

IN THE COURT OF SPECIAL REGISTRAR COOPERATIVE SOCIETIES
GOVERNMENT OF NCT OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET,
NEW DELHI-110001

Application No. _____ 2021

IN

Case No. F.1/Reader/Addl.RCS/Sec.86/2018/481-506

F.No.:

Dated.: 15/12/2021

IN THE MATTER OF:

The Rajendra Cooperative
Group Housing Society,
212, Best Arcade, Plot No.3,
Pocket-06, Sector-12,
Dwarka, New Delhi-78

... Applicant


Versus

1. Mrs. Renu Sood,
(Membership No.002)
R/o. W-56, Greater Kailash-II,
New Delhi-110048,
2. Mr. Anil Kumar Jain,
(Membership No.019)
R/o. A-60, Gulmohar Park,
New Delhi-110049,
3. Mr. Sandeep Mukhi,
(Membership No.123)
R/o. I-127, Kirti Nagar,
New Delhi-110015,
4. Mr. Sudesh Chand Rastogi,
(Membership No.037)
R/o. Rambhawan, Bharatram Road,
24, Darya Ganj,
New Delhi-110002,
5. Mr. Raj Kumar Jain,
(Membership No.040),
R/o. C-64, Ashok Vihar,
Phase-I, New Delhi-110052.
6. Sh. Sudhir Chand Rastogi,
(Membership No.042),
R/o. Rambhawan, Bharatram Road,
24, Darya Ganj, New Delhi


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7. Mrs. Kusum Lata Jain,
(Membership No.047),
R/o.C-64, Ashok Vihar-I,
New Delhi-110052
8. Mr. N. K. Gupta,
(Membership No.065),
R/o.C-6, Green Park Extension,
New Delhi-110016.
9. Mrs. Alka Amit Jain,
(Membership No.069),
R/o. 49/2, Rajpur Road,
Civil Lines, New Delhi-110009.
10. Mrs. Nishi Nitin Mukesh,
(Membership No.082),
R/o. 24/4831, Ansari Road,
Prahlaad Lane, Dayra Ganj,
New Rohtak Road,
New Delhi-10002
11. Mr. Arun Aggarwal,
(Membership No.083),
R/o. B1/74, Safdarjung Enclave,
New Delhi-110029
12. Mr. Ravi Bhatia,
(Membership No.084),
R/o.34/5, East Patel Nagar,
New Delhi-110008.
13. Mrs. Ram Rakhi,
(Membership No.088),
R/o. AE-13, Shalimar Bagh,
New Delhi-110088.
14. Mrs. Amrita Mohan,
(Membership No.112),
R/o. W-76, Greater Kailash-1,
2nd Floor, New Delhi-110048.
15. Mr. Raj Kumar Aggarwal,
(Membership No.115),
R/o. E-406, Greater Kailash-1,
New Delhi-110048.
16. Mr. Ajay Jain,
(Membership No.116),
R/o. C-599, New Friends Colony,
New Delhi-110025.


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17. Mr. Sanjay Mittal,
(Membership No.119),
R/o. C-122, Greater Kailash-1,
New Delhi-110048.
18. Mr. Bharat Bhushan Mukhi,
(Membership No.124),
R/o. I-127, Kirti Nagar,
New Delhi-110015.
19. Mr. Vinod Kumar Jain,
(Membership No.130),
R/o. 191, A/5-B, Paschim Vihar,
New Delhi-110063
20. M Bijay P.Khetan,
(Membership No.026),
R/o. P-127A, CIT Scheme-VI
M31 Phool Baghan
Kolkatta-700054
21. Mr. Vinod Kumar,
(Membership No.003),
R/o. 153, New Rajdhani Enclave,
Vikas Marg, New Delhi-110092.
22. Mr. Arun Chaddha,
(Membership No.004),
R/o.C-2/1003, Uniworld City West,
Sector-30, Gurgaon-122001.
23. Mrs. Pushpa Arora,
(Membership No.010),
R/o. T-3, 2nd Floor, Green Park Extn.,
New Delhi-110016.


... Respondents

ORDER

This Order shall dispose off the application dated 04.02.2021 filed by the applicant Society under Section 151 of CPC to recall the Order dated 05.01.2021 passed by the Additional Registrar Cooperative Societies in Expulsion Case.

