GOVT. OF NATIONAL CAPITAL TERRITORY DELHI
IN THE COURT OF THE REGISTRAR COOPERATIVE SOCIETIES
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001

F.No.47/GH-1112/AR/Sec-1/Hsng/RCS/2022/5097-6000

Dated: 30/1/26

ORDER

IN THE MATTER OF:

Lava Kishore Malhotra & oth .....

Appellant

Vs

Bhagwati CGHS.....

Respondents

1. This order shall dispose of the proceeding initiated in compliance of the order dated 08/05/2025 of L.d. Financial Commissioner in case No.242/2024 in matter of Sh. Lava Kishore & ors Vs Bhagwati CGHS. The Ld. Financial Commissioner vide order dated 08/05/2025 has orderd as under-

It is also seen from the facts of case that proceedings before the Ld. RCS were Initiated on the basis of complaint put forth by the then President of the Society against the Petitioners on the ground that the Petitioners incurred disqualification under Rule 20(1)(C)(1) & (ii) of Delhi Cooperative Societies Rules, 2007 read with Section 87 and 41(d) of the Delhi Cooperative Societies Act, 2003 for owing property bearing No.C-327, Ground Floor, Sheikh Saral, New Delhi. Subsequently, management of R-1 Society changed hands and the Administrator was appointed. The Administrator after conducting enquiry opined that the Society proposes to reconsider the complaint filed by the erstwhile President and revert if need be in accordance with law. Thus, withdrawal of the complaint was heard by the Ld. RCS and the impugned orders were passed. It appears that the Ld. RCS has held that withdrawal of the petition at this stage would not serve any purpose and then proceeded to cease the membership without any further notice to the Petitioners based on the documents already available on record with the RCS. When the arguments were heard on the issue of withdrawal of the complaint/petition, the orders should have been on the issue of complaint being withdrawn, or not, duly allowing the concerned party to take recourse as per law before proceeding further on the issue of membership itself. Even if the issue of membership was to be decided, further opportunity to the Petitioners should have been given in the interests of natural justice to allow the Petitioners to defend their claims viz-a-viz the views of the Ld. RCS complaint and membership Issue has been decided in one stroke without giving any opportunity to the Petitioners to explain their case viz-a-viz the point of view being taken by the Ld. RCS. This is all the more than important when the decision of the Ld. RCS can adversely Impact the rights of the Petitioners to defend their case before an adverse view was taken vide the impugned orders. For this reason and in the Interests of justice, the matter is remanded back to the Ld. RCS for giving one opportunity of being heard to the Petitioners qua the cognizance of the Ld. RCS in the matter. Till the time the Petitioners are heard by the Ld. RCS, the impugned orders dated 03.05.2024 need not be implemented. It is further directed that this review by the Ld. RCS should preferably be completed in the next six months.

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2. Brief facts of the case are that the petitioners herein were enrolled as members of the Society vide membership application dated 01.04.2015. The Society received a complaint that the Petitioners are having residential property in Delhi bearing No.C-327, Ground Floor, Sheikh Sarai, New Delhi and on account of disqualification of holding the said property, the Society filed petition/complaint before RCS to cease membership of the Petitioners. Accordingly, the RCS Issued show cause notice dated 18.11.2022 to Petitioners u/r 20(1)(c)(1) & (iii) of Delhi Cooperative Societies Rules, 2007 read with Section 87 & 41 (d) of Delhi Cooperative Societies Act, 2003 for cessation of membership and vide impugned order dated 03.05.2024 they were disqualified to be members of the Society. Aggrieved by the impugned orders dated 03.05.2024 and 09.08.2024 passed by the RCS the petiherein filed the revision petition in Ld.FC.

3. Thereafter, the Petitioners filed review application under Section 115(1) of DCS Act, 2003 before the RCS to review the order dated 03.05.2024 and the RCS vide order dated 09.08.2024 dismissed the same after holding the same being not maintainable

4. The member submitted that the land area of Ground Floor DDA Flat No. C-327, jointly owned by the respondents, measures 89 square meters and that the equal individual share of each respondent is less than the stipulated limit of 66.72 square meters. The member further submitted that there are two additional flats above the said flat in the same building, making it a three-storied structure. Consequently, the total proportionate share of the respondents in the land underneath the building works out to approximately 22 square meters, with an individual share of about 11 square meters, which is much less than 66.72 square meters.

5. *Rule position Rule 20(1) (c) of DCS Rules 2007*

20. Disqualification of membership
(1). No person shall be eligible for admission as a member of a co-operative society if he:-
(a)has applied to be adjudicated an insolvent or is an undischarged insolvent; or
(b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence, or

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

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6. Releavent orders of Honble supreme court and high court are extracted below-

The Hon'ble High Court in judgment dated 30.05.2011 In WP(C) No.2550/2011 titled Bindya Agarwal Vs. Registrar of Cooperative Societies & Anr. has held that -

".....The proviso excludes those members from the disqualification contained in the main part of the said Rule only if their interest "in land" and not the flat exceeds 66.72 sq. meters.

