

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/GH/RCS/2023/6555-60

Dated: 18/5/26

In the matter of:-

Sh. Sanjay Sahu

..... Petitioner

VERSUS

Sh. Jiveshwar Pathak

..... Respondent

Order

This order shall dispose of the proceedings initiated vide show cause notice dated 16.05.2025 issued u/r 20 (1)(c) & (2) of DCS Rules, 2007 read with section 87(b) and 41 (d) of the DCS Act, 2003 whereby Sh. Jiveshwar Pathak was called upon to show cause as to why his membership in Sanchar Vihar CGHS Limited, Plot No.1A, Sector-22, Dwarka, New Delhi-110075 be not ceased on the ground that he owns another property in Delhi.

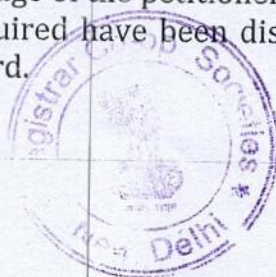
Brief facts of the case

That the present petition u/r 20 (1)(c) & (2) of DCS Rules, 2007 read with section 87 and 41 (d) of the DCS Act, 2003 was filed by Sh. Sajay Sahoo alleging therein that Sh. Jiveshwar Pathak, who is a member of the Sanchar Vihar CGHS Ltd., has another property in Delhi and has thus incurred disqualification under the provision law.

It has been alleged that after obtaining membership in the Society in the year 2002, the respondent purchased SFS Flat No. 17, 2nd Floor, along with Scooter Garage at Ground Floor, Pocket-1, SFS-II, Sector-11, Dwarka, New Delhi, vide sale deed dated 08.11.2004. A copy of the sale deed bearing the photographs of the respondent has been placed on record.

Reply of the respondent

1. The complainant has raised allegations relating to events which allegedly occurred more than twenty years ago. Though it has been stated in the petition that the facts "now came to the knowledge of the petitioner", no particulars as to when and how such knowledge was acquired have been disclosed, nor has any supporting document been placed on record.



In the absence of any explanation for the inordinate delay, the present petition is barred by limitation and suffers from gross delay and laches. It is a settled principle of law that the law assists those who are vigilant and not those who sleep over their rights (*Vigilantibus non dormientibus jura subveniunt*). Therefore, the petition deserves to be dismissed on this ground alone.

2. The complainant has made serious allegations against the respondent without placing any cogent and reliable evidence on record to substantiate the same. It is trite law that a party who seeks relief on the basis of certain facts must prove the existence of such facts.

In this regard, Section 101 of the Indian Evidence Act, 1872 is relevant, which provides that the burden of proof lies upon the person who asserts the existence of a fact. In the absence of sufficient proof, the allegations made in the petition cannot be sustained.

3. The complainant has alleged in the petition that the respondent submitted false affidavits "*neither he nor his spouse is owning any property in Delhi*" before the Society as well as the office of Registrar Cooperative Societies. However, no copies of the alleged affidavits have been annexed with the petition.

In the absence of the said documents, the respondent is unable to effectively defend the allegations made against him. Mere allegations, without supporting evidence, are not sufficient to sustain the petition. The burden lies upon the complainant to prove the allegations by placing cogent material on record.

4. Rule 25(1)(c)(i) of the DCS Rules, 1973 provides disqualification in cases where a person owns a residential property in Delhi. However, the proviso to the said Rule specifically excludes cases where the share of the co-owner/co-sharer in the land is less than 66.72 sqm.

The answering respondent had sold the property in question on 30.11.2009 vide registered sale deed bearing Registration No. 10062, Additional Book No. 1, Volume No. 5043, pages 118 to 124. A copy of the sale deed has been annexed as Annexure-R1.

The complainant has failed to prove that the respondent does not fall within the protection of the proviso to Rule 25 of the DCS Rules, 1973 or Rule 20 of the DCS Rules, 2007. The burden to establish the alleged disqualification squarely lies upon the complainant.

The answering respondent relies upon the judgments of the Hon'ble Supreme Court in *DDA vs. Jitender Pal Bhardwaj* reported as (2010) 1 SCC 146, and the judgments of the Hon'ble High Court of Delhi in *Kallu Ram Sharma vs. Financial Commissioner of Delhi* [WP(C) 794/2012] and *Bindiya Agarwal vs. RCS & Anr.*



[WP(C) 2550/2011], wherein it has been held that the relevant consideration is the proportionate share in the land and not the area of the flat, and where such share is less than 66.72 sq. meters, the disqualification is not attract.

5. The answering respondent was granted membership in the year 2002 and, as per the allegations of the complainant himself, the property in question was allegedly purchased in the year 2004. At the relevant time, the DCS Rules, 2007 were not in existence and, therefore, the provisions thereof cannot be applied retrospectively to the present case. Accordingly, the allegations and disqualification sought to be invoked under the DCS Rules, 2007 are legally unsustainable.
6. The answering respondent was granted membership of the Society in the year 2002 and admittedly did not own any residential property in Delhi at the relevant time. Even as per the case of the complainant, the alleged property in question was purchased subsequently in the year 2004.

