



\$~13

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

Date of Decision: 17th March, 2025

+ **W.P.(C) 5279/2024, CM APPLs. 21586/2024 & 7219/2025**

AJAY CHAUHAN

.....Petitioner

Through: Mr. Archit Upadhaya, Mr. Aneesh Mittal and Ms. Sonia Abral, Advs.

versus

CHINAR CO-OPERATIVE GROUP HOUSING SOCIETY AND ANR

.....Respondents

Through: Ms. Leena Tuteja, Adv. with Mr. Parveen Wadhwa, President and Mr. Jatin Mittal, Secretary of Society.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J.(ORAL)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking *inter alia* to set-aside the auction proceedings invoked by the Respondent No.1 for selling the flat belonging to the Petitioner.
3. The present petition reveals the 24-years struggle of the Petitioner's family in obtaining the possession of a flat in Chinara Co-Operative Group Housing Society Ltd. (Majestic Apartments), Dwarka, New Delhi. The mother of the Petitioner ('allottee') had applied for membership of the said Society upon clearly stating that she was a resident of Panchkula. She was



allotted a share certificate of Rs.100/- by the Society, on 16th February, 2002. According to the Petitioner, the allottee had paid an amount of Rs.13,75,264/-, details of which are as under:

LEDGER

Account of Ms. VINOD CHAUHAN

Date	PARTICULARS	C.B. Folio	Debit		Credit		Dr. or Cr	Balance	
			Rs.	P	Rs.	P		Rs.	P
27.01.02	Ct				100	00			
27.01.02	By Ch: 734533	439			1,00,000	00			
17.02.02	By Ch: 734534	440			3,00,000	00		4,00,000	00
05.08.02	By Ch: 758883	486	Chage		75,000	00			
05.08.02	By Ch: 734535	486			50,000	00		5,25,000	00
29.10.02	By Ch: 758889	524			1,10,000	00		6,35,000	00
27.01.03	By Ch: 758891	577				00		7,60,000	00
					1,25,000				
11.04.03	By Ch: 734545	652			1,25,000	00		8,85,000	00
17.07.03	By Ch: 773928	755			1,25,000	00		10,10,000	00
10.10.03	By DD: 828913	830			1,25,000	00		11,35,000	00
	Bank Chage		4,736/-					11,30,264	00
28.01.04	By DD: 831779	926			1,25,000	00		12,55,264	00
11.06.04	By DD: 000935	1090			1,20,000	00		13,75,264	00

4. It is the case of the Petitioner that this amount constitutes 100% of the initial cost of the flat and a substantial portion of the revised cost of the flat, which is to the tune of Rs.20,23,007/-. The revised cost of the said flat is as under:



FINAL COST OF THE FLAT	
A. Proportionate Cost	
Particulars	
Category	3-Bed
Flat Area (sq. ft.)	1615
Land Cost (incl. Land component, Registration Charges etc.)	247000
Cost of Construction + Dev. Cost+10cc	1047425
Cost of construction of open area	nil
Texture removal and repainting	12113
Escalation amount(material supplied by Society at fixed price)	62985
Cost of extra items	32832
Final Bill Amount	150195
Sub. Total of Prop. Cost (A)	1552550
B. Common Cost	
Cost of Lifts (8 Nos.)+ AMC and repairs	72222
Cost of fire fighting including repairs	22300
Cost of Security System	5000
ESS, External Electrification Transformers DG sets Etc	71600
Admn.,Staff, Structural, Architectural, plumbing, Electrical consultancy, liasioning water, soil testing charges, Gardning, repairs,Legal Expenses, Office, Computer room, toilets etc..	115100
Cost of community facility area	20000
Cost of RO System (Increasing Capacity from 5000 to 8000 ltrs/hr and Civil works) ,	21300
Add in News paper	2670
Sub. Total of Common Cost (B)	330192
C. Govt. Taxes	
Work Contract Tax (4%) upto 30/04/2005	36223
EWS fund as per order of Delhi High Court	26236
Deposit for POC, water and sewer connection	38500
Vat (12.5% of 75%)	13466
Service Tax from 01/06/2005	9690
MCD Vacand Land Tax up to 8-6-2005	16150
Sub. Total (C)	140265
Grand Total (A+B+C)	2023007

5. It is the case of the Petitioner that the allottee *i.e.* his mother received two show cause notices, initially on 21st February, 2005 and 9th March, 2005. These were replied to by the allottee and the communication ensued between the parties. The allottee then complained to the Registrar, Cooperative Societies in respect of the conduct of the Society on 31st May, 2011 that the flat was not being allotted to her in Majestic Apartments.



