

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/AR/ Sec-I/F.C/RCS/2023 / 6584 - 89

Dated: 21/5/26

ORDER

This order shall dispose of the proceedings initiated in compliance with the order dated 18.12.2025 passed by the Ld. Financial Commissioner. The operative portion of the said order is reproduced as under:

"The impugned order dated 09.11.2021 ceasing the membership of R. P. Kakati speaks about violation of Section 41 of the Delhi Cooperative Societies Act, 2003. However, it is noted that there is no provision of cessation of membership on having executed a GPA/Will by a member of the society outside the first degree relation. As per the rebuttal of the RCS, the relevant provision is Rule 29(g) of the Delhi Cooperative Societies Rules, 2007, and the impugned order dated 09.11.2021 is lacking in this regard.

In view of all the submissions, this Court is of the considered view that interest of justice would be served if the Ld. Registrar Cooperative Societies revisits the matter and after giving adequate opportunity to all the concerned parties including Bimla Razdan and Society to present their side, pass a reasoned and speaking order addressing all the points raised above preferably within next three months. Till the Ld. RCS pass such orders, no coercive action be taken against the Petitioner herein.

With the above directions, the case is remanded to the Registrar Cooperative Societies to take appropriate action. Accordingly, revision petition No.315/2024 titled Emi Kakati Vs. RCS & Anr. is disposed of. No order as to costs."

Background of the Case:

Late Sh. R. P. Kakati, husband of the Petitioner, allegedly executed a registered Will and GPA in favour of Smt. Bimla Razdan during his lifetime, purportedly transferring his membership prior to allotment and in favour of a person outside the first-degree blood relation, allegedly in contravention of the provisions of the DCS Act, 2003 and Rules, 2007. Thereafter, the Registrar Cooperative Societies vide order dated 13.04.2016 approved the transfer of membership in favour of the Petitioner herein. Subsequently, on the basis of a complaint received from Sh. S. K Aggarwal alleging the aforesaid unauthorized transfer by late Sh. R. P. Kakati, proceedings under Section 41 of the DCS Act, 2003 were initiated against the Petitioner vide Show Cause Notice dated 02.01.2018.

Thereafter, vide order dated 09.11.2021, the Registrar Cooperative Societies ceased the membership of late Sh. R. P. Kakati and quashed all subsequent transfers of membership under Section 41 of the DCS Act, 2003, holding that late Sh. R. P. Kakati had transferred his membership during his lifetime to Smt. Bimla Razdan, who was outside the first-degree blood relation, prior to allotment, by execution of a registered Will and GPA in her favour.

Aggrieved by the aforesaid order dated 09.11.2021, the Petitioner filed a review application under Section 115(1) of the DCS Act, 2003 seeking review of the said order on the ground that the matter had been heard and decided without affording her an opportunity of hearing and that notices of hearing were not served upon her at the new address furnished by her.



However, the said review application filed by the Petitioner was dismissed by the Registrar Cooperative Societies vide order dated 07.08.2024 as being not maintainable under Section 115 of the DCS Act, 2003 read with Rule 157 of the DCS Rules, 2007.

Submission of the Appellant

1. That the husband of the applicant, namely, Sh. R. P. Kakati, was Central Government employee and was bonafide member of the Milan Vihar Cooperative Group Housing Society Ltd., hereinafter referred as the Society.
2. That on 14.06.1998, Sh. R. P. Kakati died and thereafter on the recommendation of the Society, office of Registrar Cooperative Societies, vide order dated 13.04.2016, was pleased to transfer the membership in the name of the applicant.
3. That during his lifetime, after his retirement, the husband of the applicant has executed one GPA and in favour of one Ms. Bimla Razdan to execute some work in the Society on his behalf. However, the payment was deposited by Sh. R. P. Kakati in the Society. The detail of the payment deposited in the Society is enclosed herewith.

However thereafter, on 21.01.1998, before his death, Sh. R. P. Kakati executed Will in favour of the applicant, hence the previous Will/GPA dated 26.02.1997 has no relevance in the eyes of law. It is pertinent to note that the office of Registrar Cooperative Societies, after considering the subsequent Will dated 21.01.1998 and other relevant records, vide order dated 13.04.2016 transferred the membership in favour of the applicant solely on the basis of the said Will, as stated hereinabove.

