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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 16th April, 2025***+ W.P.(C) 4741/2025 & CM APPLs. 21763/2025, CM APPL. 21764/2025****D P S RAJESH**

.....Petitioner

Through: Mr. K. K. Rai, Senior Adv, Mr. Anshul Rai, Ms. Medha Tandon, Ms. Sreoshi Chatterjee, Mr. Ravilochan Daliparthi, Mr. S. K. Pandey, Mr. Awanish Kumar, Mr. Chandrasekhar A Chalabbi, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS.Respondents

Through: Mr. Tushar Sannu, Panel Counsel with Mr. Utkarsh Singh, Advocate for R/GNCTD/RCS

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 writ petition pertains to several grievances raised by the Petitioner against the previous Managing Committees of the Asha Deep Cooperative Group Housing Society Limited, Sector – 2, Plot 3B, Dwarka, New Delhi (*hereinafter, the Society*).
3. The Petitioner is stated to be one of the members of the Society. Elections for the managing committee of the Society are stated to have been announced and the same are to be held on 27th April, 2025.



4. Vide the present petition, the Petitioner is challenging certain orders passed by the Administrator of the Society. The prayers in this writ petition are as under :-

“A. Pass an Order issuing a writ/direction/order of or in the nature of mandamus quashing the Order dated 18.01.2025 declaring demand of Rs. 2,78,334 each against Shri K.K. Chopra, Shri R.K. Prabhakar, Shri Sayaji Alapati, Shri Bijender Singh as vacated ab initio and granting ex post fact approval to the payment of the sum of Rs. 13,91,672 paid by the erstwhile Managing Committee without requisite approvals; AND

B. Pass an Order issuing a writ/direction/order of or in the nature of mandamus directing Respondent No.2, Registrar of Cooperative Societies to carry out a special audit of the accounts of Respondent No. 4, Asha Deep CGHS Ltd., under Rule 80 of Delhi Co-operative Society Rules, 2007 to identify the defaulter; AND

C. Pass an Order issuing a writ/direction/order of or in the nature of mandamus quashing the Order dated 28.12.2024 passed by Respondent No. 3, Shri A.K. Kaushal forming the Advisory Committee; AND

D. Pass an Order issuing a writ/direction/order or in the nature of mandamus directing Respondent No.2, Registrar of Cooperative Societies to prepare a list of defaulters based on the findings of the special audit report under Rule 80 of Delhi Co-operative Society Rules, 2007, ensuring that defaulters are held accountable for financial irregularities and the arrears are duly recovered as per applicable provisions of the Delhi Co-operative Society Rules, 2007;

E. Pass an Order issuing a writ/direction/order of or in the nature of mandamus directing Respondent No.2, Registrar of Cooperative Societies to immediately appoint a neutral and independent Administrator to oversee the affairs of the society and transparent conduct of elections of Respondent No. 4, Asha Deep CGHS Ltd; AND

F. Direct the Respondent No.2, Registrar of Cooperative Societies to conduct elections strictly in accordance with



the provisions of the Delhi Co-operative Societies Act, 2003 and Schedule II (Rule 51) of the Delhi Co-operative Society Rules, 2007 within a time-bound schedule;

G. Pass an Order directing that a thorough inquiry under Section 62 of the Delhi Co-operative Societies Act, 2003 into the illegal actions of Respondent No.3, Shri A.K. Kaushal in respect of Respondent No. 4 Society, M/s Asha Deep CGHS Ltd; AND/OR

H. Pass any other order or direction that this Hon'ble Court deems fit and proper in the interest of justice."

5. Mr. Rai, Id. Senior Counsel for Petitioner submits that at present, he is only pressing para (B) of the prayer wherein a special audit of accounts of the Society is being sought in accordance with Rule 80 of Delhi Co-operative Society Rules, 2007 (*hereinafter, the 2007 Rules*). The relevant portion of said Rule is extracted herein below:

"80. POWER OF REGISTRAR TO DIRECT SPECIAL AUDIT IN CERTAIN CASES AND PROCESS OF CONDUCTING AUDIT IN ALL SOCIETIES -

(1) Where the Registrar is of the opinion -

(a) that the affairs of a co-operative society are not being managed in accordance with the co-operative principles or prudent commercial practices or sound business principles;

b) that a co-operative society is being managed in a manner likely to cause serious injuries or damage to the interest of business to which it pertains;

c) that the financial position of a co-operative society is such as to endanger its insolvency to the society;

- the Registrar may at any time by written order, direct that a special audit of the accounts of co-operative society for such period or periods and for such purpose, as may be specified in the order, shall be conducted and may by the same or different order appoint an auditor out of the panel drawn by Registrar to conduct special audit after giving a show cause notice to the co-operative society. The Special Auditor shall have same



powers and duties as are given to an Auditor under the Act. The Special Auditor shall submit its report to the Registrar for taking suitable action on the report as he considers necessary in accordance with the provision of the Act or any other law for the time being in force. Registrar may direct the co-operative society to submit comments on the auditor report or direct the co-operative society to place the report in the general body meeting to be called for this purpose by the committee. The expenses incurred for conducting special audit shall be decided by the Registrar, which shall be paid by the co-operative society from its funds and in default of such payment, the same shall be recovered from the co-operative society as arrears of land revenue....”

