

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

F.47/AR/Sec-IV/654-GH/RCS/2019/Part File/2072-76

Dated: 18/8/26

Order

This order shall dispose of the proceedings initiated vide Show Cause Notice dated 16.03.2020, F.C remanded matter in matter of Smt. Sushma Vs The Mianwali CHBS Society Ltd.

Brief Facts of the Case

Whereas, Smt. Shushma D/o Sh. H.B. Sapra filed writ petition CWP No. 3529/1989 before the Hon'ble High court of Delhi wherein the Hon'ble Court vide order dated 15.01.2009 had observed as follows:-

"Our conclusion, therefore, is that the petitioner was validly inducted as a member of the respondent society on the basis of the application made by her on 28th August, 1981. Consequently, the cessation of her membership from the Respondent society by its letter dated 10th November, 1987 on the basis of the report of inquiry officer is not justified. The natural consequences of quashing of the letter dated 10th November, 1987 will follow and the name of the petitioner may be shown in the draw of lots at the appropriate stage depending on her seniority and eligibility. The letter dated 10th November, 1987 is quashed and the writ petition is allowed. No costs."

Whereas, the then RCS taking note of the observation of the Hon'ble High Court in WP (C) NO. 3529/1989 (the case of Smt. Sushma Sharma) and in WP (c) No. 4380/2007, passed a fresh order dated 13.02.2012 observing that Smt. Sushma Sharma was not eligible to get the membership of the society. The operative part of the order reads as follows:-

"Whereas, from the facts and records of the case it is found that Smt. Sushma is the daughter of Sh. HP Sapra (Former Secretary of the Society) and at the time of enrolment as member in the society she was dependent upon Sh. HP Sapra who had already been allotted a residential plot NO. BC-36 in the society. While admitting Smt. Sushma as a member of the society the factor of dependency mentioned in rule 25 (1) (c) (iii) read with Rules 27 of DCS Rules, 1973 were not considered. Rule 25 (1) (c) (iii) of DCS Rules, 1973 deals with disqualification for membership which is reproduced below:-

As per Rule 25 (1)(c)(i) of DCS Rules, 1973

In case a member of the housing society owns a residential house or a plot of land for the construction of a residential house in any of the approved or unapproved colonies or other localities in NCT of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free hold basis or on power of attorney or an agreement to Co-op sale, provided that disqualification of the membership as laid down in sub ruler shall be applicable in case of co-sharers of property whose share is less than 66.72 Sq. Mtr.



As per Rule 25 (1)(c)(iii) of DCS Rules, 1973

He or his spouse or any of his dependent is a member of any other housing society otherwise permitted by the Registrar.

Rule 27 deals with procedure for admission of Joint members and Minors and persons of unsound Mind inheriting the share or interest of deceased member.

In view of the above discussion, I am of the considered opinion that Smt. Sushma was not eligible to get the membership of the society as her father, on whom she was dependent had already been allotted a plot bearing No. BC-36 in the said society.

Now therefore, I, A B Shukla Registrar Cooperative Societies Govt. of NCT of Delhi in exercise of powers conferred under the provisions of Rule 25 of DCS Rules, 1973 read with Rule 20 of DCS Rule 2007 hereby disqualify Smt. Sushma from the membership of Mianwali Distt. Cooperative House Building Society Ltd.

Whereas, a revision petition was filed by Smt. Sushma Sharma before the Hon'ble Financial Commissioner on 16.03.2012 challenging the above order No. F.46/1411/HB/West/195-197 dated 13.02.2012 of RCS and Vide order dated 19.07.2013, Financial Commissioner set aside the impugned order and directed RCS to pass appropriate a fresh order for immediate implementation of the direction given the Hon'ble High Court on 15.01.2009 in the said writ petition no. 3529/1989 in a time bound manner.

Whereas, Shri H.B. Sapra filed various representations/complaints with various departments/agencies requesting allotment of plot in favour of his daughter Sushma, this office forwarded the complaints to the Society and sought the comments.