4. That after some proceedings, on 09.11.2021, this Court has disqualified the late Sh. R. P. Kakati, under section 41 of the Delhi Cooperative Societies Act, 2003 on the ground that he has transfer his membership before the allotment during his lifetime in the name of Bimla Razdan. The applicant filed one review petition against the order dated 09.11.2021; the same was also dismissed by this Court on 07.08.2024.
5. That as per the order dated 18.12.2025, now both the orders have been quashed by the Hon'ble Financial Commissioner.
6. The appellant submitted that the impugned Show Cause Notice is liable to be quashed as the General Power of Attorney dated 26.02.1997 ceased to have any legal effect after the death of Sh. R. P. Kakati on 14.06.1998. The said GPA, being without consideration, merely authorized the attorney holder to perform certain acts on behalf of the executants and cannot, by any stretch of imagination, be construed as transfer of membership. Further, the alleged GPA was executed on 26.02.1997, at which time the provisions of the Delhi Cooperative Societies Act, 1972 and Rules, 1973 were in force. Therefore, invocation of Section 41 of the Delhi Cooperative Societies Act, 2003 retrospectively is contrary to settled principles of law.

It is pertinent to mention that the predecessors of the Registrar Cooperative Societies have already adjudicated identical issues concerning members of Talagang Cooperative Group Housing Society Ltd., wherein it has consistently been held that execution of GPA/Agreement to Sell does not amount to transfer of membership. The relevant orders are summarized below:

- a. **Case No. RCS/RMD/FC/5902 dated 26.12.2017 titled *P. N. Bhatia Vs. Registrar Cooperative Societies***

It was held that the Agreement to Sell referred only to transfer of the flat and not transfer of membership. The GPA merely authorized certain acts in respect of



membership and did not amount to transfer thereof. The authority further observed that since the original membership continued in the name of the original member, it could not be presumed that membership had been transferred. It was specifically held that the provisions of the DCS Act, 1972 and Rules, 1973 applicable at the relevant time were required to be considered.

b. *Payal Vijay Vs. Talagang Cooperative Group Housing Society Ltd.*, order dated 24.01.2018

It was held that transfer through GPA/Agreement to Sell amounted only to transfer of right, title and interest in the flat and not transfer of membership. The Inquiry Officer was found to have erred in treating such transaction as transfer of membership. The authority reiterated that the provisions of the DCS Act, 1972 and Rules, 1973 governed the matter.

c. *Pawan Kumar Mittal Vs. Registrar Cooperative Societies*, order dated 26.12.2017

The authority held that execution of GPA/Agreement to Sell does not transfer property or membership and merely creates an agency authorizing performance of specified acts. It was further held that transfer of right, title and interest in the flat cannot be construed as transfer of membership of the original allottee.

d. *Jai Dev Aggarwal Vs. Registrar Cooperative Societies & Ors.*, order dated 28.12.2017

It was categorically held that GPA and Agreement to Sell did not constitute transfer of membership and that under the DCS Act, 1972 and Rules, 1973 there existed no provision recognizing transfer of membership merely on the basis of GPA/Agreement to Sell.

7. The impugned Show Cause Notice is liable to be set aside as the Will dated 26.02.1997 stood superseded and rendered inoperative upon execution of the subsequent Will dated 21.01.1998 in favour of the applicant. It is settled law that the last valid Will executed prior to the death of the testator prevails over all previous Wills. Significantly, the office of the Registrar Cooperative Societies itself, vide order dated 13.04.2016, acted upon the said Will dated 21.01.1998 and transferred the membership of late Sh. R. P. Kakati in favour of the applicant.
8. The impugned Show Cause Notice is liable to be quashed as registration of a Will is not mandatory under Section 17 of the Registration Act, 1908. Accordingly, the Will dated 21.01.1998 constitutes a valid testamentary document in the eyes of law. It was only after due consideration of the said Will that the office of the Registrar Cooperative Societies, vide order dated 13.04.2016, endorsed transfer of membership in favour of the applicant.
9. The documents allegedly executed in favour of Ms. Bimla Razdan have no legal sanctity insofar as transfer of ownership or membership is concerned. The Hon'ble High Court of Delhi in *S. K. Bahl Vs. Delhi Development Authority & Ors.* relying upon the judgment of the Hon'ble Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*, (2012) 1 SCC 656, held that GPA and Agreement to Sell do not confer ownership rights nor amount to sale or transfer of immovable property.