6. The allottee then received the show cause notice dated 20th June, 2011 for initiation of expulsion proceedings against her, from membership of the Society. A fresh exercise was started again by the Society for expulsion on the ground that she fraudulently obtained the membership of the Society despite not being a resident of Delhi. The said show cause notice dated 20th June, 2011 was replied to by the allottee.

7. Again, a second show cause notice was issued on 26th July, 2011, which was also replied to by the allottee. On 26th September, 2011, the third and final show cause notice was issued, which was also replied to by the allottee. The allottee was then given personal hearing in the expulsion proceedings and after hearing the parties, the order dated 19th October, 2012 was passed by Office of Registrar of Cooperative Societies. The conclusion in the said order was that the proceedings for expulsion were not maintainable as the allottee had not misled the Society in any manner. The operative portion of the said order reads as under:

"I have gone through the Application Form dated 15.12.2001 submitted by the Respondent with the Society for acquiring membership in the Society. While the permanent address of the member is mentioned as "H.No.440, Sector-6, Panchkula, Haryana", the present address is stated to be "F-2, Sector-14, Chandigarh". The main point for consideration in this case is as to whether the cooperative society has been deceived by the member by virtue of any false statement or submitting any false documents. During arguments on 9.10.2012, this question was posed to Shri S.K. Pathak, Ld. Counsel appearing for the Petitioner Society that when the member had clearly stated on the Application Form that she was a resident of Chandigarh, how can the Society claim that the Society has been deceived by



*the member. The Ld.Counsel sought to. draw my attention to the documents filed by the member with regard to her proof of residence in Delhi and stated that those documents were not sufficient to draw the conclusion as to whether the member was residing in Delhi for a period of three years prior to the date of application for membership. During these proceedings, I am not inclined to enter into this issue. The Society has tried to make out a case that it has been deceived by the member. What I am required to look into, in terms of Section 86(1)(b) of the Act, is that whether the Member had willfully deceived the Society or not. **In this case, I find that since the Member had clearly stated herself to be a resident of Chandigarh at the relevant time, it can not be claimed by the Society that it has been deceived by the Member.** I may hasten to add that I am not deciding the eligibility of the Member for acquiring membership in the Society. The Member may or may not be eligible on the ground of residence proof in Delhi. I am only restricting myself to the provisions of Section 86(1)(b) of the Act. If the Society is of the view that the Member does not have any proof of residence in Delhi for the relevant period, it has alternate remedies available. However, the Society can not claim that it has been deceived by the Member as the Member had never claimed, at least at the time of acquiring membership that she was a resident of Delhi. I am, therefore, unable to agree with the contention made by the Ld.Counsel for the Petitioner Society that the Society has been deceived in this case.”*

8. In effect, therefore, the expulsion proceedings were rejected as under:

“5. In view of the above, I am of the considered view that the proposal of the Society is not covered u/s 86(1)(b) of the Act and the same is, therefore, rejected. Copy of this order be sent to both the parties free of cost. File be consigned to concerned Zone/Branch.”



9. This was an appealable order but the Society chose not to appeal the said order. The mother of the Petitioner *i.e.* the original allottee expired on 18th August, 2021. Upon this factum being communicated to the Society, the Society surprisingly took a position on 30th August, 2022 that the membership itself deserves to be ceased. A communication was issued to the Petitioner. In the said proceedings before the Registrar, Cooperative Societies, the President of the Society wrote a communication dated 23rd March, 2023 stating that the Society may be given an opportunity of being heard. In the said letter, the Society did not agree with the judgment dated 29th April, 2022 passed by the Id. Division Bench of this Court in ***W.P.(C) 1538/2020 titled 'T.N. Haokip v. Registrar, Co-operative Societies and Ors.*** which held that the requirement of three years of residence in Delhi was not mandatory. The relevant portion of the said judgement reads as under:

"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.

