

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

% Date of decision: May 23, 2023

+ W.P.(C) 6703/2023 & CM APPL. 26235/2023 and
CM APPL. 26236/2023

DHANANJAY GARG

..... Petitioner

Through: Mr. Amarendra Dubey and Mr.
Ghanshyam Thakur, Advs.

versus

REGISTRAR OF COOPEARTIVE SOCIETIES OF
GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Mohit Agarwal, Adv. for
R1.
Mr. S.D. Singh, Mr. Puneet
Kumar Jain and Ms. Ridhi Jain,
Advs. for R3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 26235/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6703/2023

1. This petition has been filed by the petitioner challenging the order dated April 26, 2023 passed by the Registrar Cooperative Societies ('RCS', for short), wherein (at pages 289 – 290) it has stated as under:

“And whereas, in the meantime Sh V.K.Jain had filed CP (Civil) No 426/2017 seeking compliance of order dated 31.01.2017 passed by Hon'ble High Court of Delhi. Hon'ble High Court vide its order dated 08.12.2022,

01.03.2023 & 13.03.2023 has directed the department to comply with the earlier orders of the Court. Vide its order dated 13.03.2023 Hon'ble High Court has further observed as under:

.... The insistence of the documents at this belated stage does not appear to be well founded and gives an impression to this Court that the Respondent No.1 is dragging its feet. This Court has been apprised that a new administrator has been recently appointed and for this additional reason, the insistence on the said documents is bound to indefinitely delay the compliance. Similarly, the condition at paragraph 3(c) as per the learned senior counsel for the Petitioner is inapplicable to the facts of this case and is in the teeth of the judgment and order dated 08.05.2019 passed by the Supreme Court.

After some arguments, learned standing counsel for the Respondent No.1 states on instructions from Respondent No.1, who is present in Court that in case the present Administrator of the society is unable to provide the documents as required in paragraph 3(d), the Respondent will dispense with the requirement of the said documents/information and complete the formalities for allotment in favour of the Petitioner and hand over the possession to the Petitioner within a period of ten days. He also states that the condition of paragraph 3(c) will not be insisted upon.

Accordingly, in compliance of order dated 13.03.2023 passed by Hon'ble High Court in CONT.CAS(C) 426/2017 & CM APPL. 9954/2023 the Rule 90 Committee in its meeting held on 05.04.2023 opined that despite the fact that Hon'ble High Court vide order dated 13.03.2023 in CCP No.426 of 2017 has directed the RCS respondent No.1. In that matter to dispense with certain documents required as per Rules, it is a fact neither RCS nor the Rule 90 Committee has any legal mandate to exempt operation of any provision of DCS Act 2003 or DCS Rules 2007. The

RCS may in consultation with Law Department, place the facts of the case and the orders of the Hon'ble Courts, before the competent authority i.e. Hon'ble Lt. Governor u/s 127 of DCS Act, 2003 read with Rule 163 of DCS Rules, 2007 for necessary action in compliance of orders passed by Hon'ble Courts."

And whereas, in terms of the Minutes of the Meeting of the Rule 90 Committee dated 05.04.2023, the file was sent to the Law department for the legal opinion on the applicability of the provisions of Delhi Cooperative Societies Act 2003 in case of the membership of VK Jain. In response, the Law Department, GNCTD has observed that the queries raised by the administrative Department are not relevant since it is not a case where the statutory provisions are to be exempted by the Rule 90 Committee or any other statutory authority. In fact, the necessary action has to be taken in this matter, in compliance of directions of Hon'ble High Court. In exercise of their jurisdiction, Hon'ble High Court and Hon'ble Supreme Court can pass directions to do the complete justice between the parties in any situation where the law or the statutory provisions are not capable of addressing the grievances of the parties or where the adherence to the statutory provisions or procedural guidelines would be unjustified in the circumstances of the case. The Law Department, GNCTD has further advised as under:

In this case, the administrative Department has stated that Hon'ble High Court has passed directions and the order of Hon'ble High court has been upheld by the Supreme court. In the peculiar facts and circumstances, the administrative Department may consider to comply with the directions while specifically mentioning that the action is being taken in compliance of Hon'ble High Court directions and the same shall not be treated as a precedent under any circumstances.