The Hon'ble Court further held that a Power of Attorney merely creates an agency relationship and does not transfer any right, title or interest in immovable property. Similarly, in *Ramesh Chand Vs. Suresh Chand & Anr.*, the Hon'ble High Court of Delhi reiterated that GPA/Agreement to Sell/Will transactions do not amount to conveyance or transfer of ownership under Section 54 of the Transfer of Property Act.

10. The execution of GPA and Agreement to Sell does not confer ownership rights nor constitute transfer of property under Section 54 of the Transfer of Property Act. The Hon'ble Supreme Court of India in *Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana* has conclusively held that execution of GPA and Agreement to Sell does not amount to transfer of ownership or conveyance of immovable property in law.
11. A Power of Attorney is merely an instrument creating an agency and not an instrument of transfer. It authorizes the attorney holder to act on behalf of the principal but does not transfer title or ownership rights. Even an irrevocable Power of Attorney does not confer ownership rights upon the attorney holder. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *State of Rajasthan Vs. Basant Nahata*.

SUBMISSIONS OF THE SOCIETY

1. That as per the available record in the Society, it is submitted that Shri Rabindra Prasad Kakati (R. P. Kakati, Husband of Emi Kakati) was enrolled as a member vide MS. No. 438 for allotment of a flat in Category 'B' in the Society in 1983, who died on 14.06.1998 leaving behind his widow, Smt. Emi Kakati, who was also his nominee.
2. Intimation of death of Sh. R. P. Kakati was communicated by his widow, Smt. Emi Kakati, vide her letter dated 15.05.2000 and 24.11.2001 along with the death certificate of Sh. R. P. Kakati and other requisite documents with a request to the Society for transfer membership in her name, accordingly, the then Managing Committee of the Society in its meeting held on 10.11.2002 decided to transfer the said membership in her favour and forwarded to the office of RCS.
3. That interregnum, Ms. Bimla Razdan, through her advocate has approached the Society for transfer of membership of Sh. R. P. Kakati, however the same was declined by the office of Registrar Cooperative Societies, vide order dated 15.04.2010.
4. That subsequently, after some correspondence, vide order dated 13.04.2016, office of Registrar Cooperative Societies has directed the Society to transfer the membership of Late Sh. R. P. Kakati in the name of Emi Kakati. The copy of the dated 13.04.2016, passed by the Registrar Cooperative Societies is enclosed herewith.
5. That vide letter dated 25.07.2018, the Society was directed to submit the original record of Ms. Emi Kakati, membership No. 438 and Sh. V. K. Gulati, membership No. 23 in the office of Registrar Cooperative Societies, on 08.08.2018.
6. That in compliance of the order dated 25.07.2018, passed by the Registrar Cooperative Societies, on 07.08.2025, then President of the Society Sh. Rakesh Kumar Sharma has submitted all the relevant record of members including Emi Kakati/membership No. 438.
7. That as per the record of the Society, all payments received against the subject membership No.438 was received either from the original member, Shri Rabindra Prasad Kakati, or,



after his death, from his widow, Smt. Emi Kakati against receipt issued in their favour. The copy of the ledger pertaining to Emi Kakati is enclosed herewith.

8. That even during the process of allotment of the flat, the then President of the Society had issued a No Dues Certificate in favour of Ms. Emi Kakati/ membership No. 438. The copy of the No Dues Certificate is enclosed herewith.
9. That on 07.08.2021, the then President of the Society again sent fresh proposal for draw of lot pertaining to Sh. V. K. Gulati for 'A' Category flat, Emi Kakati for 'B' Category flat, Sh. Harish Kumar Manchanda for 'C' category flat and Sh. Kunal Kumar for 'C' category flat, to the office of Registrar Cooperative Societies, which were duly acknowledged on 11.08.2021. The copy of the proposal dated 07.08.2021 is enclosed herewith.'
10. That interregnum during the process of verification of membership Ms. Emi Kakati, some of the old record was not available. On the advice of the office of Registrar Cooperative Societies on 25.02.2022 one NCR was got issued by the Society for missing record pertaining to the Emi Kakati.
11. That subsequently on 01.03.2022, the then President of the Society has submitted one more affidavit in the office of Registrar Cooperative Societies for allotment of the flat to above mentioned members including Emi Kakati. The copy of the letter and affidavit dated 01.03.2022 send by the then President of the Society is enclosed herewith.