XXXXXX

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 Cooperative 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.***

10. Further, no date was given for hearing in the matter. However, on 17th July, 2023, a deemed approval was communicated under Section 41 of the Delhi Cooperative Societies Act, 2003 ('DCS Act') for secession of the membership to allottee i.e. the Petitioner's mother. In response thereto, the Petitioner wrote a representation application under Section 70 of the DCS Act dated 11th March, 2024 praying that the Registrar, Cooperative Societies may hold a hearing and take action against the Managing Committee of the Society. Relief was also sought that the flat be not disposed of and allotment was also sought. The relevant portion of the said representation application is set out below:



“18. Therefore, with folded hands, I request your good self to take quick and stern actions against the Managing Committee of Chinar CGHS Ltd. for concealing the true facts from your good self. Further, declare their order/ letter dated 17.07.2023 as non-est and null & void, since ab-intio, as the proceedings under Section 41 of DCS Act, 2003 cannot be initiated for ceasing the membership no. 378 of my late mother.

19. I also humbly request your good self to restrain Chinar CGHS Ltd. from disposing of the flat in the said society by selling or/ and by creating any type right(s)/title(s)/encumbrance(s), etc. of any third party. Further, direct Chinar CGHS Ltd. to allot the flat of my late mother to me as I am her rightful legal heir and nominee.

20. I also humbly request your good self to conduct the hearing in respect of the Reference for cessation of membership no. 378 of my late mother dated 30.08.2022 by Chinar CGHS Ltd. and in respect of present Application under Section 70 of DCS Act, 2003 and under DCS Rules, 2007. By rejecting false, vague and baseless case of Chinar CGHS Ltd. and directing them to allot the flat of my late mother to me without any further delay.”

11. The Petitioner, thereafter, came across an advertisement wherein the said flat, which was allotted to the Petitioner’s mother, was sought to be auctioned. The same is being challenged by way of the present petition. The prayers in this petition are as under:

- “a. direct Respondent no. 2 to not to initiate auction proceedings invoked by Respondent no. 1;*
- b. set-aside the auction proceedings invoked by Respondent no. 1 for selling the flat/property belonging to the Petitioner;*
- c. direct the Respondent no. 2 to issue order/ directions*



to Respondent no.1 to refund the amount collected from the applicants and not to create any third party right or/and encumbrance upon the flat/ property belonging to the Petitioner;

d. direct the Respondent no. 2 to decide the reference under Section 41(1)(d) of DCS Act, 2003 read with Rule 35 of DCS Rules, 2007 referred by the President of Managing Committee of Respondent No.1, which is currently pending for adjudication before Respondent no.2; or/and

e. direct the Respondent no. 2 to decide the Application u/s 70 of DCS Act of Petitioner in respect of cessation of membership by Respondent no.1 by claiming it 'Deemed Approval'."

12. On 10th April, 2024, this Court had stayed the advertisement as well as the auction proceedings including the declaration of deemed approval of succession of membership. The Court further directed that the President and Secretary of the Society shall be personally present on the next date of hearing. Relevant portion of the said order dated 10th April 2024, reads as under:

"2. Learned counsel for the Petitioner states that the Petitioner's mother was a member of Respondent no.1 society. He states that the Petitioner is her nominee and sole legal heir. He states that on 19th October, 2012, the Respondent No.2 rejected the proposal of Respondent No.1 to expel Petitioner's mother. He states that Respondent No.1 did not comply with the order dated 19th October, 2012 and did not allot a flat to Petitioner's mother. He states that the order dated 19th October, 2012 has attained finality.

3. He further states that Respondent No.1 initiated proceedings under Section 41(1)(d) of DCS Act, 2003 read with Rule 35 of DCS Rules, 2007 ("cessation



proceeding”) against the Petitioner. He states that Respondent No.1 declared the cessation proceeding against the Petitioner as deemed approved on 17th July, 2023 despite the matter being pending before Respondent No.2. He points out that the Respondent No.1 has published an advertisement on 27th February, 2024 to auction the flat which belongs to the Petitioner/his mother. According to him, the auction proceedings are nonest, null & void as the cessation proceeding is still pending.

