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/RCS/ARCS-02/2023/3366 - 71

Dated: 28/10/26

Order

This order shall dispose of the proceedings initiated vide show cause notice dated 08.08.2024 issued u/s 87 & 41 of the DCS Act, 2003 for cessation of the membership of Sh. Om Prakash Sharma and Smt. Rekha Sharma, W/O of Sh. Om Prakash Sharma in Canara Group Co-operative Group Housing Society Ltd., Plot No. 16, Sector-13, Rohini, New Delhi 110085.

Brief facts of the case

A petition has been received from Sh. Rajeev Parashar, member and owner of Flat No. 90, Canara Apartment, Sector-13, Rohini, Delhi-110085, under Section 87 of the Delhi Cooperative Societies Act, 2003, against Sh. Om Prakash Sharma and Smt. Rekha Sharma. It is alleged that Sh. Om Prakash Sharma is a member in respect of Flat No. 81 (Membership No. 123), while his wife, Smt. Rekha Sharma, is also a member in respect of Flat No. 07 (Membership No. 271) in the same society. The petitioner has alleged that such arrangement amounts to dual membership and has sought appropriate action under Sections 41 and 87 of the DCS Act, 2003 and the DCS Rules, 2007.

Reply of the Respondents

1. That the answering Respondent submits that he/she has only received a copy of the notice issued by this Hon'ble Court. It is stated that the petition allegedly filed by the Petitioner does not contain the name of the answering Respondent as a party. The answering Respondent has, therefore, expressed his/her surprise as to how notice has been issued to him/her when his/her name does not find mention in the petition. It is further submitted that the notices earlier issued in the present matter were addressed only to six members of the Society and did not include the answering Respondent.
2. That however without prejudice to the rights and contentions of the answering Respondents, the Respondent submits that the petition filed by the Petitioner is just gross mischievous and abuse of process of law as the same is being filed just with the sole motive to harass the answering Respondents and thus the same is liable to be dismissed with heavy costs.
3. That even otherwise the Petitioner has failed to disclose before this Hon'ble Court that even after granting a membership to the spouse the Society has not given the voting rights to the said spouse although the same is ought to be given but the same is not the subject matter of the present petition, therefore it categorically shows that

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the Petitioner is deliberately filed the present petition just to harass and exert pressure over the Respondents.

4. That the Petitioner has deliberately only chose and pick certain members of the Society with whom he wants some personal vendetta whereas there are other members in the society where the both the spouses are having the membership in the Society but the Petitioner deliberately not filed the petition against them as the Petitioner is having good relations with them and just want to take personal vendetta against the Respondents.

5. That it is pertinent to mention that Respondent/ Omprakash Sharma has purchased the flat No. 81 in the Society on 09.02.2011 Through his own source of funds. It is pertinent to mention that the Respondent/ Rekha Sharma who is the wife of Om Prakash Sharma has purchased the Flat No. No. 7 in the Society on 23.08.2007 from her own source of funds from the open market. It is pertinent to mention that both the flats are also free hold flat and thus as per Section 91 of Delhi Cooperative Societies Act, 2003 they both are entitled to get the membership in the Society and thus after following the due procedure the answering Respondents applied for the membership in the Society, and the same has been granted by the Society, in compliance of the Delhi Cooperative Societies Act and Rules.

6. That it is pertinent to mention that the provisions which are being relied upon by the Petitioner like Section 87 and Section 41 are applicable when the person is being allotted flat in the Society and not for the purpose when the person purchases a flat in the Society and applies for the membership under Section 91 of Delhi Cooperative Societies Act, 2003, even otherwise there have been thousand of cases wherein both husband and wife who were having the membership in the Society and are being allotted the flat in the Society if they has separate source of income, thus even therefore the case of the Respondents are totally different as the Smt. Rekha Sharma has purchased the flat from the open market that too on market rate.

7. That there have been several judgments passed by the Hon'ble High Court of Delhi in this regard that a spouse can have second membership if the same is purchased from their own funds that too in case where the allotment of flat is in question, whereas in the present case there is no question in regard to allotment of flat to the initial member but only in regard to grant of membership to the spouse which itself is baseless.

8. The respondents have relied upon the judgments of the Hon'ble High Court of Delhi in *Ratna Mohla v. RCS* and *Dr. J.K. Gupta v. Registrar Cooperative Societies & Ors.*, to submit that there is no bar against both spouses holding separate membership where the property acquired by one spouse is purchased from his/her own independent source of funds. It has been held that where such independent acquisition is established and the property stands in the individual name of the spouse, the statutory disqualification is not attracted. The respondents have relied upon these judgments to contend that the membership of Smt. Rekha Sharma is legally permissible as the flat was allegedly purchased by her from her own funds.