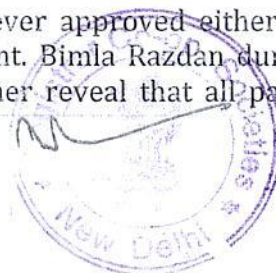
REPLY/ DECLARATION FILED BY BIMLA RAZDAN AS UNDER:

Smt. Bimla Razdan, who is arrayed as Respondent No. 2/Non-Applicant No. 2 in the present proceedings, submitted that late Shri R. P. Kakati had executed a Will dated 26.02.1997 and a General Power of Attorney dated 26.02.1997 in her favour without any consideration, merely authorizing her to carry out certain work in the Society on his behalf. She further stated that all pending payments payable to Milan Vihar Cooperative Group Housing Society Ltd., Plot No. 72, IP Extension, Patparganj, Delhi, were made by late Shri R. P. Kakati and his wife Smt. Emi Kakati and that no payment whatsoever was ever made by her to the said Society. She further clarified that no sale or purchase agreement was ever executed between late Shri R. P. Kakati or his legal heirs and herself. Smt. Bimla Razdan also submitted that she has no objection if Membership No. 438/allotment of the Society is restored in favour of Smt. Emi Kakati, wife of late Shri R. P. Kakati, resident of House No. 290, Jatia Kahili Para Road, Guwahati, Assam. She further stated that she has no contractual relationship with Smt. Emi Kakati and that whatever documents were executed earlier stand cancelled and withdrawn. Lastly, she prayed that her statement/declaration be taken on record and Membership No. 438 of the Society be restored in favour of Smt. Emi Kakati.

FINDINGS

At the outset, it is observed that the entire proceedings were initiated on the basis of allegation that late Sh. R. P. Kakati had transferred his membership in favour of Smt. Bimla Razdan before allotment of flat by executing GPA and Will dated 26.02.1997. However, from the material placed on record, it is evident that the membership of the Society at all times continued in the name of late Sh. R. P. Kakati and after his death the same was transferred in favour of his widow Smt. Emi Kakati vide order dated 13.04.2016 passed by the office of Registrar Cooperative Societies.

It is not disputed that no formal transfer of membership was ever approved either by the Society or by the Registrar Cooperative Societies in favour of Smt. Bimla Razdan during the lifetime of late Sh. R. P. Kakati. The records of the Society further reveal that all payments



towards the subject membership were made either by late Sh. R. P. Kakati himself or subsequently by Smt. Emi Kakati and receipts were issued in their names. The Society has also categorically stated that Smt. Bimla Razdan was never recognized as member in the records of the Society.

The declaration/reply filed by Smt. Bimla Razdan assumes significance. She has categorically admitted that the GPA and Will dated 26.02.1997 were executed without consideration merely for carrying out certain work in the Society and that no sale/purchase agreement was executed between her and late Sh. R. P. Kakati or his legal heirs. She has further stated that she has no objection if membership No. 438 is restored in favour of Smt. Emi Kakati and has expressly clarified that she has no contractual relationship with the petitioner. Thus, even the alleged beneficiary under the documents in question does not claim any right, title or membership in the Society.

The issue whether execution of GPA/Agreement to Sell/Will amounts to transfer of ownership or membership has been conclusively settled by judicial pronouncements. The Hon'ble Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*, (2012) 1 SCC 656 held that GPA sales or SA/GPA/Will transactions do not convey title nor create any interest in immovable property. Similarly, in *State of Rajasthan Vs. Basant Nahata*, it was held that a Power of Attorney is merely an instrument creating agency and not an instrument of transfer. Further, Section 54 of the Transfer of Property Act specifically provides that an agreement to sell does not create any interest in immovable property.

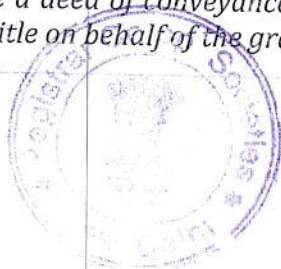
Scope of Power of Attorney

Power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (sec Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan V.S Basant MANU/SC/0547/2005: MANU/SC/0547/2005: 2005 (12) SCC 77 this Court held:

A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the done to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The done in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.



Scope of Will

A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is essential transfer inter vivos. The two characteristics of a will are that it is intended to come not into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective."