Therefore, in other words where a co-sharer of a property has acquired interest in a flat built on a piece of land, in which, his proportionate share is less than 66.72 sq. meters, the disqualification contained in the main part of the Rule will not get attracted, notwithstanding the foot that the flat area is more than 66.72 sq. meters It is this the share of land which is material which in the present case is undisputedly 35 sq. meters ,' less than 66.72 sq. meters....We are thus of the opinion that the acquisition of interest by tie petitioner in the flat would not disqualify the petitioner if the proviso to Rule 25(1)(c) of the said Rules or Rule 20 of the Delhi Cooperative Societies Rules,

2007 is interpreted in the manner indicated above. Result would be that petitioner would be entitled to the flat....."

7. ***The judgment of the Supreme Court In DDA Vs. Jitender Pal Bhardwaj (2010) 1 SCC 146. The observation made in paragraph 7 of the said judgment being opposite are extracted hereinafter:***

'.... When a person acquires a flat in a multi-storeyed building, what he gets is co-ownership of the land on which the building is constructed and exclusive ownership long-term lease of the residential flat. As per Clause i(ii) , where the individual share in the land on which the building stands, held by the allottee is less than 65 sq. m. he is not barred from securing allotment from DDA. The other interpretation is that if the measurement of the flat is less than 65 sq. m and the allotte owns only an undivided share in the land, corresponding to such flat the benefit of exemption would be available to the applicant.....'

8. ***The Hon'ble High Court in Judgment dated 08.02.2012 in WP(C) No.794/2012 titled Kalu Ram Sharma Vs. The Financial Commissioner Ors. has held that-***

".....On a party of reasoning if the expression co-sharer is to include co owner (sez. DDA va Jinsender Pal Bhantwat (supra)), we see no difficulty in extending the

expression to an individual owner who has standalone property admeasuring less than 66.72 sq. mtrs. This is for the reason) if in a multi-storeyed building each persons proportionate share in the land is to be calendared to determine as to whether or not he falls within the exclusion carved out on the first proviso, we tee no reason why an owner of standalone property should have recourse to exclusion carved out in the said Rule.

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The Object of the rule appears to be to keep persons outside the disqualification criteria or long as what they own by way of share a really not of much significance. In ar view any other interpretation would lead to absurd and unfair result, when seen in the light of the supreme judgment. To will it would be untenable to say that a person who owns a flat in a multi-storey Building admeasuring a couple of thousand square feet would full within the exclusory portion of the Rule as his proportionate share in the land is less than 66.72 sq. mars,

whereas a person of meagre means holding a standalone property admeasuring less than 66.12 sq. mtrs cannot avail of the benefit accorded by the exclusion engrafted in the said Rule....."

9. It is observed that the petitioners' ownership pertains to a flat in a three-storied building and that their individual proportionate share in the land underneath Flat No. C-327 is approximately 11 sq. meters, which is well below the prescribed limit of 66.72 sq. meters. In view of the settled legal position laid down by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi, no disqualification is attracted under Rule 20(1)(c) of the Delhi Cooperative Societies Rules, 2007.

10. It is also noted that despite due opportunity, the petitioner/complainant did not appear on any date of hearing.

11. In view of the facts discussed above, the documentary evidence available on record, the settled position of law as laid down by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court, and the consistent view taken in similar matters.

12. I find that the member has not incurred any disqualification under Rule 20(1)(c)(i) & (iii) of the Delhi Cooperative Societies Rules, 2007. The essential conditions for attracting disqualification are not satisfied, as the individual share of the member in the land beneath the flat is below the prescribed statutory limit.

13. Accordingly, the Show Cause Notice dated 25.11.2022 issued under Rule 20(1)(c)(i) & (iii) of the Delhi Cooperative Societies Rules, 2007 is hereby withdrawn, and Sh. Lava Kishore Malhota & Anr continues to be a member of the Bhagwati CGHS Ltd.

Registrar Co-op Societies New Delhi

Krishna Kumar Singh IAS
REGISTRAR COOPERATIVE SOCIEITIES

13. Sh. Jagat Singh D-407, Sri Durga CGHS Ltd.Sector -12, Dwarka , Delhi-75.
14. Mr. Lava Kishore Malhotra & Ors Through President Secteary Bhagwati CGHS Plot No.1A, Sector -22, Dwarka, New Delhi-75.
15. ARCS Sec-01O/o RCS.
16. ARCS IT Cell O/o RCS.