6. Mr. Sannu, Id. Counsel for the RCS submits that since the elections have been announced, any steps towards derailing the elections would not be in the interest of the society or its members. He however submits that if the Court directs a special audit of accounts, then the same would be carried out by the Registrar Cooperative Society (*hereinafter, RCS*) in accordance with law.

7. The prayer therefore, in this petition presently for a special audit of accounts of the Society is in terms of Rule 80 of the 2007 Rules. The allegations raised in this petition are in respect of certain recoveries that were directed against certain members of the Managing Committee of the Society.

8. The said recoveries were imposed vide letter dated 02nd May, 2024 issued by the Ex-Administrator of the Society – Mr. V.S. Malik which has been further confirmed by the letter dated 23rd May, 2024.

9. As per this communication by the said administrator, letters were issued to five members of the Managing Committee of the Society for recovery of unapproved payment to the Contractor. Thus, *vide* this letter, the five



members were directed to pay Rs.2,78,334/- each. The relevant portion of the letter of the Administrator dated 23rd May, 2024 is set out below:

“[.....]

As you have made irregular escalated payment of Rs. 13,91,672/- (Rupees Thirteen lakh, ninety-one Thousand, Six hundred and Seventy-two only) to the contractor without following the due process and against the provisions of DCS Act, Rules and the bye-laws of the society, you are jointly and severally responsible which makes each of you liable to compensate the society and its members.

The undersigned, Administrator of Asha Deep CGHS Ltd. do hereby direct you all to make payment of Rs 2,78,334/- (Rupees Two lakh Seventy-eight thousand, Three hundred & Thirty-four only) each within 5 days from the date of issue of this letter failing which an appropriate further necessary action as per law would be taken against you in discharge of my responsibility as assigned to me by the Special GBM held on 21.04.2024.”

10. Thereafter, *vide* order dated 18th January, 2025, the said directions in the letter dated 2nd May, 2024 and subsequent letter dated 23rd May, 2024 have been vacated *ab initio* by Respondent no. 3 – Shri Ajay Kumar Kaushal, Administrator. The relevant portion of the said order is extracted below:-

“5. A request letter dated 03.01.2025 has been received from Sh. K K Chopra (Membership No. 234), Sh. Sayaji Alapati (Membership No. 194), Sh. Bijender Singh (Membership No. 239) and Sh. R. K. Prabhakar (Membership No. 190) Individually whereby a request has been made to discharge them from the list of defaulters on account of the demand created on 02.05.2024 vide no. 44 for releasing the payment as members of the Ex-Managing Committee. Moreover, the demands appear to be undue enrichment of Society at the cost of 5 individual MC Members and this needs immediate remedy and rectification. The request has been examined and found in order in order and valid to delete the demand created on 02,05.2024 on account of procedural matter.



6. *In view of the aforesaid, the demand created by Shri. V.S. Malik (Ex-Administrator) against Shri K.K. Chopra (Ex-President), Shri. R.K. Prabhaker (Ex-Secretary), Shri Sayaji Alapati (Ex-Treasurer) and Shri Bijender Singh (Ex-MC Member) of Rs. 2,78,334/- each on 02.05.2024 vide no. 44 for non-approval of Committee's recommendation of cost/price escalation hereby stands vacated ab initio. The necessary corrected in the books of accounts will be suitably carried out by the accountant of the Society."*

11. The Petitioner's grievance is that the members of the Managing Committee have been allowed to go scot-free despite the irregularities which were found in payments to Contractors. Since there are allegations of mis-management, the RCS, being the independent body, ought to conduct a special audit of accounts of the Society in terms of Rule 80 of the 2007 Rules in respect of the allegations contained in the order dated 23rd May, 2024 where irregular payments were alleged by the Managing Committee to the contractor, despite the same being subsequently vacated.

12. As per Rule 80 of the 2007 Rules, let a Show Cause Notice be issued by the RCS to the Society, calling for an explanation as to the allegations and thereafter, if required, the RCS shall proceed in terms of Rule 80 of the 2007 Rules.

13. It is directed that the said Show Cause Notice be issued soon after the elections of the Society take place on 27th April, 2025 and the proceedings pertaining to the audit of the accounts shall be concluded within a period of one year.

14. All rights and remedies of the parties are left open.

15. It is made clear that elections of the Society shall proceed as scheduled on 27th April, 2025.



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16. The present petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 16, 2025
v/ss