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

+ **CONT.CAS(C) 1230/2023 & CM APPL. 44571-44572/2023**

SURESH KUMAR RATHEE

..... Petitioner

Through: Mr. Naveen Gupta & Mr. Sandhya
Gupta, Advs.
M: 9312280288
Email: sgsandhyagupta@yahoo.co.in

versus

SHRI KRISHAN KUMAR

..... Respondent

Through: Mr. Anuj Aggarwal, ASC, GNCTD
with Ms. Arshya Singh & Mr.
Siddhant Dutt, Advs.
M: 9891363718

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Date of Decision: 23rd February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 44572/2023 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

CONT.CAS(C) 1230/2023 & CM APPL. 44571/2023

3. The present petition has been filed alleging willful disobedience of order dated 21st March, 2016 passed in *W.P.(C) No. 1634/2015*, wherein this Court had directed the respondent to consider the bank accounts and statements of 39 members, who were claiming 16 un-allotted flats, for verifying whether payment was deposited into the account of the society and to pass a comprehensive speaking order to resolve the *inter se* claims of the



allotment.

4. This Court notes that the writ petition pertained to *inter se* claim of 39 persons claiming allotment of 16 flats in 'Sita Cooperative Group Housing Limited', for which there were discrepancies as their names were wrongfully excluded from the draw of lots. Thus, writ petition being *W.P.(C) No. 1634/2015* was filed.

5. Learned counsel appearing for the petitioner submits that the respondent neither considered any bank accounts of the society, nor considered the bank accounts and statements of the claimants, but has passed the speaking order dated 17th January, 2023. Therefore, the same is in contravention of the order/directions passed by this Court. Thus, the present contempt petition came to be filed.

6. Learned counsel appearing for the petitioner has drawn the attention of this Court to the speaking order dated 17th January, 2023 passed by the respondent. He submits that without any audit of the accounts of the members of the society, the speaking order has been passed.

7. Learned counsel appearing for the petitioner further relies upon the order dated 21st March, 2016, where there were directions that the representations of the petitioner shall be considered and a speaking order shall be passed. He further submits that there were specific directions that the Registrar shall consider the accounts, specially the bank account statements for the relevant period concerning the members, to verify whether the amounts in fact were deposited into the society account or paid to it.

8. Learned counsel appearing for the petitioner has also relied upon the order dated 11th February, 2002 passed in *W.P.(C) No. 1007/2002*, to submit



that the society itself had filed the said petition alleging that fraud had been committed by the office bearers of the society.

9. Learned counsel appearing for the petitioner further relies upon the order dated 30th January, 2003 passed in *W.P.(C) No. 1007/2002*, wherein it was stated that approval of the State Government had been received for appointment of a Chartered Accountant from the panel and the Chartered Accountant shall be appointed shortly. He further relies upon the order dated 10th August 2005 passed in *W.P.(C) No. 1007/2007*, wherein it has been recorded that investigation and inquiry was being conducted by Crime Branch of Delhi Police with respect to role of Shri Sita Ram Singhal, the then secretary of the Managing Committee of the society.

10. Learned counsel further relies upon the speaking order passed by the respondent in order to show that the speaking order itself records that a Special Audit of the society under Rule 80 of the Delhi Co-operative Societies (“DCS”) Rules, 2007 had been ordered. However, the Special Audit had not been concluded.

11. Learned counsel also relies upon the order dated 09th August, 2019 issued by the office of the Registrar Cooperative Societies, in order to contend that the aforesaid order passed by the respondent itself records that Special Audit is required to facilitate the scrutiny of the claims made by the claimants. Thus, he submits that the respondents have not only violated their own specific order dated 09th August, 2019 issued by the Registrar Cooperative Societies, but also the various directions passed by this Court.

12. Per contra, Mr. Anuj Aggarwal, learned Additional Standing Counsel appearing for the Registrar Cooperative Societies (“RCS”), submits that no contempt has been committed. He submits that there were no specific



directions by the Court in the order dated 21st March, 2016 with respect to any Special Audit. He submits that the only direction that had been passed by the learned Division Bench of this Court was to take into account the various payments made by the members of the society.

