of this court,

i.e., O.P. Sethi v Lt. Governor MANU/DE/0678/1991 : 45(1991) DLT 426, Navjeevan Co-operative House Building Society Ltd v Delhi Cooperative Tribunal : CWP 3150/1985 decided on 10.07.1987 and Shri Sita Ram Jain v Registrar of Co-operative Societies : CWP 3203/1992 decided on 15.11.1995.

Relying on the aforesaid judgments, a Division Bench of this court in Alimuddin’s case (supra) observed as under:-

“The view taken by this Court has been that to attract the applicability of Rule 25(1)(c)(i), the member of the Society must own a residential house or a plot of land for the construction of a house in his own name or in the name of his spouse or a dependent child. The phrase “in the name of” has been interpreted to mean the ownership must be of the member though it may stand Benami in the name of the wife or a child.” We have also followed the same view in two cases decided by us recently which are as under:-

(i) Jagdish Chander v Lt Governor and Ors, W.P.(C) No. 1646/1995 decided on 22.07.2009 and,

(ii) Krishan Kumar Sachan v The Lt Governor and Ors, W.P.(C) No. 417/1995 decided on 10.08.2009.

7. In the present case, the membership of the petitioner has been ceased by respondent no. 1 by holding that property bearing no. 8315, Multani Dhanda, Paharganj, New Delhi is held by petitioner as “Benami” and therefore the disqualification as stated in Rule 25(1)(c)(i) is attracted in the present case. The said finding is also upheld by the Financial Commissioner, Delhi vide impugned order dated 15.05.2008. It may be mentioned that the petitioner has throughout contended before the respondent no. 1 and Financial Commissioner as well as stated in reply to the show cause notice that the said property is in the name of his wife

who has purchased it from her own funds. There is an affidavit of the petitioner and his wife before the respondent no. 1 in this regard. Petitioner has also categorically stated in the affidavit that his wife is the owner of the same and she has purchased it from her own resources. Petitioner has also placed on record Income Tax Returns of his wife to substantiate the same. Petitioner has also placed on record material to show that the said property is assessed in the name of his wife and in the records of the municipal authorities, the same is mutated in her name. "Agreement to sell" of the property in question is in the name of his wife. But none of these aspects have been considered by the respondent no. 1 or by the Financial Commissioner. The other contention of petitioner is that said property is commercial in nature and, in any event, provisions of Rule 25 of the Rules are not attracted in the present case. In support of his contention, petitioner has relied upon notice issued by the DDA to the previous owner of the property under Section 7(3) of Public Premises (Eviction of Unauthorized Occupant) Act. The said notice shows that property is commercial in nature. There is also no finding on aforesaid contentions of petitioner – i.e., about nature of property i.e. whether the same is residential/commercial and as regards the funds as to who had purchased it. The contention that the finding about size of the property is not being given by respondent no. 1 and Financial Commissioner is immaterial in as much as it is not the stand of petitioner that property in question is coming as a share of joint ancestral property. We have perused the "Agreement to Sell" in respect of property in question. The same shows that property is a "house". Even considering the property in question to be residential, the finding given in the impugned order that same is held by the petitioner as "Benami is not based on any material on record. Rather, evidence on record is to the contrary. The same shows property in question is purchased by the petitioner's wife out of her own funds and the same stands in her own name. The present case is fully covered by the judgment in Alimuddin's case (supra). It may also be mentioned that proceedings have been initiated against petitioner for cessation of membership on the ground of ownership of house in the name of his wife in her own capacity. The respondents were not justified in doing so. In view of the facts and circumstances of the case, we are of the view that disqualification as held in the impugned order under Rule 25 of the Rules is not attracted in the present case..."

In view of above, it was held that the petitioner did not incur any disqualification under Rule 25(1)(c)(i). The orders passed by the FC and RCS were accordingly set aside.

16. Before proceeding to consider the factual position on merits, it may be noticed that Section 141 of the DCS Act, 2003 provides for repeal and savings and lays down that on the day on which DCS Act, 2003 comes into force, the DCS Act, 1972 in force in the NCT of Delhi shall stand repealed. Provided that the repeal shall not affect-

“(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.”