The Hon'ble High Court of Delhi in *S. K. Bahl Vs. DDA and Ramesh Chand Vs. Suresh Chand* has reiterated that GPA/Agreement to Sell transactions do not amount to conveyance or transfer of ownership rights. The same principle would equally apply to cooperative society membership unless transfer is affected in accordance with statutory procedure prescribed under the DCS Act, Rules and Bye-laws.

It is further observed that the alleged documents in favour of Smt. Bimla Razdan were executed in the year 1997 when the Delhi Cooperative Societies Act, 1972 and Rules, 1973 were in force. The petitioner has rightly pointed out that several orders passed in cases pertaining to Talagang Cooperative Group Housing Society Ltd. including *P. N. Bhatia Vs. Registrar Cooperative Societies*, *Payal Vijay Vs. Talagang Cooperative Group Housing Society Ltd.*, *Pawan Kumar Mittal Vs. Registrar Cooperative Societies* and *Jai Dev Aggarwal Vs. Registrar Cooperative Societies* have consistently held that execution of GPA/Agreement to Sell does not amount to transfer of membership under the DCS Act, 1972 and Rules, 1973.

The subsequent Will dated 21.01.1998 executed by late Sh. R. P. Kakati in favour of his wife Smt. Emi Kakati also assumes relevance. The said Will formed the basis for transfer of membership in favour of the petitioner vide order dated 13.04.2016. It is settled law that the last testamentary disposition prevails over any earlier Will. Therefore, even otherwise, the earlier Will dated 26.02.1997 cannot be treated as operative after execution of the subsequent Will dated 21.01.1998.

Further, the impugned proceedings were initiated after considerable delay in the year 2018 with respect to documents allegedly executed in the year 1997. During this entire period neither the Society nor the office of RCS recognized any transfer of membership in favour of Smt. Bimla Razdan.

This office also takes note of the observations made by the Ld. Financial Commissioner that the earlier order dated 09.11.2021 had invoked Section 41 of the DCS Act, 2003 without examining the applicability of Rule 29(g) of DCS Rules, 2007 and without there being any specific provision providing cessation of membership merely on execution of GPA/Will outside first degree relation.

In view of the aforesaid discussion, this office is of the considered opinion that mere execution of GPA and Will in favour of Smt. Bimla Razdan did not amount to transfer of membership of late Sh. R. P. Kakati. No evidence has been brought on record to establish that any valid transfer of membership was ever affected in accordance with the provisions of the DCS Act, Rules and Bye-laws of the Society. Further, on court proceeding dated 14.05.2026, Smt. Bimla Razdan submitted that she has no objection if Membership No. 438/allotment of the Society is restored in favour of Smt. Emi Kakati, wife of late Shri R. P. Kakati, resident of House No. 290, Jatia Kahili



Para Road, Guwahati, Assam. Consequently, invocation of Section 41 of the DCS Act, 2003 against late Sh. R. P. Kakati was unwarranted.

Accordingly, the Show Cause Notice dated 02.01.2018 issued against late Sh. R. P. Kakati is hereby withdrawn. The order dated 13.04.2016 passed by the office of Registrar Cooperative Societies transferring Membership No. 438 of Milan Vihar Cooperative Group Housing Society Ltd. in favour of Smt. Emi Kakati is upheld. Consequently, the earlier order dated 09.11.2021 ceasing the membership of late Sh. R. P. Kakati and all consequential actions arising therefrom shall remain set aside in terms of the order passed by the Ld. Financial Commissioner dated 18.12.2025. The Society is further directed to process the case of Smt. Emi Kakati for verification/allotment strictly in accordance with law, Rules and Bye-laws, subject to fulfillment of requisite formalities and availability of records.

Ordered accordingly.




Krishna Kumar Singh
Registrar Cooperative Societies

Sent To:-

1. Smt. Emi Kakati, W/O Sh. R.P Kakati, House No. 290, Jatia, Kahili Para Road, Guwahati - 781006, Assam **also at** Sh. Rishi Sharma S/o Sh. B.L Sharma, R/o B-237, Surajmal Vihar, Shakarpur, Baramand, Shakarpur, Delhi-110092.
2. Ms. Bimla Rajdan, R/o 3328/D-3, Vasant Kunj, New Delhi -110070
3. President / Secretary, Milan Vihar CGHS Ltd., Plot No. 72, I.P. Extension, Patparganj, Delhi - 110092.
4. DRCS (IT), O/o RCS
5. DRCS, Section -4, O/o RCS
6. Guard File