And whereas, it is observed that membership of the Sh V.K.Jain was restored in compliance order dated 18.10.2010 of Hon'ble Supreme Court in Civil Appeal 9439 of 2003 titled Sant Lal Gupta & Ors V/s Modern CGHS Ltd & Ors thereby restoring membership no 159 dated 24.11.1985 in favour of Sh V.K.Jain. It is further relevant to reiterate that Hon'ble High Court of Delhi vide para 16 of its order dated 31.01.2017 has observed that 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). Further, it is noted that Sh V.K.Jain is one of the members of the Rakesh Grover Group to whom Hon'ble High Court directed the RCS to hand over the possession of the flat.

And whereas, Hon'ble High Court of Delhi vide its recent order dated 10.03.2022 in WPC 9505 of 2019 titled Chander Kaul and Ors V/s RCS & Anr has directed RCS to regularize membership of petitioners in case it is found that each of them were otherwise qualified to become members on the date when they made their applications by reference to the provisions of the Act and Rules as they were operating on the date when such application were made.

And whereas, the provisions of the DCS Act 1972 & Rules made there under were applicable at the time of enrolment of Sh V.K.Jain and also at the time when the draw of lots of other members of the society was held in the year .1995 to 1999. Thus, the provisions of DCS Act 1972 and Rules made there under shall continue to apply as present proceedings are taken up for preserving the rights of members which continue to exist under the said Act by virtue of Section 141 of DCS Act 2003, consequently the DCS Rules 2007 are also not applicable and the DCS Rules 1973 shall continue to apply to members of the society whose draw of lots was pending before coming into force of DCS Act, 2003 which came into effect by the Gazette Notification dated 01.04.2005 whereas the DCS Rules, 2007 were notified with effect from 19h October 2007

which have no retrospective effect and apply to those proceedings taken after said date.

Therefore, in view of the foregoing, I am of the considered view that the membership in respect of Sh V.K.Jain (Ms No 159) in Modem CGHS Ltd is cleared and his name is to be forwarded to DDA for draw of lots in respect of only one vacant 'A' category flat (i.e. flat no 638) in favour of Sh V.K.Jain within seven (07) days so that possession of the flat may be handed over to him in compliance of Hon'ble High Court directions."

2. The petitioner had earlier approached this Court in W.P.(C) 1327/2023 with the following prayers:

"a. Pass a direction to respondent no. 2 and 3 to cancel the membership of respondent no.1 from The Modem Co-Operative Group Housing Society Ltd. on the ground of dual membership.

b. Pass an order to cancel the relief obtained by respondent no.1 on grounds of misrepresentation and false claim

c. Pass a direction to respondents to perform as per law and hand over the possession of the flat to the petitioner.

d. Pass any other such order/s that this Hon'ble Court may deem fit and proper under the given facts and circumstances in the interest of justice."

3. The said petition was not entertained by this Court by stating in paragraphs 10 and 11 of the order dated April 11, 2023 as under:

"10. Having heard the learned counsel for the parties, we are not inclined to entertain the petition as the petitioner has already filed a representation before the RCS. Appropriate for the petitioner is to pursue the representation filed by him, annexed at page 127 of the

Writ Petition, which was received by the RCS office on February 11, 2020.

11. With the above observations, we dispose of the petition. It is also made clear that the order passed by this Court shall in no way delay handing over of the possession of the flat to the respondent no. 1 by the society. Counsel for the petitioner states that the representation made by him be considered by the RCS. We say nothing on that. Such a request can be made by the petitioner to the RCS."

4. The impugned order dated April 26, 2023 is an order passed by the RCS on the representation made by the petitioner.

5. Mr. Amarendray Dubey, learned counsel appearing for the petitioner would submit that the Registrar has not considered in proper perspective the submissions made by the petitioner that the RCS could not have dispensed with the requirement of certain documents as per rules. His submission is that Clause 19 of Schedule-VII of the Delhi Cooperative Societies Rules which reads as under has been violated:

"The Co-operative housing society shall publish a Public notice in two leading daily newspapers of National Capital Territory of Delhi one each in English & Hindi, inviting objections on the proposal regarding clearance of membership for allotment of flats/plots by draw of lots."

6. We have seen the impugned order passed by the learned RCS which we have reproduced above.

7. From the reading of the aforesaid paragraphs, it is noted that RCS has taken a view on the basis of the past litigation between the parties and has rightly come to a conclusion in the manner it has done it in the last paragraph of the order.

8. We see no reason to interfere with the conclusion arrived at by the RCS keeping in view the past litigation. The petition is dismissed.

CM APPL. 26236/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MAY 23, 2023/jg

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