

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 /6001 - 6004

Dated: 20/12/2023

ORDER

IN THE MATTER OF:

Priyanka Kumari

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.296/2024 in matter of Ms. Priyanka Kumari Vs Bhagwati CGHS. The Ld. Financial Commissioner vide order dated 08/05/2025 has ordered as under-

It is 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 Petitioner on the ground that the Petitioner incurred disqualification under Rule 20(1)(C)(i) & (iii) of Delhi Cooperative Societies Rules, 2007 read with Section 87 and 41(d) of the Delhi Cooperative Societies Act, 2003 for owing property bearing Flat No.A-82, Floor, M. K. Residency, Sector-11, Dwarka, Delhi in her spouse name. There is also an issue that area of Flat No.A-82 is about 100 square meters in a building having 8 Floors and, therefore, the share of husband of the petitioner in the land underneath the said building is much less than 66.72 square meters which is otherwise exempted under Proviso (a) to Rule 20(1)(C)(i) of the DCS Rules, 2007. Subsequently, management of 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 requested by the Ld. RCS and the Impugned orders were passed. It appears, 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 Petitioner based on the documents already available on record with the RCS. When the on the Issue of withdrawal of the arguments were heard complaint/petition, the orders should have been on the issue of complaint withdrawn or not, duly allowing the concerned party to take course as per law before proceeding further on the issue of membership self. Even if the issue of membership was to be decided, further opportunity to the Petitioner should have been given in the interests of natural justice to allow the Petitioner to defend her claims viz-a-viz the s of the Ld. RCS keeping the complaint out of the picture. Here the withdrawal of the complaint and membership issue has been decided in the stroke without giving any opportunity to the Petitioner to explain her 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 Petitioner to defend her case before an adverse he 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 Petitioner qua the cognizance of the LO RCS in the matter. Till the time the Petitioner is heard by the Ld. FCS, 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 petitioner herein was enrolled as member of the Society vide membership application dated 10.02.2016. The Society received a complaint that the Petitioner is having a residential property In 'Delhi bearing No.A-82, 8th Floor. M. K. Residency, Sector-11, Dwarka, New Delhi-110075 and on account of disqualification of holding the said property, the Society filed petition/compliant before RCS to cease the membership of the Petitioner accordingly, the RCS issued show cause notice dated 21.11.2022 to petitioner under Rule 20(1)(c)(1) & (iii) of Delhi Cooperative Societies Rules, 2007 read with Sections 87 & 41 (d) of Delhi Cooperative Societies , 2003 for cessation of membership. The RCS vide impugned order dated 03.05.2024 disqualified her to be member of the Society/Respondent no.2. Thereafter, the petitioner filed review application under Section 115(1) of Delhi Cooperative Societies 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. Aggrieved by the impugned orders dated 03.05.2024 and 09.08.2024 passed by the RCS.
3. The member submitted that, without prejudice to and in addition to the foregoing submissions, the area of Flat No. A-82 is approximately 100 square meters, and the same is situated on the eighth floor of a ten-storied building, as is evident from the sale deed dated 14.03.2016. The member further submitted that the proportionate share of her husband in the said flat, as well as in the land underneath it, is less than 66.72 square meters, and therefore no disqualification is attracted.

4. *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*

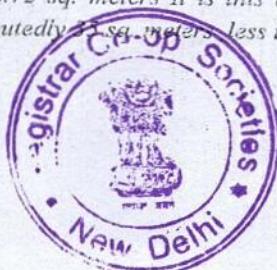
(c) *In the case of membership of a co-operative housing society, (i) owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse 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.*

5. 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 fact 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 100 sq. meters less than 66.72 sq. meters....We are thus of the opinion



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that the acquisition of interest by the 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.....”

6. *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 allottee owns only an undivided share in the land, corresponding to such flat the benefit of exemption would be available to the applicant.....”

7. *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 vs Jinsender Pal Bhatwat (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 see no reason why an owner of standalone property cannot take recourse to exclusion carved out in the said Rule. 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 fall within the exclusory portion of the Rule as his proportionate share in the land is less than 66.72 sq. mtrs,

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.....”

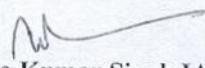
8. On consideration of the material on record and the settled legal position, it is observed that the petitioner's ownership relates to a flat situated in a multi-storied building and the relevant consideration under Rule 20(1)(c) of the Delhi Cooperative Societies Rules, 2007 is the proportionate share in the land beneath the said building. The petitioner's share in the land is below the prescribed limit of 66.72 sq. meters.
9. It is also noted that despite due opportunity, the petitioner/complainant did not appear on any date of hearing.
10. 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.



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11. 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.
12. 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 Ms. Priyanka Kumari continues to be a member of the Bhagwati CGHS Ltd.




Krishna Kumar Singh IAS
REGISTRAR COOPERATIVE SOCIETIES

05. Sh. Jagat Singh D-407, Sri Durga CGHS Ltd. Sector -12, Dwarka, Delhi-75.
06. Ms. Priyamka Kumari & Ors Through President Secretary Bhagwati CGHS Plot No.1A, Sector -22, Dwarka, New Delhi-75.
07. ARCS Sec-01O/o RCS.
08. ARCS IT Cell O/o RCS.