And whereas, the society vides its reply dated 15.06.2019 "the entire matter is based upon fraud, the Hon'ble Supreme Court of India has repeatedly said "that illegality should not be allowed to be perpetuated". That Smt. Sushma was enrolled admitted as a member of the society on 31.08.1981. That a bare perusal of the documents and admission by Smt. Sushma, clearly shows that she submitted the admission fees/share money/incidental charges vide DD no. BC 736377 dated 13.08.1981 issued by stated Bank of Patiala and also paid the alleged cost of land and alleged interest amounting to Rs.35,754.00 by demand draft dated 13.08.1981. That from the above, it is clear that her date of application, admittedly without any declaration ie. mandatory affidavit is 28.8.1981 and she has been enrolled on 31.08.1981, which reflects that she deposited that payments and even the cost of land and the share money and other incidental charges even before the passing of her resolution of enrolment, admittedly her father shri H.B. Sapra was the Hony. Secretary of the society and he managed the entire show. That from the above it is apparent that it is a clear cut case of violation of DCS Rules, 1973 and DCS Act, 1972 and the membership of Smt. Sushma is to be ceased with immediate effect. The society will be taking the matter with the RCS Office as per law.

Whereas, society has not only made serious allegation on the membership of Smt. Sushma Sharma but letters submitted by the society for forwarding the name of Smt. Sushma to DDA dated 03.03.2017 and 11.12.2017 has also been withdrawn.



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REPLY OF THE SOCIETY

1. That the present Executive Committee (MC) is re-elected in the month of November, 2023 and prior to that the election of the Executive Committee was held on December, 2020. After taking the charge, the complete records of the Society including the pending cases were not handed over to the Managing Committee. The elected MC vide its letters dated 08.01.2021, 28.01.2021 had requested the erstwhile MC to handover the complete documents, but failed to get the same.
2. That accordingly, the MC had requested the Office of the RCS, Govt. of NCT of Delhi, Parliament Street, New Delhi vide its letter dated 09.01.2021, 31.03.2021 for providing the old records from the erstwhile MC.
3. That the MC had again requested the previous MC vide letters dated 12.04.2021, 11.06.2021, 23.07.2021 to provide the documents but to no avail and till date, no document is provided by the previous MC. Copy of the letters dated 12.04.2021, 11.06.2021, 23.07.2021 are annexed herewith.
4. That the elected MC had obtained the certified copy of the court files as pending before Hon'ble RCS including the present matter and has only got the court document including the letter dated 15.06.2019 sent by the previous Managing Committee on the complaints of the Petitioner herein. The letter contained the detailed facts of the present complaint filed by the Petitioner and the contents of the same are as follows:
 - a) Shri H. B. Sapra is the father of Smt. Sushma and Shri H. B. Sapra has been heading the entire society being its Hony. Secretary since its inception.
 - b) Smt. Sushma applied for membership in 1975 and her application was kept in abeyance and in 1981 when she became major, she was enrolled as member. The issue of her being minor on the date of application has already been adjudicated in writ petition no.3529/1989 vide orders dated 15.1.2009 and it has been held by the Hon'ble High Court that she was major on the date of her enrolment.
 - c) That Smt. Sushma submitted her application for being enrolled as a member on 28.8.81 alongwith a draft of Rs. 35, 865. 3 Ps.
 - d) That Smt. Sushma. was enrolled /admitted as a member of the society on 31.8.1981.
 - e) That a bare perusal of the documents and admission by Smt. Sushma, clearly shows that she submitted the admission fees/share money/ incidental charges vide DD no. BC 736377 dated 13.8.81 issued by State Bank of Patiala and also paid the alleged cost of land and alleged interest amounting to Rs. 35,754.00 by demand draft dated 13.8.1981.



- f) That from the above, it is clear that her date of application, admittedly without any declaration i.e. mandatory affidavit is 28.8.1981 and she has been enrolled on 31.8.1981, which reflects that she deposited the payments and even the cost of land and the share money and other incidental charges even before the passing of her resolution of enrolment, admitted her father Shri H.B. Sapra was the Hony. Secretary of the society and he managed the entire show.
- g) That from the above it is apparent that it is a clear cut case of violation of DCS Rules, 1973 and DCS Act, 1972 and the membership of Smt. Sushma is to be ceased with immediate effect. The society will be taking the matter with the RCS Office as per law.
- h) That it is also admitted case that Smt. Sushma joined Indian Railways as per her appointment order dated 23.9.1980 and she was appointed as a Typist with a basic salary of Rs. 250/- (approx.) p.m.
- i) It is also admitted that she deposited the huge amount of Rs. 36000/- in August, 1981 i.e. less than one year of her appointment. If we presume that she has saved her entire salary, the same comes to Rs. 300/- x 11/- i.e. Rs. 3300/-.
- j) From the above, it is amply clear that the membership of Smt. Sushma is benami so as to attract disqualification under Rule 25 (1) (c) (i) of DCS Act which deals with disqualification of membership and states "he shall be deemed to have ceased to be a member from the date of disqualification incurred". The same has been incorporated in Bye law 5 of the Society.