The aforesaid provision of Section 141 of 2003 Act is corresponding to Section 98 of DCS Act, 1972 and the provisions are identical without having any change except to the extent that on the day on which the Delhi Co-operative Societies Act, 1972 comes into force, the Bombay Co-operative Societies Act, 1925 as in force in the Union Territory of Delhi stood repealed except for the saving clauses.

Admittedly, in the present proceedings, no show-cause notice was ever served upon the petitioner by the Society with reference to the proceedings which have been subsequently filed by the respondent pursuant to the observations of the High Court vide judgment dated 16.08.2010. The membership of the petitioner already stood restored vide judgment dated

29.07.1991 in LPA No.97/1983 and he stood relegated to the original position in 1968 and entitled to allotment of plot. There is no material to support if the petitioner was ineligible to allotment at the said relevant time and objections have emanated only because of supervening events. It needs to be kept in perspective that any right, privilege, objection or liability accrued in favour of the petitioner is saved both under Section 141 of the DCS Act, 2003 as well as Section 98 of DCS Act, 1972.

17. Reverting back to the merits of the case, at the outset, it may be observed that the petitioner became a member of New Indraprastha Cooperative House Building Society Ltd. sometime in the year 1968 and some amount as per the demand was paid by the petitioner till 1973 prior to resolution on 25.08.1974 expelling the petitioner from the membership on account of failure to make the payment of dues. The same was finally approved on 19.01.1979 by the Deputy Registrar, Cooperative Societies. Vide judgment dated 29.07.1991 passed in LPA No.97/1983 by the Division Bench of this Court, the appeal preferred by the petitioner was allowed and the resolution dated 25.08.1974 passed by the Society and the decision dated 19.01.1979 of the Deputy Registrar, Cooperative Societies was quashed. It was further recorded that the effect of the same is that appellant continues to be a member of the respondent Society and is entitled to all the benefits thereof. In the light of aforesaid directions, there remains no iota of doubt that the membership of the petitioner continued from the year 1968 with all the benefits thereof and as such his claims needed to be considered in accordance with his seniority. Admittedly, Shri V.K. Jain through whom respondent No.3 claims the right of allotment was inducted pursuant to

resolution dated 27.02.1977. Unfortunately, the petitioner despite having the orders of expulsion from membership having been set aside by the Division Bench on 29.07.1991 and as upheld in SLP, could not get the benefit due to certain supervening events as his entitlement was challenged by said Shri V.K. Jain who was subsequently inducted as a member pursuant to resolution dated 27.02.1977. Admittedly, the claim of Shri V.K. Jain could not be meritorious than the claim of the petitioner since membership of Shri R.K. Aggarwal pre-dated to the year 1968.

It was also held vide judgment dated 16.08.2010 passed in Writ Petition No.1678/1992 by the Division Bench that if a member who is expelled regains the membership through a judicial order, the person concerned regains his seniority and the person who is pushed out is not the one who was inducted against the resultant vacancy but the one who is at the bottom of the seniority list. The said observations were made having considered the plea raised on behalf of respondent No.3 at the relevant time that the petitioner was entitled to a land admeasuring 200 sq. yds while the respondent No.3 was claiming for a plot admeasuring 150 sq. yds and respondent No.3 had not been inducted as a member with reference to the vacancy of Shri R.K. Aggarwal.

18. The observations in paragraphs No.7 to 17 in judgment dated 16.08.2010 are crucial and may be beneficially reproduced as they settle some of the issues which have again been raised during the course of submissions:-

“7. We note that as of today, the undisputed position is that R.K.Agarwal continues to be a member of respondent No.1 society and his

entitlement would relate back to the year 1968 when he became a member of the society and would thus rank senior to the petitioner.

8. The further undisputed position is that as of today there is only one plot of land which has to be allotted and the same is plot No.90 measuring 150 sq.yds.

9. It is true that R.K.Aggarwal had pleaded his entitlement to a plot of land measuring 200 sq.yds. but since he is ready to accept a plot lesser in size, it cannot be said that merely because his claim was for a larger plot he cannot seek satisfaction of his claim by accepting a smaller plot. What has happened is that in the interregnum when R.K.Aggarwal was fighting the battle all plots stood allotted save and except one i.e. plot No.90 ad-measuring 150 sq.yds.