That thus it can be seen that when even the allotment is on the line the same is being granted whereas in the present case, there is no such case as the other spouse has purchased the said property from the open market from their own source of funds, and

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even there is no voting rights assigned to them by the Society thus there is no reason/ground of whatsoever for cessation of membership of the Respondents.

Submission of the Society

1. That the petition filed by the Petitioner is just gross mischievous and abuse of process of law as the same is being filed just with the sole motive to harass the answering Respondents and thus the same is liable to be dismissed with heavy costs.
2. That the petition filed by the Petitioner is just so vague and does not disclose how the membership of the Respondents are liable to be ceased as the Petitioner has deliberately failed to disclose the other spouse who has obtained the membership in the Society has not been the original allottee of the flat in the Society however the other spouse has purchased the flat in the Society from the open market and that too from their own source of funds and therefore he/she is entitled to get the membership in the Society.
3. That even otherwise the Petitioner has failed to disclose before this Hon'ble Court that even after granting a membership to the spouse the Society has not given the voting rights to the said spouse although the same is ought to be given but the same is not the subject matter of the present petition, therefore it categorically shows that the Petitioner is deliberately filed the present petition just to harass and exert pressure over the Respondents.
4. That the Petitioner has deliberately only chose and pick certain members of the Society with whom he wants some personal vendetta whereas there are other members in the society where the both the spouses are having the membership in the Society but the Petitioner deliberately not filed the petition against them as the Petitioner is having good relations with them and just want to take personal vendetta against the Respondents. The list of the other members who are spouses and both are having membership in the Society as well a member having three membership in her name are as under:

    A. R.N Sharma M.No. 197 (Flat No. 101) & Sushma Sharma Ms. No. 299 (Flat No. 99)
    B. Rajesh Mittal M.No. 242 (Flat No. 40) & Monika Mittal Ms. No. 93 (Flat No. 39)
    C. Anju Rani Mangla M.No. 129/62/372 (Flat No. 36/226 & 231)

5. That it is pertinent to mention that the provisions which are being relied upon by the Petitioner like Section 87 and Section 41 are applicable when the person is being allotted flat in the Society and not for the purpose when the person purchases a flat in the Society and applies for the membership under Section 91 of Delhi Cooperative Societies Act, 2003, even otherwise there have been thousand of cases wherein both husband and wife who were having the membership in the Society and are being allotted the flat in the Society if they has separate source of income, thus even therefore the case of the Respondents are totally different as the Smt. Rekha Sharma has purchased the flat from the open market that too on market rate.

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6. That there have been several judgments passed by the Hon'ble High Court of Delhi in this regard that a spouse can have second membership if the same is purchased from their own funds that too in case where the allotment of flat is in question, whereas in the present case there is no question in regard to allotment of flat to the initial member but only in regard to grant of membership to the spouse which itself is baseless.

7. The respondents have relied upon the judgments of the Hon'ble High Court of Delhi in *Ratna Mohla v. RCS* and *Dr. J.K. Gupta v. Registrar Cooperative Societies & Ors.*, to submit that there is no bar against both spouses holding separate membership where the property acquired by one spouse is purchased from his/her own independent source of funds. It has been held that where such independent acquisition is established and the property stands in the individual name of the spouse, the statutory disqualification is not attracted. The respondents have relied upon these judgments to contend that the membership of Smt. Rekha Sharma is legally permissible as the flat was allegedly purchased by her from her own funds.

That thus it can be seen that when even the allotment is on the line the same is being granted whereas in the present case, there is no such case as the other spouse has purchased the said property from the open market from their own source of funds, and even there is no voting rights assigned to them by the Society thus there is no reason/ground of whatsoever for cessation of membership of the Respondents.

Rejoinder by petitioner

1. That the petitioner has submitted that the replies filed by the respondents are legally untenable, evasive and unsupported by any cogent documentary evidence. It has been contended that the replies have not been duly supported by affidavits and, therefore, the assertions made therein cannot be treated as sufficient proof of the facts pleaded.

2. That the petitioner has further submitted that the respondents have not produced any contemporaneous documentary evidence in support of their claim regarding the independent source of funds of the respective spouses. In particular, no bank statements, income-tax returns, affidavits, sale deeds, payment records or other financial documents have been placed on record.

3. That according to the petitioner, the respondents have thus failed to discharge the burden of establishing that the impugned memberships are not hit by the provisions of Sections 41 and 87 of the Delhi Cooperative Societies Act, 2003 read with Rule 20 of the Delhi Cooperative Societies Rules, 2007.