"Whereas bye-law 5 (i) (e) provides in positive terms that disqualifies a person whose spouse or dependents own a residential property, Rule 25(1)(c) was intended to address **benami** holdings. The legislative intent was to prevent a person from securing membership by holding property in the name of a spouse or dependent child. Accordingly, Rule 25(1)(c) applies only where the property is owned by the member or held **benami** in the name of the spouse or dependent children. If the spouse has independently purchased the property from her own funds in her own name, the Rule is not attracted.

- k) From the above, it is absolutely clear that the membership of Smt. Sushma is benami and Shri H.B. Sapra who is the member of the society vide. M.S. No.47 and having a property bearing no. BC-35 in Mianwali Nagar measuring more than 300 sq. ys. is the benamidar, therefore, Smt. Sushma is disqualified to have the membership of the society.

5. That as mentioned in the reply dated 15.06.2019, it is clear that the Petitioner i.e., Smt. Sushma had joined Indian Railways as per her appointment order dated 23.09.1980 and she was appointed as a Typist with a basic salary of Rs.250/- (approx.) per month. Thus,



it is impossible to deposit a huge amount of Rs.36000/- in August, 1981 i.e. less than one year of her appointment. Even if we presume that she has saved her entire salary, the same comes to Rs.300/- i.e. Rs.3300/- till August, 1981, which clearly shows that the payment is not made from her own account but from the funds of her father who was office bearer of the Society at that point of time and as such, the Petitioner is not entitled to get the relief as sought before this Hon'ble Tribunal.

6. That the Hon'ble High Court of Delhi in WP (C) No. 3529/1989 have not delve into the matter with regard to payment of the membership fees by the Petitioner herein and the same has been duly verified by the previous Managing Committee while submitting its reply dated 15.06.2019 and as such, the Hon'ble Tribunal may call for the records in this regards from the Petitioner herein to come to the just conclusion of the present matter.
7. That the malafide of the Petitioner is clear from the fact that instead of legally following the procedure for allotment of the plot through this Hon'ble Tribunal, the father of the Petitioner had sent various letters to National Commission for Women and other Ministers of the Delhi Government to create pressure on this Hon'ble Tribunal to pass order in favour of the Petitioner which is not tenable in law.
8. That it is well settled law that any decree or order obtained by fraud can be set aside at any stage by any court of law or tribunal in Indian Bank vs. Satyam Fibres India Pvt. Ltd. (MANU/SC/0657/1996) by the Hon'ble Supreme Court of India and as such, the Petitioner herein, who has obtained the orders by concealing the above mentioned facts is liable to be set aside.
9. That the Hon'ble Financial Commissioner in Case No. 251/2012, 252/2012 and 113/2013 vide its judgment dated 15.12.2023 while considering the similar petition based on the similar facts wherein the Petitioners parents were the members of the society and were holding plot, on the basis of the submissions of the Hon'ble RCS, the revision for their disqualification was rejected. Copy of the order dated 15.12.2013 is attached herewith.
10. That the Hon'ble Supreme Court of India in Ishwar Nagar HB Society vs. Parma Nand Sharma & Ors. MANU/SC/0950/2010 has held that it is obligatory for a society not to allot plots and land to such persons who owns' any residential property either in his own name or their family members.
11. That the Petitioner has failed to disclose her independent source of income at the time of becoming member of the Society which can be duly examined by the Hon'ble Tribunal by calling the records from the Tribunal and after enquiry, appropriate orders may be passed.

In view of the same, it is humbly prayed that this Hon'ble Tribunal may cancel the membership of the Petitioner being obtained by fraud and to dismiss the present petition in favour of the Respondent Society.