4. Issue notice. Mr. Vishal Chanda, learned counsel accepts notice on behalf of Respondent No.2. Issue notice to Respondent No.1 by all modes returnable on 15th May, 2024.

5. Till further orders, there shall be a stay of the advertisement dated 27th February, 2024 as well as the auction proceedings and Respondent No.1’s unilateral declaration of deemed approval dated 17th July, 2023.

6. The notice shall specifically state that the President and the Secretary of Respondent No.1 society shall be personally present in Court on the next date of hearing.”

13. The matter has, thereafter, been adjourned from time to time. The President and Secretary of the Society are present today.

14. The Court has heard the parties.

15. Ms. Leena Tuteja, Id. Counsel for the Respondent submits that insofar as prayers (a) to (c) are concerned, the same have become infructuous as the auction proceedings have been cancelled. She submits that the prayers (d) and (e) are concerned, the matter may be sent to the Registrar, Cooperative Societies.

16. Ld. Counsel further submits, on instructions, that out of 108 flats, only



two flats are still vacant and one of them is blocked by virtue of this Petition. She further submits that other flat allottees have deposited maintenance charges and the market value of the flat is quite high. She also submits that three payments *vide* DD No.828913 dated 10th October, 2003, DD No.831779 dated 28th January, 2004 and DD No.000935 dated 11th June, 2004 made by way of demand drafts are not traceable and that only the amount of Rs.8,69,000/- stands reflected in the Society's account as having been received from the allottee.

17. On the other hand, Id. Counsel for the Petitioner submits that after making initial payments way back in 2002 to 2004, more than 20 years have passed, the flat has still not been allotted. According to the Petitioner, a substantial sum of Rs.13,75,264/-, out of the total revised amount of Rs.20,23,007/-, also stands paid. The Petitioner is also willing to deposit the entire outstanding amount with interest and any other charges payable so that the flat may be allotted to the Petitioner.

18. Insofar as the amount deposited is concerned, the accounts may be reconciled with the Petitioner by the Society after verifying from their respective bank account statements.

19. Insofar as the relief being sought by the Petitioner *qua* the allotment of the flat, this Court is of the opinion that after the order dated 19th October, 2012, the Society took no steps either to challenge the said order or to cancel the allotment of the Petitioner on any other ground.

20. The proceedings under Section 86(1)(b) of the DCS Act having been rejected, thus there cannot be any deemed cessation of membership. The Petitioner's mother, who was working as a teacher, had paid a substantial amount from her hard earned money and the Petitioner, who is the son of the



original allottee, cannot be deprived of the possession and enjoyment of the flat for which his mother and himself have been embroiled in this long drawn litigation with the Society.

21. Certain disputes have to come to an end and this is one of them. The Petitioner being one of the original allottees and the issue of mandatory residence in Delhi having been adjudicated in favour of the Petitioner/allottee, by the Registrar, Cooperative Societies in its order dated 19th October, 2012, the said issue cannot be re-agitated today. The deemed cessation of membership is thus totally untenable.

22. Under these circumstances, this Court is of the opinion that instead of again litigating this matter, the Petitioner ought to be directed to deposit the entire outstanding amount, after reconciling the accounts, along with interest @ 9% Simple Interest per annum by 15th June, 2025. The Petitioner would also be liable to pay all the maintenance charges of the Society and any other charges, which may have been collected from other allottees/occupants of the flats in the Society from 19th October, 2012 onwards. On this amount, interest shall not be payable.

23. Subject to both the amounts, as directed above, being deposited by 15th June, 2025 and all the outstandings being collected, the Registrar, Cooperative Societies shall, through draw of lots, allot to the Petitioner, one of the two flats, which is vacant in the Society, by 15th July, 2025.

24. The Society confirms that insofar as the auction, which was proposed to be carried out in terms of the public notice dated 27th February, 2024, there is no encumbrance or liability upon the Petitioner.



2025:DHC:1702-DB



25. The petition is allowed and disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MARCH 17, 2025/dk/ck