4. That the petitioner has submitted that Section 87 of the Act read with Rule 20 of the Rules contains a statutory restriction concerning continuation/eligibility of membership where the prescribed disqualification arises on account of membership of the spouse or dependent children in a cooperative housing society. It has been contended that the object of the provision is to prevent multiple memberships within the same family and to ensure equitable distribution of cooperative housing resources.

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5. That with regard to Smt. Rekha Sharma and Sh. Om Prakash Sharma, the petitioner has submitted that the membership of Smt. Rekha Sharma was allegedly obtained on the basis of an Agreement to Sell. It has been contended that an Agreement to Sell by itself does not confer title in immovable property and, therefore, cannot constitute a valid basis for claiming ownership of the flat. The respondents have allegedly not produced any sale deed, bank statement, ITR, payment record or other material to establish that the entire consideration was paid from the exclusive funds of Smt. Rekha Sharma.

6. That in support of the aforesaid contention, the petitioner has relied upon the judgment of the Hon'ble Supreme Court in *Babasahib Dhondiba Kute v. Radhu Vithoba Barde*, 2024 LiveLaw (SC) 225, and has submitted that ownership in immovable property is transferred in accordance with the requirements of law and not merely on the basis of an Agreement to Sell.

7. That the petitioner has further submitted that the reliance placed by the respondents upon *Alimuddin v. Registrar Cooperative Societies*, 63 (1996) DLT 655, is misplaced. According to the petitioner, the said judgment itself recognizes that an Agreement to Sell or Power of Attorney does not, by itself, confer ownership, and therefore the said judgment does not support the membership claimed on the basis of an Agreement to Sell.

8. That the petitioner has also sought to distinguish the judgments relied upon by the respondents, namely, *Jagdish Chander v. Lt. Governor*, W.P.(C) No.1646/1995, decided on 22.07.2009, and *Krishan Kumar Sachan v. Lt. Governor*, W.P.(C) No.417/1995, decided on 10.08.2009. It has been submitted that in those cases the concerned spouse had produced documentary evidence, including affidavits, income-tax returns and bank records, to establish acquisition from independent funds, whereas no such evidence has been produced in the present case.

9. That the petitioner has therefore submitted that the ratio of the aforesaid judgments cannot be mechanically applied to the present case, as the factual foundation regarding independent source of funds has not been established by the respondents.

10. That the petitioner has further submitted that the President/Secretary of the Society have failed to produce the relevant membership records and other documents despite the directions issued by the Registrar through various hearing notices. It has been contended that non-production of the relevant Society records has prevented proper verification of the circumstances in which the impugned memberships were granted.

11. That the petitioner has lastly submitted that the respondents have failed to satisfactorily rebut the allegations raised against them. According to the petitioner, the contradictions in the replies, coupled with the absence of documentary evidence regarding ownership, source of funds and grant of membership, establish that the impugned memberships require cessation/action under Sections 41 and 87 of the Delhi Cooperative Societies Act, 2003 read with Rule 20 of the Delhi Cooperative Societies Rules, 2007.



FINDINGS AND OBSERVATIONS

I have carefully considered the petition, replies filed by the respondents, rejoinder filed by the petitioner and the material available on record. The undisputed position emerging from the record is that Sh. Om Prakash Sharma is a member of the Society bearing Membership No. 123 in respect of Flat No.81 and his wife, Smt. Rekha Sharma, is also a member of the same Society bearing Membership No.271 in respect of Flat No.07.

Thus, the factum of simultaneous membership of both spouses in the same cooperative housing society is not in dispute. The principal defence of the respondents is that the membership of Smt. Rekha Sharma is based upon her independent purchase of Flat No.07 from the open market from her own funds. It is also their contention that the purchase being an open-market transaction, the provisions relating to cessation of membership are not attracted.

The said contention has been examined in the light of the material placed on record. It is well settled that the mere fact that husband and wife are separately owning properties does not, in every case, by itself establish a statutory violation, particularly where independent acquisition by one spouse from his/her own resources is established by cogent material. The judgments relied upon by the respondents are to be understood in this factual context.

However, in the present case, the respondents have not placed on record sufficient documentary material to establish that the purchase consideration for Flat No.07 was paid exclusively from the independent funds of Smt. Rekha Sharma. No bank statement, income-tax return, payment record or other contemporaneous financial document has been produced in support of the said claim.