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Submissions of the Petitioner

1. That the Mianwali District CHBS Ltd. (the respondent society), as per its practice, used to accept request letters from people who were interested in becoming members thereof and had prepared a list of such persons which is called wait list members/persons. As and when the occasion of actual enrolment arises, society would enroll the members out of that list as per their seniority after satisfying itself about the eligibility of such persons in all respects under the relevant provisions of its byelaws and applicable laws. Such practice of maintaining wait list members and enrolling members from wait list members by the house building societies (plotted societies) has been duly accepted and recognized by the RCS office and courts.
2. That Smt. Sushma (the petitioner) also sent a request letter to the Society in 1975 communicating her interest in becoming member of the respondent society viz. Mianwali District CHBS Ltd.
3. That the matter of enrolment of fresh members was taken up by the respondent society sometime in April 1981 in view of the vacancies which had arisen in the Society and accordingly a letter dated 08.08.1981 was issued to the petitioner and others, communicating the terms and conditions for becoming a member, including the offer of a plot etc.
4. That the respondent society vide its letter dated 08.08.1981 invited applications on prescribed form along with requisite affidavit and declaration in terms of the prevailing DCS Act and Rules and its Bye-laws from the petitioner and also called upon her to submit two separate bank drafts for (i) admission fee, share money and incidental charges; and (ii) amount of cost of land, development charges and interest, as per the category/size of plot. A copy the letter dated 08.08.1981 is again filed as Annexure P-1 with the present written arguments.
5. That in response to the aforesaid letter dated 08.08.1981, the petitioner made due arrangements and on 28.08.1981 she submitted all requisite documents as sought by the Society, including her membership application, affidavit, declaration and Bank drafts as required in respect of allotment of a plot of 300-349 sq. yards category/ size.
6. That the respondent society after carefully examining the documents of the petitioner under the prevailing relevant provisions of DCS Act, Rules and Bye-laws of the Society duly enrolled the petitioner, along with other eligible persons, as its member vides resolution dated 30.08.1981 against membership No.1011. The petitioner was thereafter also issued Share Certificate by the Society.
7. That thereafter the name of the petitioner along with other members of the Society was forwarded to the office of RCS for verification and clearance for allotment of a plot to the petitioner. The petitioner again completed all formalities as required by the office of the RCS and on 03.05.1985, after due verification of the case of the petitioner, her name was cleared and approved by the office of RCS for allotment of a plot.



8. That That, pursuant to complaints made by certain members, the Registrar Cooperative Societies appointed an Enquiry Officer, who returned adverse findings against the petitioner. Aggrieved thereby, the petitioner filed W.P.(C) No. 3529/1989, which was allowed by the Hon'ble High Court of Delhi vide judgment dated 15.01.2009. The Hon'ble Court held that the petitioner's valid application for membership dated 28.08.1981, submitted after attaining majority, was duly accepted by the Society and constituted the basis of her lawful induction as a member. It further held that the Enquiry Officer had erroneously relied upon the petitioner's earlier application made during her minority, which was irrelevant. Consequently, the Court set aside the Enquiry Officer's findings, quashed the Society's letter dated 10.11.1987 ceasing the petitioner's membership, restored her membership, and directed that her name be considered in the draw of lots in accordance with her seniority and eligibility.
9. That the above-mentioned judgment/order of the Hon'ble High Court of Delhi in favour of the petitioner herein, wherein the respondent society as well as RCS was parties, was never challenged by anyone and had attained finality. However, the petitioner was still not allotted any plot and on the contrary. RCS vide suo-moto, ex-parte order dated 13.02.2012 held that the petitioner is disentitled to a plot on the alleged new ground that she was dependent on her father at the time of enrollment. The order dated 13.02.2012 was passed in blatant violation of the principles of natural justice i.e. without affording any opportunity of hearing to the petitioner.
10. That the petitioner challenged the order dated 13.02.2012 by filing Revision Petition No. 144/2012 before the Financial Commissioner, which was allowed vide order dated 19.07.2013. The Financial Commissioner held that the Registrar Cooperative Societies had acted beyond the scope of the Hon'ble High Court's judgment dated 15.01.2009 by introducing extraneous issues, including the petitioner's alleged financial dependence, without issuing notice or granting an opportunity of hearing. It was further observed that the impugned order was contrary to the explicit directions of the Hon'ble High Court and that, if aggrieved, the RCS ought to have sought review or appeal instead of passing a contrary order. Accordingly, the order dated 13.02.2012 was set aside, and the RCS was directed to pass fresh orders for immediate implementation of the Hon'ble High Court's judgment dated 15.01.2009 in a time-bound manner.
11. That no one including RCS and Society, who were parties to the Revision Petition No. 144/2012 and judgment dated 19.07.2013 passed by the Hon'ble Financial Commissioner, Delhi, challenged the said judgment of the Financial Commissioner, which has attained finality and is binding upon all concerned including office of RCS.
12. That the petitioner thereafter made repeated requests and visits to the offices of the society as well as RCS for implementation of the aforesaid judgments of Hon'ble High Court and Financial Commissioner for allotment of a plot.