13. He further submits that each case of the members of the society, have been discussed, as well as the amounts which were paid by the members were taken into account, and the seniority of each of the members were determined on that basis.

14. He further submits that the petitioner has already challenged the speaking order dated 17th March, 2023 in separate proceedings. Therefore, he submits that the order dated 21st March, 2016 passed by learned Division Bench of this Court had been complied with and no contempt has been committed.

15. I have heard learned counsels for the parties and have perused the record.

16. The learned Division Bench of this Court vide order dated 21st March, 2016 had directed the respondent-RCS to consider the bank account statements of the 39 members who were claiming the 16 un-allotted flats and he was directed to verify whether payment was deposited into the account of society by the said members. Thus, directions were given to prepare a seniority list in order to resolve the *inter se* claims of allotment by a comprehensive speaking order.

17. At the outset, this Court notes that by order dated 21st March, 2016 passed in *W.P.(C) No. 1634/2015*, the Division Bench had *inter-alia* passed the following directions:

“xxx xxx xxx



*There can be no doubt that this Court's attempt in its order dated 29.07.2010 was to ensure quietus to the entire controversy in the shortest possible time. However, the effort to resolve the dispute quickly should not result in injustice. In other words, while there is need for speedy justice, there should not be the casualty. In this view of the matter, the Court hereby directs the Registrar to consider the Committee's recommendations/report dated 03.12.2014 and pass a comprehensive order on the basis of the materials (that were considered by the Committee, as well as other such materials which may be furnished to the Registrar) in respect of the 39 members who are now claiming the 16 unallotted flats. The seniority list or lists will have to be drawn with reference to specific dates and in the case of those found ineligible, the Registrar should specifically record his reasons for arriving at such conclusion. The entire process shall be conducted in such a manner that the concerned individuals are given reasonable opportunity. In any event the parties concerned shall be allowed to file representations not exceeding three pages with the supporting proof of payments etc. **The Registrar shall consider the accounts, especially the bank accounts, statements for the relevant period or periods concerning the members while verifying whether the amounts infact deposited into the Society account or paid to it.***

After having considered all the above factors, the Registrar shall pass a comprehensive speaking order. The Registrar shall complete the task and at the utmost experience in any case by 31.08.2016. The present writ petitioners and all the parties before the Court (including the contesting respondents) shall appear before the Registrar for further directions on 31.03.2016 at 3 p.m.

xxx xxx xxx”

(Emphasis Supplied)

18. Perusal of the aforesaid clearly shows that directions were issued by learned Division Bench to the Registrar to pass a speaking order after taking into consideration the relevant materials that may be furnished to the Registrar in respect of the 39 members who were claiming the 16 un-allotted flats.

19. There were further directions by the learned Division Bench that the seniority list shall be drawn by the Registrar after considering all the



documents on record, especially the accounts statements and the payments made by each member, for the purpose of verifying as to whether the amounts were infact deposited by the said claimants into the account of the society.

20. Pursuant to the aforesaid directions dated 21st March, 2016, a speaking order dated 17th January, 2023 has come to be passed by the respondent. By way of the said speaking order, the respondent has *inter-alia* held as follows:

“xxx xxx xxx

As per DCS Act & Rules the following documents were required for allotment of flats i.e.

- A. Application form of the member and affidavit at the time of applying for membership.*
- B. Resolution of Managing Committee approving membership.*
- C. Proof of payment of admission fees and share money.*
- D. Proof of payment of land and construction money.*
- E. Membership Registrar showing the name of the member.*

The society could not produce any of the documents, hence, this committee relied upon the proof/ evidence given by the members/ claimant. As documents provided by some of the members only 02 members can be considered having valid membership of the society those are Sh. Sita Ram Singhal and Sh. R.S. Singhal as these members were promoter members. The main criteria for deciding seniority was taken as (a) date of enrolment (decided on proof of admission/ share money), (b) correlation of payment made by the members towards land and construction money taking cut off date as 17 I 10 I 1999 when the draw of lots were held for 45 members wherein A category, flat was fixed for Rs 5,05,000/- and B Category flat cost was fixed for Rs. 4,05,000/-.

xxx xxx xxx

S.No. 1 to 10 not considered for seniority as these claimant has not contributed towards construction of flats and S. No. 39 did not appear before this Committee and not submitted any proof of payment.