10. As regards the plea of the petitioner that the petitioner was inducted against vacancy which ensued when Satish Kumar Sharma has resigned, suffice would it be to state that the entitlement to a plot is not related to the corresponding vacancy filled up on a member resigning or being otherwise expelled. If a member who is expelled regains the membership through a judicial order, the person concerned regains his seniority and the person who is pushed out is not the one who was inducted against the resultant vacancy but the one who is at the bottom of the seniority list for the reason, as it has happened in the instant case, due to further resignations/expulsions, more and more members get inducted into the society.

11. Who was the last person to be affected when R.K.Aggarwal re-entered on being declared victorious by the Division Bench is not known to us.

12. It may have happened that somebody inducted after the petitioner has been given a plot and had somebody been live to the issue of the last member being thrown out, claim of the petitioner could have been satisfied at the cost of the said person. But in the absence of that person being before us and not knowing who the person is, and a single plot left for allotment, inter se the petitioner and R.K.Aggarwal, we hold in favour of R.K.Aggarwal.

13. R.K.Aggarwal being admittedly senior to the petitioner would be entitled to the plot for the reason the entitlement flows seniority-wise.

14. We do not opine upon the third contention pertaining to the R.K.Aggarwal being otherwise disentitled to be allotted any plot for the simple reason there are no pleadings to this effect and the said stand has been taken during oral submissions made in Court today.

15. Even otherwise, the question would be a question of fact requiring adjudication at the level of Registrar, Co-operative Grouching Society on a properly constituted petition.

16. Accordingly, we dismiss the writ petition but with a clarification that the last issue pertaining to the disentitlement of R.K. Aggarwal as argued above has not been decided by us, and if permissible in law, an appropriate petition be filed before that Registrar, Co-operative Society. The matter may be decided at an early date.

17. No costs."

In view of above, the only contention which was left open was pertaining to Shri R.K. Aggarwal being otherwise disentitled to be allotted any plot since there were no pleadings to this effect and the question of fact was directed to be adjudicated by the Registrar, Cooperative Group Housing Societies by filing of appropriate petition.

The contention raised by the petitioner disputing the membership of respondent No.3 cannot be gone into in the present proceedings since no such claim appears to have been ever adjudicated by the Registrar, Cooperative Societies or the Financial Commissioner as the limited question left for adjudication vide judgment dated 16.08.2010 was qua the disentitlement of Shri R.K. Aggarwal. Also, contention regarding entitlement of Shri R.K. Aggarwal for plot of 150 sq. yds. having been already considered and decided vide judgment dated 16.08.2010 referred to above cannot be re-agitated by the respondent No.3.

19. The disqualification, if any, incurred for purpose of allotment by Shri R.K. Aggarwal may now be tested on the anvil of the provisions of the DCS

Act, 2003, the Rules framed thereunder and the bye-laws of the Society as relied by respondent No.3.

The case of respondent No.3 is that the petitioner is disqualified on account of being owner of the immovable property in Delhi and one of the conditions of the membership of the Society to the effect that a person inducted as a member should not own any residential property in Delhi stands violated.

In the aforesaid context, it is important to keep in perspective that at the time of the membership in the year 1968 or till the passing of resolution of expulsion on 25.08.1974 by the Society, no such impediment existed and only on account of supervening events, the allotment of the plot stands postponed. The order dated 18.12.2013/26.12.2013 passed by the Registrar, Cooperative Societies duly deals with the explanation in respect of the respective properties referred to by respondent No.3 and reached a conclusion that Shri R.K. Aggarwal does not incur any disqualification from being a member of the New Indraprastha Cooperative House Building Society Ltd. The same may be reproduced for reference:

“5. I have gone through the submissions made by the Petitioner and the Respondents. I have also perused the agreement to sell dated 22/12/1994 between the vendor and S/Sh. Puneete Aggarwal, Kapil Aggarwal and Mukul Aggarwal (minor son of Sh. R.K. Aggarwal) Respondent No.2, 88-Sainik Farm. The document clearly reflects Mukul Aggarwal to be the minor son of Sh. R.K. Aggarwal. The document further reveals that M-109 which has been purchased by three sons of Sh. R.K. Aggarwal including minor son, Mukul Aggarwal is a plot in Block-M, Saket, New Delhi that measures 200 sq. yds or 167.226 sq. mtrs. Assuming that the minor son must have been dependent on his father at the time of purchase of this property as contended by the applicant, there can be reasonable assumption to the effect that Sh. R.K. Aggarwal must have