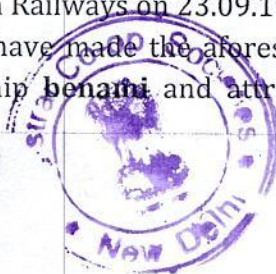


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13. That ultimately the respondent society vide letter dt.03.03.2017 recommended petitioner's name to the RCS office for forwarding the same to DDA for allotment of a plot to her. The society vide letter dt. 10.08.2017, on the instructions of the Assistant Registrar, furnished requisite information about latest position of the vacant plots in the Society. Copies of the letters dt.03.03.2017 and 10.08.
14. The petitioner personally appeared in the Office of RCS and produced all her original documents for verification and wrote a letter dt.23.01.2018 to RCS in this regard.
15. However, again thereafter neither the respondent society nor the office of the RCS made any effort for compliance with the aforesaid orders of the Hon'ble High Court of Delhi and Financial Commissioner for more than two years, when the petitioner was shocked to receive notice dated 16.03.2020 from the office of the RCS, wherein the Ld. RCS after referring to previous litigations, as mentioned above, and the some alleged letter dt. 15.06.2019 asked the petitioner to present her case either personally or through authorized representatives.
16. That the petitioner filed a detailed reply dt. 16.09.2020 to the notice of the RCS dt. 16.03.2020, strongly disputing not only the legality and propriety of the notice dt. 16.03.2020 but also the power of the RCS to issue such notice after the aforesaid judgments and orders dt. 15.01.2009 and 19.07.2013.
17. So far as the alleged letter dt. 15.06.2019 is concerned the same was issued by a unscrupulous and dubious person namely Maneesh Chhabra misrepresenting himself as the Secretary of the respondent society though as a matter of fact the claim petition of Maneesh Chhabra claiming membership rights in the respondent society had already been rejected by the RCS as well as Delhi Cooperative Tribunal vide orders dt.24.12.2013 and 10.02.2014 respectively holding that Maneesh Chhabra is not a member of the respondent society. Pertinently, Maneesh Chhabra did not challenge the said orders as passed against him, thus the same attained finality. It is also not out of place to mention here that same Maneesh Chhabra and one Rajinder Gulati also filed an application for impleadment in the revision petition No. 144/2012 earlier filed by the petitioner before the Financial Commissioner against RCS order dt.13.02.2012, however, same was rejected and not entertained by the Ld. Financial Commissioner. The said order was also not challenged by either of them.
18. In the alleged letter dt.15.06.2019, Maneesh Chhabra had raised same false and baseless allegations i.e. the petitioner was a minor and financially dependent upon her parents at the time of enrollment which have already been rejected by the Hon'ble High Court and Ld. Financial Commissioner in its orders dt. 15.01.2009 and 19.07.2012 and therefore the RCS has no power or jurisdiction to again go into those issues which have already been decided in the aforesaid two orders of the Hon'ble High Court and Ld. Financial Commissioner.



19. That in notice dt. 16.03.2020, the Ld. RCS has also made passing reference to the alleged withdrawal of earlier recommendation of the respondent society to the case of the petitioner for allotment of a flat but has not given any justified reason for the same. It is submitted that recommendation of the society to the RCS forwarding the name of the petitioner for allotment of a plot to her cannot be withdrawn just because of a change in the managing committee especially after the aforesaid judgments of the Hon'ble High Court as well as Financial Commissioner in favour of the petitioner.
20. Under identical circumstances involving the same Society, in *Vikas Dhamija v. RCS & Ors.*, the Hon'ble High Court strongly deprecated the attempt of the newly elected Managing Committee to overturn the decisions of its predecessor regarding membership. The Court observed that the Society could not disown its own resolutions and actions merely because there was a change in management. It held that permitting such conduct would enable cooperative societies to arbitrarily change their stand with every change of management, thereby undermining certainty and fairness in the administration of their affairs.
21. It is thus clear from the above judgment that if anyone was/is aggrieved by the judgments of the Hon'ble High Court and Financial Commissioner, as referred above, he/she could have challenged the same as per law. However, with the change of managing committee the earlier decisions of the society as well as courts cannot be ignored or disobeyed by the successor committee.
22. Similarly, the stand of the present managing committee, which is in the office since 2000, that it has not been handed over the records of the society by the erstwhile managing committee is just a lame and malafide excuse to create unnecessary hurdles in the allotment of a plot in favour of the petitioner. It is not out of place to mention here that name / case of the petitioner was verified by the society and then RCS office and recommended to DDA for allotment of a plot to her and later on it is on the alleged complaint that the petitioner was a minor at the time of enrollment and thereafter, on the alleged ground that the petitioner was financially dependent on her father/parents. However, both these grounds were rejected by the Hon'ble High Court as well as Financial Commissioner in their respective judgments / orders as reproduced above and therefore nothing remains in the matter except referring the name of the petitioner again to DDA for allotment of a plot measuring 300-349 sq. yds to her in the respondent society.
23. In its latest written submissions, furnished to the petitioner only on 17.07.2025, the present Managing Committee sought to raise fresh pleas which are legally impermissible, namely: (i) that the petitioner deposited the admission fee, share money, plot cost and other charges before the resolution approving her membership dated 31.08.1981, allegedly violating the Delhi Cooperative Societies Act and Rules; (ii) that, since the petitioner had joined Indian Railways on 23.09.1980 on a basic salary of about Rs.250/- per month, she could not have made the aforesaid payments from her own resources, rendering her membership **benami** and attracting disqualification under