Seniority list table for allotment of 07 A Category flats.



S. No.	Name	Seniority	Category of Flat
1.	Sita Ram Singhal	01.08.1979	A
2.	Radhey Shyam Singhal	01.08.1979	A
3.	Pyare Lal	04.08.1988	A
4.	Santosh Gandhi	12.12.1990	A
5.	Nirmala Devi	26.06.1995	A
6.	Neelam Bhatia	26.06.1995	A
7.	Krishna Verma	18.10.1995	A
8.	Sunil Gupta	18/10/1995	A
9.	Suresh Kumar Rathi	18/10/1995	A
10.	Suresh Pal Gupta	20/10/1995	A
11.	Anoop Singh	28/10/1995	A
12.	Urmil Suneja	25/05/1996	A

Smt. Krishna paid Rs. 5,15,000/- on 30/12/1995 and Shri Sunil Gupta paid Rs. 4,65,000/- on 25/03/1996. S/hri Suresh Kumar Rathi paid Rs. 5,00,000/- upto 18/09 /1996.

Seniority list table for allotment of 09 B Category flats.

1.	Shiv Kumar Singhal	06.05.1991	B
2.	Sameer Goel	15.06.1988	B
3.	Devender Sharma	15.06.1988	B
4.	Madhu Aggarwal	25.10.1988	B
5.	Sanjay Kr. Aggarwal	25.10.1988	B
6.	Rekha Rani	01.12.1988	B
7.	Vikram Kumar	01.12.1988	B
8.	Seema Goel	01/12/1988	B
9.	Ashish Jain	01/09/1990	B
10.	Raj Bala	01/11/1990	B
11.	Uma Dutt Kaushik	18/02/1994	B
12.	Jai Bhagwan Gupta	08/01/1995	B
13.	Laxmi Chabaria	18/10/1995	B
14.	Harish Mohan Sharma	18/10/1995	B
15.	Ashwani Kumar Bhardwaj	10/11/1995	B
16.	Manju Gupta	01/11/1996	B

The RCS vide Affidavit of dated 11/08/2017 filed in WP (C) No. 1634 of 2015 titled as Sita Ram Singhal Vs J. R. Aryan and Others has placed on record the findings of the committee before the Hon 'ble High Court of Delhi. The then RCS upon consideration of the report of three member committee, had filed an affidavit dated 11.08.2017 in



W.P.(C) 1634/2015, the para 6 of which reads as follows:-

"That in respect of all 39 claimants, it has been noticed from the society that as none of the claimant had produced copy of application for the membership, declaration on oath providing eligibility for membership, any resolution passed by the managing committee of the society approving that membership and then documents submitted to the Registrar Cooperative Societies for approval to enrol such person as member in the society, none of the claimant could be said to have been validly enrolled as a member of the society and thus, entitled to be considered for the allotment of flat."

Further, in the said affidavit, the position of each of the 39 claimants was also placed on the basis of the documents produced by these 39 claimants i.e. share certificate, share money receipt, receipt of land and construction money, audit report and passbook issued by the Society.

xxx xxx xxx

In compliance of the order dated 10.02.2021 passed by Hon'ble High Court of Delhi in WP (C) No.7659/2020 titled Sh. Suresh Kumar Rathee Vs RCS & Qrs and after obtaining the advice of Government Counsel wherein it has been opined that RCS office need not consider the written representation made by petitioner i.e. Sh. Suresh Kumar Rathee and intervener i.e. Sh. Sita Ram Singhal but by all the 39 claimants and pass a reasoned orders in respect of such claimants. Additionally, the Department must render a chance of at least one personal hearing to each claimant, thereby providing him/her a chance to explain the current facts and circumstances, before deciding the merits of each of the claim.

Accordingly, Department issued notices dated 19.08.2021, 05.10.2021 and 12.11.2021 requesting all the 39 claimants to appear and to submit their respective claims with supporting evidence and proof of payment etc.

In response to the 39 notices, 17 claimants appeared in person whereas 7 claimants submitted their documents by post. They submitted their documents in support of their claim for establishing membership. Further, a final notice was issued to those who did not appear with requisite documents. However, none appeared in response to these notices despite service.