Thus, on the date of admission to membership, the respondent was fully eligible and did not suffer from any disqualification under Rule 25 of the DCS Rules, 1973. The provisions relating to disqualification are required to be examined with reference to the date on which membership was granted and cannot be applied retrospectively on account of subsequent events.

In this regard, reliance is placed upon the judgment of the Hon'ble High Court of Delhi in *Jasdeep Singh Nanra vs. RCS & Anr.* [WP(C) 10971/2019 decided on 28.01.2022], wherein the Hon'ble Court held that eligibility conditions under the DCS Rules are to be tested at the time of admission to membership and not continuously thereafter. The Hon'ble Court further observed that applying such conditions retrospectively to invalidate an already valid membership would be unreasonable and unsustainable in law.

Accordingly, the respondent cannot be held to have incurred disqualification merely because of the alleged purchase of property subsequent to grant of membership.

7. The respondent was validly admitted as a member of the Society and any subsequent purchase of property cannot automatically invalidate his membership. The right to property is a constitutional and legal right protected under Article 300A of the Constitution of India and cannot be curtailed unless expressly prohibited by law.

Submission of the Society

During the course of hearing dated 16.04.2026 counsel of the complainant submitted that the complainant has filed an application seeking withdrawal of the present case and does not wish to pursue the matter any further.



Conclusion

Upon examination of the material available on record and the submissions made by both the parties, at the outset, it is observed that the allegations in the present case pertain to the year 2004, whereas the complaint has been initiated after an unexplained delay of more than twenty years. No material has been placed on record by the complainant to explain as to when and in what manner the alleged facts came to his knowledge. The proceedings, therefore, suffer from gross delay and laches.

It is pertinent to note that the present case is covered under Rule 100 of DCS Rules, 2007, pertaining to limitation and cessation of membership.

The rule position of Rule 100 of DCS Rules, 2007 is as below:

Additional grounds for cessation of membership of co-operative housing society

For Cessation of membership, on the grounds mentioned in section 87 the co-operative housing society shall produce document to prove the grounds and the member against whom action is being taken shall be informed in advance. Cessation of membership shall be deemed to be effective from the date when the Registrar accord approval of cessation of membership.

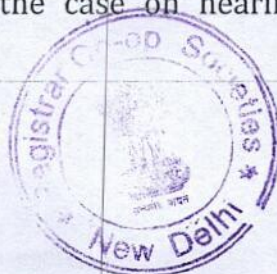
"Provided that the addition ground for cessation of membership mentioned in section 87 shall not be raised after three years of allotment of flat or plot, as the case may be."

The proviso to Rule 100 of the Delhi Cooperative Societies Rules, 2007 stipulates that the ground for cessation of membership under Section 87 shall not be raised after three years from the date of allotment of the flat. Thus, no action for disqualification or expulsion can be initiated beyond the prescribed limitation period. In the present case, the flat in Sanchar Vihar CGHS Ltd. was allotted to the applicant in 2002, whereas the issue of alleged disqualification was raised only in 2024 through an, after a delay of about 22 years. It is contended that such action is contrary to the mandatory provisions of Rule 100, and the use of the word "shall" makes the limitation binding in nature.

Further, it is not in dispute that the respondent was admitted as a member of the Society in the year 2002 and did not own any residential property in Delhi at the relevant time. Even as per the case of the complainant, the alleged property was purchased subsequently in the year 2004 through the open market.

It is also pertinent to note that the respondent has placed on record a copy of the registered sale deed dated 30.11.2009 showing that the alleged property was subsequently sold.

Further, the complainant has also expressed disinterest in pursuing the matter further and has sought withdrawal of the case on hearing dated 16.04.2026 before the Undersigned.

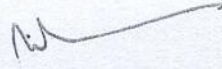


In view of the aforesaid facts and circumstances, I am of the considered opinion that no case for ceasing the membership of the respondent under Rule 20(1)(c) & (2) of the DCS Rules, 2007 read with Sections 87(b) and 41(d) of the DCS Act, 2003 is made out.

Accordingly, the proceedings initiated vide show cause notice dated 16.05.2025 is hereby dropped and Sh. Jiveshwar Pathak shall continuous to be member of the Sanchar Vihar CGHS Ltd.

Ordered accordingly.




Krishna Kumar IAS (IAS)
Registrar Cooperative Societies

Sent To:-

1. Sh. Sanjay Sahu S/o Sh. Arjun Sahu, R/o A-25, New Gupta Colony, Delhi – 110009.
2. Sh. Jiveshwar Pathak, R/o Flat No. 1602, Sanchar Vihar Ltd., Plot No. 15, Sector-04, Dwarka, New Delhi - 110075
3. President/Secretary, Sanchar Vihar Ltd., Plot No. 15, Sector-04, Dwarka, New Delhi – 110075
4. DRCS, Sectar-7, O/o RCS
5. IT Cell, O/o RCS
6. Guard file