Rule 25 of the Delhi Cooperative Societies Rules, 1973; (iii) that similar claims had been rejected in Case Nos. 251/2012, 252/2012 and 113/2013 by the Financial Commissioner; and (iv) that reliance was also placed during oral arguments on the judgment dated 06.05.2024 passed by the Hon'ble High Court of Delhi.

24. That none of the above pleas or objections of the respondent society have any merit or substance and rather same old pleas are being repeatedly raised tautologically despite having already been decided by the Hon'ble High Court of Delhi as well as Financial Commissioner, Delhi in their respective judgments as mentioned above and most importantly, no one has ever challenged the said judgments which have already attained finality and binding upon all i.e. the petitioner, respondent society as well as RCS office, who were parties to the said judgments and non-compliance of the said judgment by anyone shall tantamount to willful contempt of courts order.
25. So far as the first objection is concerned, as stated above, the respondent society itself vide letter dt.08.08.1981 made it compulsory for all the persons (not only for petitioner herein) interested in obtaining membership of the society to submit two separate demand drafts towards admission fee, share money, cost of plot and other miscellaneous expenses along with their applications to the society, otherwise, the application would have been treated incomplete and would not have been entertained by the Society. Many of those applicants, who were enrolled on same terms and conditions along with petitioner, have already been allotted plots in society. The respondent society is therefore now estopped from raising any such plea against the terms and conditions of its own offer letter dt.08.08.1981, a copy of which is annexed with the present written arguments. Even otherwise, no provision of DCS Act, 1972 or DCS Rules, 1973 was violated by tendering demand draft towards payment of admission fee, share money and cost of plot along with application when same was made mandatory by the society itself and that is the reason that the society had failed to disclose any such provision of law in its written submissions.
26. That the respondent society despite having accepted the fact that the issues regarding petitioner being a major and was gainfully employed at the time of her enrollment in 1981 have been conclusively decided by the Hon'ble High Court of Delhi and Ld. Financial Commissioner, has now raised the alleged plea that her job was not old enough to enable her to make the payments towards admission fee, share money and cost of plot from her own resources and funds and therefore the petitioner was holding benami membership. The above objection does not only sound illogical and irrational but also not based on any tangible evidence but on surmises and conjectures and therefore cannot be accepted in the court of law.
27. It is submitted that, at the time of the petitioner's enrolment and subsequent verification, both the Society and the Registrar Cooperative Societies examined all aspects of her eligibility, including her financial independence, and only thereafter approved her membership and recommended her name for allotment of a plot. The



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petitioner had sufficient funds from her personal savings and gifts to meet the admission fee, share money, plot cost and other charges. The respondent Society has failed to produce any evidence to substantiate its belated allegation that the petitioner's membership was **benami**. The burden of proving such an allegation lies upon the party asserting it, which the Society has failed to discharge. It is further submitted that the issue of the petitioner's financial independence was specifically raised before and rejected by the Learned Financial Commissioner in order dated 19.07.2013. The said order, as well as the judgment of the Hon'ble High Court dated 15.01.2009, has attained finality and is binding upon both the Society and the Registrar Cooperative Societies. Consequently, they are estopped from reopening issues that have already been conclusively decided. In this regard, the Hon'ble Supreme Court, in The Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Ltd. v. Bapuna Alcobrew Pvt. Ltd., reiterated that once a matter has attained finality, the parties are bound by the judgment and are precluded by the principles of cause of action estoppel and issue estoppel from re-agitating the same issues in subsequent proceedings.