It has been observed by this office that the documents filed by these 24 claimants in response of the above said notices are incomplete in order to decide their seniority for allotment of 16 flats in the Society



on as is where is basis, hence a recourse is taken on the basis of submitted earlier before Sh. J. R. Aryan Committee as considered by him with reproduction in his report and later re-examined by the three members committee of this office in its report dated 28.12.2016 for each individually. As documents have been analyzed earlier and found to be in a sequence chronologically with payments records the same are undisputed facts not challenged before any legal forum so far, hence is to be accepted as authentic being established in a fact finding report and, as on date, there is no apparent reason on record to reject the established facts of the report. Hence, in the given circumstances and to bring an end to protracted litigations, from decades on this issue and in order to bring a new horizon in the remaining lives of those claimants who were found rightful earlier and now again found eligible without any iota of doubt. The office has taken up the claims of these individuals and consider it appropriate that 16 flats of Sita CGHS be allotted to the 16 claimants in the categories of flats A & B, as under:

Seniority list for allotment of 7 A category flats:

S. No.	Name	Seniority	Category of Flat
1.	Sita Ram Singhal	01.08.1979	A
2.	Radhey Shyam Singhal	01.08.1979	A
3.	Pyare Lal	04.08.1988	A
4.	Santosh Gandhi	12.12.1990	A
5.	Nirmala Devi	26.06.1995	A
6.	Neelam Bhatia	26.06.1995	A
7.	Krishna Verma	18.10.1995	A

Seniority list of 09 B Category flats:

1.	Shiv Kumar Singhal	06.05.1991	B
2.	Sameer Goel	15.06.1988	B
3.	Devender Sharma	15.06.1988	B
4.	Madhu Aggarwal	25.10.1988	B
5.	Sanjay Kr. Aggarwal	25.10.1988	B
6.	Rekha Rani	01.12.1988	B
7.	Vikram Kumar	01.12.1988	B

Accordingly, reference of the above mentioned names be made for the further course of action as per the mandate of Rule 90 of DCS Rules, 2007.”

(Emphasis Supplied)



21. Perusal of the aforesaid clearly shows that the respondent while passing the aforesaid speaking order has considered the amounts paid by each member and on the said basis, seniority of each member has been fixed. Further, this Court also takes into account the order dated 21st March, 2016, wherein there were directions that the payments made by each member are to be taken into account. There were no specific directions in the order dated 21st March, 2016 with respect to any Special Audit being conducted.

22. Supreme Court in the case of *Jhareswar Prasad Paul And Another Versus Tarak Nath Gang And Others*, (2002) 5 SCC 352, has held that in contempt proceedings, a Court cannot enter into questions or adjudicate upon questions which have not been specifically directed. Thus, the Court held as under:

“11.....The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts



exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.”

(Emphasis Supplied)

23. In view of the aforesaid position of law, and facts and circumstances of the present case, this Court is of the view that substantial compliance of the order dated 21st March, 2016 has been done by the respondent. No contempt has been committed by the respondent.

24. This Court in contempt jurisdiction only has to consider whether or not there has been any willful disobedience of the order in question. In the present case, once the RCS has taken into account the various documents produced before it, including the amounts paid by each member, it cannot be said that there is any willful disobedience or violation committed by the RCS.

25. Supreme Court in the case of ***Bihar State Government Secondary School Teachers Association Versus Ashok Kumar Sinha And Others, (2014) 7 SCC 416***, held that when substantial compliance is made, then a case for willful disobedience and contempt thereof cannot be made. Thus, the Supreme Court has held as under:

“24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful



and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of the 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in the 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of CAs Nos. 8226-27 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether the 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres.”

(Emphasis Supplied)

26. The petitioner is stated to have already challenged the speaking order dated 21st March, 2016 before the learned Financial Commissioner. Needless to state, the matter before the Financial Commissioner shall be decided on its own merits, without being affected by any observations made in the present case. This Court clarifies that this Court has not adjudicated upon the merits of the case of the petitioner pending before the learned Financial Commissioner.
27. Accordingly, the present contempt petition is disposed of with the aforesaid directions.

MINI PUSHKARNA, J

FEBRUARY 23, 2024/kr