

IN THE COURT OF THE REGISTRAR COOPERATIVE SOCIETIES, DELHI
OLD COURTS BUILDING, PARLIAMENT STREET, NEW DELHI-110001

F.NO.47/GH-1112/AR/SEC-1/GH/RCS/2022 | 3297 - 3300

01 - 26/5/25

IN THE MATTER OF:

Jagat Singh

Petitioner

Versus

Malti Gupta

Respondents

ORDER

This order shall dispose of the proceedings initiated vide Show Cause Notice dated 23.08.2024 issued u/r 20(1)(c)(1) & (iii) (2) of DCS Rules, 2007 read with Section 87 & 41 (d) of DCS Act, 2003 whereby Malti Gupta was called upon to show cause as to why cessation of membership should not be granted against them U/r 20(1) (c) (i) & (iii) of DCS Rules 2007 read with section 87 & 41(d) of DCS Act, 2003,

The brief facts of the case are as under:-

Ms. Malti Gupta enrolled as a member of the Bhagwati Co-operative Group Housing Society. Ltd (Regn. No. 1112/GH), Plot no. 1A, Sector-22, Dwarka, New Delhi-110075. The petitioner has stated that the respondent is having a residential property in Delhi bearing No. G-102, Kaveri CGHS Sector-06 Dwarka Delhi, the petitioner accordingly prayed to cease the membership of the respondent on account of disqualification of holding the above said property.

In her reply dated 29/10/2024, The respondent, submitted that she is a member of Bhagwati CGHS Ltd. since 2002 and is presently working as an Associate Professor at Zakir Hussain Delhi College, Delhi. She filed her service certificate and copies of Income Tax Returns (ITRs) from AY 2012-13 onwards, showing that she has been making payments for her flat from her own independent and lawful income.

The petitioner alleged that she holds property No. G-102 in Kaveri CGHS Ltd., Sector-6, Dwarka. However, this is factually incorrect and contradicted by the petitioner's own annexure—a printout from the Delhi Online Registration Information System—which clearly shows that the said property stands solely in the name of her husband, Sh. Virendra Kumar Gupta, who purchased it from his own funds through a registered conveyance deed dated 14.08.2013. There is no allegation or evidence to suggest that this property was purchased benami on her behalf.

As per settled law, including *Navjivan Coop. H/B Society Ltd. vs. DCT, O.P. Sethi, and Alimuddin*, ownership in the name of a spouse does not attract disqualification unless it is benami. Furthermore, since the property is part of a seven-storeyed building, Sh. Virendra Kumar Gupta's land share is only 16.143 sq. meters, which is far below the exempted limit of 66.72 sq. meters under Rule 20(1)(c)(i), Proviso (a) of the DCS Rules. Therefore, the petition is baseless, contrary to the record, and liable to be dismissed.



It is relevant to read the provisions of DCS Act and Rules in this regard which are as under:

20. Disqualification of membership

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

(c) In the case of membership of a co-operative housing society,

(1) owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale.

Provided that above clause shall not be applicable,

(a) in case of co-sharers of property whose share is less than 66.72 sq. metres of land or if the residential property devolves on him by way of inheritance:

(b) in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the transfer of membership of the housing society concerned

(ii) deals in purchase or sale of immovable properties either as principal or as agent in the National Capital Territory of Delhi, or

(iii) his spouse or any of his dependent children is a member of any other cooperative housing society

It is pertinent to note, that in terms of Section 41(3) of the DCS Act, 2003, the Registrar may of his own motion, if satisfied that any member has incurred any of the disqualification under sub section (1) declare through an order in writing that such member is disqualified to be a member.

It is pertinent to mention here that in the *Alimuddin v. Registrar Cooperative Societies & Ors.* case, the Delhi High Court held that mere ownership of a property by a member's spouse does not amount to disqualification under Rule 25 of the DCS Rules unless it is established that the property is held benami for the benefit of the member. In that case, the petitioner's wife had purchased a property through a General Power of Attorney during his membership in a cooperative housing society. Although the RCS and Financial Commissioner upheld the termination of his membership, the High Court reversed it, clarifying that the expression "in the name of" under Rule 25 must be interpreted to mean actual ownership by the member himself. The Supreme Court dismissed the SLP filed against this decision, affirming the High Court's view. Similarly, in *Navjivan CHBS Ltd. v. DCT, Delhi & Ors.*, the Delhi High Court emphasized that Rule 25 must be strictly construed, and disqualification cannot be imposed unless the member is squarely covered by the language of the rule. It further held that ownership of property by a spouse or relative does not justify disqualification unless the member is the actual or beneficial owner. These judgments establish that unless clear evidence of benami ownership exists, no disqualification arises solely due to a spouse's independent property ownership.

The **DDA vs. Jitender Pal Bhardwaj** Supreme Court case (2010) dealt with whether owning a flat in a multi-storeyed building disqualifies a person from certain housing benefits based

on land ownership rules. The Court ruled that when someone owns a flat in such a building, they have exclusive ownership of the flat but only a co-ownership (undivided share) of the land beneath it. The key factor for disqualification is the individual's undivided share of the land, not the size of the flat. If this land share is below a specified limit (65 sq. meters), the person is not disqualified, even if the flat itself is larger. This judgment clarified that co-owners of flats in multi-storeyed buildings are exempt from disqualification based on flat size alone.

In the light of the above judgments and submissions, it is clear that the respondent has not incurred any disqualification under the relevant provisions of the DCS Rules, 2007. The ownership of the disputed property by the respondent's spouse does not amount to disqualification in the absence of any benami holding. Further, the respondent's individual undivided share in the land underlying the multi-storeyed building is well below the prescribed threshold under Rule 20(1)(c)(i). Accordingly, in view of the settled legal position and the facts on record, the membership of the respondent, Ms. Malti Gupta, is hereby restored forthwith.



Anil Kumar Singh
Registrar Cooperative Societies

Sent to:

1. Sh. Jagat Ram D-407, Sri Durga CGHS Sector -12 Dwarka Delhi-110075.
2. Malti Gupta (Through President/ Secreteary)
3. Assistant Registrar (Sec-1), office of RCS
4. ARCS IT Cell