The respondents have not produced the complete relevant documents to satisfactorily establish their contention. The contention that Smt. Rekha Sharma purchased the flat from the open market also does not, by itself, take the membership outside the statutory framework. A person acquiring a flat in a cooperative housing society is required to satisfy the applicable provisions of the Act, Rules and registered bye-laws. Section 91 cannot be interpreted as providing an unconditional exemption from the other statutory restrictions governing membership.

The judgments relied upon by the respondents do not lay down that a mere assertion of independent source of funds is sufficient. The factual foundation regarding independent acquisition has to be established by reliable material. In the present case, such material is conspicuously absent.

The submission regarding non-grant of voting rights to Smt. Rekha Sharma is also not relevant for determining the legality of the membership itself. Similarly, the allegation that other members of the Society may be similarly placed cannot, by itself, provide a defence to the respondents. Each case has to be examined on its own facts and material.

It is further observed that the reply filed by the Society substantially corresponds with and reproduces the stand taken by the respondents in their reply. The factual assertions, legal contentions and grounds taken by the Society, including the plea regarding purchase of Flat

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No.142 from the open market through independent funds, reliance upon Section 91 of the DCS Act, 2003, the judgments cited by the respondents and the contention regarding non-grant of voting rights, are substantially identical to those taken by the respondents. Thus, it appears that the stand taken by the Society is substantially the same as that of the respondents. The Society, being responsible for maintaining the membership records and for ensuring compliance with the Act, Rules and registered bye-laws, was expected to place before the Registrar an independent and record-based position regarding the legality of the membership in question. However, apart from reiterating the stand of the respondents, the Society has not produced sufficient independent documentary material to establish the basis and legality of the membership granted to Sh. Om Prakash Sharma and Smt. Rekha Sharma.

CONCLUSION

In view of the foregoing discussion and after considering the petition, replies of the respondents, rejoinder of the petitioner and the material available on record, it is observed that Sh. Om Prakash Sharma and Smt. Rekha Sharma are admittedly members of the same cooperative housing society. The respondents have sought to justify the membership of Smt. Rekha Sharma on the ground that Flat No.07 was purchased by her from the open market from her independent funds. However, despite the specific objection raised by the petitioner, the respondents have failed to place sufficient and cogent documentary evidence on record to establish that the said property was acquired exclusively from the independent funds of Smt. Rekha Sharma.

The plea of independent acquisition, therefore, remains an unsupported assertion and cannot be accepted merely on the basis of the reply filed by the respondents. The judgments relied upon by the respondents are distinguishable on facts, particularly in the absence of documentary material establishing the independent source of funds and nature of acquisition in the present case. The fact that the alleged property was allegedly purchased from the open market does not, by itself, create an exemption from the statutory conditions governing membership of a cooperative housing society.

Accordingly, on the basis of the material available on record, I find that the respondents have failed to establish a valid justification for continuation of the membership in the Society in the facts and circumstances of the present case.

In view of the findings recorded herein, the later membership between the two memberships, i.e. Flat No. 81 (M. No. 94) and Flat No. 07 (M. No. 325), held by the spouses in the Society, is hereby ceased/terminated in accordance with law, while the earlier membership shall remain unaffected by the present order.

The Society/Administrator is directed to take consequential action in the membership records in accordance with law and the findings recorded in this order and to submit a compliance report within 15 days from the date of receipt of this order. It is noted that despite the specific direction contained in the Show Cause Notice and reiterated in the notices issued to the Society, the Society failed to comply with the direction to produce the relevant membership records. Accordingly, the Society/Administrator is once again directed to rectify and update the membership records in accordance with the findings

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recorded herein and submit a compliance report within the stipulated period. No separate order for cessation of membership is called for in the present proceedings.

The concerned DRCS is directed to follow up the matter and ensure timely compliance of the aforesaid directions. The Society is further directed to ensure that its membership records are properly maintained and that all future admissions, transfers and grant of membership are made strictly in accordance with the provisions of the DCS Act, 2003, the DCS Rules, 2007 and the registered bye-laws of the Society.

The proceedings are accordingly disposed of.

Registrar Co-op Societies Delhi

Krishna Kumar Singh (IAS)
Registrar Cooperative Societies

Sent To

1. The President/Secretary/Administrator, Canara CGHS Ltd., Plot No. 16, Sector 13, Rohini, New Delhi-110085.
2. Rekha Sharma, Flat No. 7, Canara CGHS Ltd., Plot No. 16, Sector 13, Rohini, New Delhi-110085.
3. Om Prakash Sharma, Flat No. 81, Canara CGHS Ltd., Plot No. 16, Sector 13, Rohini, New Delhi-110085.
4. DRCS (IT), O/o RCS (with request to upload due order)
5. DRCS, Section -2, O/o RCS
6. Guard File