28. That respondent society has also taken the plea that similar cases have also been rejected by the Financial Commissioner vide order dt.23.12.2023, which has also been confirmed by the Hon'ble High Court vide its judgment dt.06.05.2024. However, society has failed in its duty to disclose that the facts of the said cases were totally different from the facts of the present case and therefore the said orders have no application in the present case. It is submitted that in Cases no.251/12 and 252/12, which were ultimately dismissed by the Ld. Financial Commissioner and Hon'ble High Court, it was held by the RCS, as noticed in para 2.6 of the Judgment dt.06.05.2024 that the petitioners in those cases were minors and financially dependent upon their parent at the time of their enrollment and therefore, the Ld. Financial Commissioner and Hon'ble High Court dismissed their petitions. However, in the present case, it is conclusively decided in favour of the petitioner by the Hon'ble High Court of Delhi in its judgment dt. 15.01.2009 in WP (c) 3529/1989 titled as "Smt. Sushma VS Mianwali Distt CHBS Ltd. & Ors." that the petitioner was a major at the time of her enrollment and again when the issue of financial independence of the petitioner was raised by the RCS before the Ld. Financial Commissioner Delhi the same was rejected by the Ld. Financial Commissioner in its judgment dt. 19.07.2013 in case No.144/2012 titled as "Smt. Sushma Vs RCS & Ors." holding that the petitioner was financially independent being gainfully employed in Indian Railways at the time of her enrollment.

29. It is further submitted that even in the recent judgment dated 06.05.2024 in G. Hemant v. RCS & Ors., the Hon'ble High Court of Delhi categorically held that a financially independent adult is not disqualified under Rule 25 of the Delhi Cooperative Societies Rules, 1973 from seeking membership merely because his or her parent owns a residential plot or flat. The Court clarified that such protection is unavailable only where the applicant is merely a benami name lender for the parents. This judgment, therefore, supports the petitioner's case, whose financial independence has already been recognized in earlier proceedings.



30. It is thus clear from above facts that even the recent judgment of the Hon'ble High Court of Delhi dt.06.05.2024 in WP (c) No.6395/2024 is not against the petitioner herein and rather supports the case of the petitioner herein.

31. Based on the above, even alleged latest objections of the respondent society lack merit and appear intended only to obstruct the petitioner's plot allotment due to some malafide extraneous reasons.

32. The respondent society and RCS are bound by the aforesaid judgments of Hon'ble High Court of Delhi and Financial Commissioner and any non-compliance by any party of the aforesaid judgments will be tantamount to willful contempt of courts orders.

OBSERVATION AND FINDINGS

I have carefully considered the record of the case, the submissions made by the petitioner and the respondent Society, the judgment dated 15.01.2009 passed by the Hon'ble High Court of Delhi in W.P.(C) No.3529/1989, and the order dated 19.07.2013 passed by the Hon'ble Financial Commissioner in Revision Petition No.144/2012.

It is an admitted position that the Hon'ble High Court of Delhi, vide judgment dated 15.01.2009 in W.P.(C) No.3529/1989, categorically held that the petitioner was validly inducted as a member of the respondent Society on the basis of her application dated 28.08.1981. The Hon'ble Court further quashed the letter dated 10.11.1987 whereby her membership had been ceased and directed that the natural consequences thereof would follow, including consideration of her name in the draw of lots at the appropriate stage, subject to her seniority and eligibility.

Thereafter, the order dated 13.02.2012 passed by the then RCS, whereby the petitioner was again held ineligible on the ground of alleged dependence upon her father, was challenged before the Hon'ble Financial Commissioner. Vide order dated 19.07.2013, the Hon'ble Financial Commissioner set aside the said order and directed the RCS to pass an appropriate fresh order for immediate implementation of the directions contained in the judgment dated 15.01.2009 of the Hon'ble High Court.

The aforesaid judgment of the Hon'ble High Court and order of the Hon'ble Financial Commissioner have attained finality. Neither the respondent Society nor the office of the RCS has placed on record any subsequent order whereby the said judicial determinations have been stayed, modified, reversed or set aside. The respondent Society, having participated in the earlier proceedings, cannot seek to reopen issues which already stand conclusively determined.