contributed on behalf of minor son for purchase of property bearing No. M-109. Such conclusion implies that property is jointly held by two sons who were not minor and Sh. Mukul Aggarwal, minor son of Sh. R.K. Aggarwal, on behalf of Sh. R.K. Aggarwal. This entails working out of co-share of joint owners. The plot being only 200 Sq. Yds. co-share of the joint owner's works out to 66.67 Sq. Yds which is much less than 66.67 Sq. mtrs. Accordingly co-share of minor/ Sh. R.K. Aggarwal falls within the exception clause provided for in proviso (a) of Rule 20 (1)(C)(i) of DCS Rules, 2007.

6. As regards the property at building No.N-1 on Main Road in NDSE-I, the applicant has not contested the submission of respondent that the actual area of place measures only 19-20 sq. mtrs. And being used for commercial purpose other than the argument that power bills at commercial rate is being paid only in order to avoid disqualification for owning residential property in NCT of Delhi. Payment of electricity bills at commercial rate implies that the space is permitted for use for commercial purpose.

7. As regards house property in Sainik Farm the applicant has not made any allegation to the effect that is being held or owned benami by the wife of Sh. R.K. Aggarwal, Respondent No.2. The Hon'ble High Court of Delhi in its order dated 10-07-1987 in the matter of Navjeevan Co-operative Society – Petitioner Vs Delhi Co-operative Tribunal, Delhi & Others – Respondent, has held that clear intent of Rule 25 of CDS Rules, 1973 is that those who held properties benami or in their wife's name or in the name of their dependent children were not to be permitted to become a member of Cooperative Housing Society. The wife of Sh. R.K. Aggarwal is holding the property No.88 in Sainik Farm in her own right out of her own income. It is not a property held benami. Therefore, in terms of law settled by Hon'ble High Court in a number of cases starting with Navjeen Housing Society Ltd. Vs Delhi Co-operative Tribunal & Others house property in Sainik Farm of the wife of the respondent is not a disqualification for his membership in the New Indraprastha House Building Society.

8. In the light of discussions in the foregoing paras, I am of the considered view that Sh. R.K. Aggarwal does not incur any disqualification from being a member of the New Indraprastha Society Ltd. The application of Smt Sneh Lata Jain stands dismissed accordingly.

Sd/-

18/12/13

Registrar: Cooperative Societies”

20. It may be observed that the reasons accorded by Registrar, Cooperative Societies were not accepted by the Financial Commissioner vide

order dated 28.04.2022. However, for the reasons best known, the rulings referred to by the learned counsel for the petitioner have not been referred by the Financial Commissioner vide impugned order dated 28.04.2022 but have been simply ignored by observing that the same were not truly relevant to the instant case. Neither any contention challenging the jurisdiction of the Financial Commissioner by the petitioner has been dealt with. The case set up by the petitioner has been simply disagreed merely on the ground that there are properties in the names of sons and spouse of Shri R.K. Aggarwal without reflecting upon the law laid down in ***Navjivan Cooperative House Building Society*** (supra). The order passed by the Financial Commissioner does not provide any basis for treating the properties as benami in the name of the petitioner.

We are of the considered opinion that in case the Financial Commissioner was of the view that the lack of details of independent sources of income of the spouse and major sons of Shri R.K. Aggarwal had not been put to any test or examination by the Registrar, Cooperative Societies, the matter should have been remanded back.

The observations in ***Ishwar Nagar Cooperative Housing Building Society Vs. Parma Nand Sharma*** (supra) as quoted by the RCS are not in dispute. However, it may be observed that the learned counsel for the petitioner has duly pointed out that the facts in the aforesaid case are completely distinguishable. It has been pointed out that as per the factual position in the aforesaid case, the member himself had 1/3rd share in the

subject property which was measuring 1080 sq. yds and was obviously more than the exemption of 66.72 sq. mtrs. (80 sq. yds).

21. In the facts and circumstances, we are of the considered opinion that it shall be appropriate to remand back the proceedings before the Financial Commissioner for consideration of all the issues raised on behalf of the petitioner in accordance with law, after giving due opportunity to the parties. The date for appearance before the Financial Commissioner is fixed for March 23, 2023.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

FEBRUARY 24, 2023/sd