The principal objections now raised by the respondent Society regarding the alleged financial dependence of the petitioner, the source of the amount deposited by her and the alleged benami nature of her membership are, in substance, an attempt to reopen the question of her eligibility which had already been considered in the earlier proceedings. The issue of financial independence had already been examined in the records of the RCS, and therefore, there was no justification for reopening or relying upon the same without first complying with the binding directions of the Hon'ble High Court.



The subsequent allegation that the petitioner could not have arranged the amount deposited in August 1981 merely because she had joined Indian Railways in September 1980 is based essentially on inference and conjecture. No cogent or legally admissible material has been produced by the Society establishing that the petitioner's membership was benami or that the amount was actually paid by her father in his own interest. Such an allegation, in the absence of supporting evidence, cannot be made the basis for nullifying a membership which has already been judicially recognized.

Most importantly, this Authority cannot sit in appeal over the judgment of the Hon'ble High Court or the order of the Hon'ble Financial Commissioner. The limited proceedings pursuant to the Show Cause Notice dated 16.03.2020 cannot be converted into a fresh adjudication of issues which have already been decided by the competent judicial forums. Accordingly, the objections raised by the respondent Society on the aforesaid grounds are not sustainable.

CONCLUSION

In view of the foregoing discussion, I am of the considered opinion that the objections raised by the respondent Society do not furnish any lawful basis for denying the petitioner the benefit of the judgment dated 15.01.2009 passed by the Hon'ble High Court of Delhi and the order dated 19.07.2013 passed by the Ld. Financial Commissioner.

The finding of the Hon'ble High Court that the petitioner was validly inducted as a member of the respondent Society and that cessation of her membership was unjustified remains binding. The subsequent order dated 13.02.2012 passed by the RCS, which sought to take a contrary view, already stands set aside by the Hon'ble Financial Commissioner.

Accordingly, the petitioner continues to be recognized as a valid member of the Mianwali District Cooperative House Building Society Ltd. and her membership cannot be treated as ceased or disqualified on the basis of the objections raised by the respondent Society in the present proceedings.

The respondent Society and this office are bound to give effect to the final judicial directions and cannot reopen or nullify the issues already adjudicated. The petitioner's case is therefore required to be processed in accordance with the judgment dated 15.01.2009, including consideration of her name in the draw of lots at the appropriate stage, subject to her seniority and eligibility as directed by the Hon'ble High Court.

Therefore, in compliance with the judgment dated 15.01.2009 passed by the Hon'ble High Court of Delhi in W.P.(C) No. 3529/1989 and the order dated 19.07.2013 passed by the Hon'ble Financial Commissioner in Revision Petition No. 144/2012, it is hereby ordered that Smt. Sushma shall continue to be recognized as a valid member of the Mianwali District Cooperative House Building Society Ltd. The objections raised by the respondent Society seeking cessation or disqualification of the petitioner's membership on the grounds of alleged financial dependence, source of funds or alleged benami membership are hereby rejected. The order dated 13.02.2012 passed by the RCS, having already been set aside by the Hon'ble Financial Commissioner vide order dated 19.07.2013, shall not constitute any impediment to the implementation of the judgment dated 15.01.2009.

The respondent Society shall not reopen or raise objections on issues which already stand finally adjudicated by the Hon'ble High Court and the Ld. Financial Commissioner, except on

the basis of any subsequent order of a competent court or any legally sustainable ground arising independently after the aforesaid judgments. The Society shall comply with this order and submit a compliance report to this office within 30 days from the date of receipt of this order.

Accordingly, the proceedings initiated vide Notice dated 16.03.2020 are hereby disposed of in favour of Smt. Sushma, with a direction to the respondent Society and all concerned to ensure due and effective implementation of the judgment dated 15.01.2009 passed by the Hon'ble High Court of Delhi and the order dated 19.07.2013 passed by the Ld. Financial Commissioner. The Society shall take all consequential steps strictly in accordance with the aforesaid judicial directions and applicable law.

Ordered accordingly.




Krishna Kumar Singh (IAS)
Registrar Cooperative Societies

Sent To:-

1. The President/Secretary, Mianwali Distt. CHBS Ltd., Mandir Marg, A7X A3 Road, Rohtak Road, Mianwali Nagar, New Delhi-110087
2. Smt. Shushma (M.No. 1022), Flat No. 264, 6th Floor, Plot No. 18, Shivani Apartment, Sec-12, Dwarka-110078.
3. DRCS (IT), O/o RCS
4. DRCS, Section -4, O/o RCS
5. Guard File