BRIEF FACTS OF THE CASE:-

The applicant Society is a Group Housing Society registered in the Office of the Registrar Cooperative Societies, Govt., of NCT of Delhi, Parliament Street, New

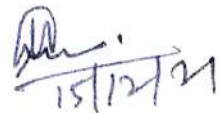

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Delhi (hereinafter referred to as "RCS") having registration No.1395/GH and is governed by the Delhi Cooperative Societies Act and Rule as amended. The Respondents were the bona-fide members of the Society and were persistent defaulters since the beginning and in this regard on numerous occasions the Society had sent reminders and demand notices to the Respondents but the Respondents failed to deposit the requisite demands of the Society and in the Special General Body Meeting held on 25.02.2018 in the society it was resolved to initiate expulsion proceedings against the defaulter members.

On 01.04.2018 the Society issued the First Expulsion Notice under Section 86 of the DCS Act 2003 read with Rule 99 of the DCS Rules 2007 to the Respondents through Speed Post. After the expiry of the statutory period as prescribed under the Act and Rules, on 04.05.2018 the second Expulsion Notice was issued to the Respondents through Speed Post as per the mandatory requirement of the DCS Act and Rules. On 11.06.2018 the third expulsion notice was issued to the Respondents through Speed Post but the Respondents failed to deposit the demanded amounts with the Applicant Society as mentioned in the Expulsion Notice.

The Applicant Society gave last and final opportunity to the Respondents to make payments or present his/ her case before the Managing Committee of the Applicant Society by making the publication in the two leading newspapers as per the mandatory requirement of the DCS Act and Rules. In compliance of the same on 27.07.2018 the Applicant Society published one Public Notice in Newspaper "Veer Arjun (Hindi) and The Statesman (English)" whereby Respondents were informed to appear before the Managing Committee Meeting on 28.08.2018 at 2.00 p.m. in the Society office to explain the case but the Respondents failed to comply with the public notice and did not appear before the Managing Committee of the Applicant Society on 28.08.2018.

On 28.08.2018 in the Managing Committee Meeting of the Society it was unanimously resolved to expel the defaulter members from the primary membership of the society and the society referred the matter to the Office of RCS for seeking approval thereof, under the DCS Act and Rules. The applicant Society submitted the dossier on 26.09.2018 for 52 defaulter members including the Respondents herein. Notices were issued by Ld Predecessor of this Hon'ble court for appearances on

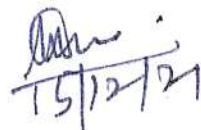


15.11.2018, 06.12.2018 and 26.12.2018. As notices for 29 respondents were received back unserved, public notice was issued in two daily newspapers i.e. The Times of India (English) and Hindustan Times (Hindi) on 31.12.2018 for appearance on 17.01.2019. As none of the 29 Respondents appeared on 17.01.2019 in person nor through authorized representatives, the proceedings in respect of 29 respondents was proceeded ex-parte. Ld Predecessor of this Hon'ble Court thus expelled 29 Respondents vide Order dated 21.01.2019.

After the expiry of the statutory period of 180 days as prescribed under Section 86 of DCS Act 2003 read with Rule 99 of DCS Rules, 2007, the Society passed the resolution of the deemed expulsion of remaining 23 members including all the Respondents and intimation was duly sent to all the deemed expelled members vide speed post and subsequently Society submitted the intimation before the Hon'ble Court, RCS vide letter dated 18.11.2019 with request that proceedings u/s 86 of DCS Act 29003 read with Rule 99(3) of DCS Rules 2007 be initiated i.r.o. 23 members out of 52 members. Proceedings against the left out 23 defaulter members (deemed expelled members) including the above mentioned Respondents were continued before the Hon'ble Court, however, only the four persons namely, i.e. the Respondent No.20 to 23 appeared and filed their submissions and none of the remaining 19 above mentioned Respondents appeared before the Hon'ble Court nor they filed any reply.

As none of the above mentioned Respondents Nos.1 to 19 filed their submissions before the Hon'ble Court and after considering all the records, documents and pleadings by both the sides, Additional Registrar, RCS vide his Order dated 25.06.2020 approved the expulsion of 19 members (Respondent Nos.1 to 19). However, Respondent nos. 20 to 23 who had appeared were given last opportunity and were directed to submit their dues within a period of 30 days of the receipt of the Order and in case of non-compliance of the order, the remaining 4 Respondents will also be considered as deemed expelled.

On 21.07.2020 the society in compliance of the Order dated 25.06.2020 refunded the amounts to all the expelled members through demand drafts and intimation in this regard was sent to the Assistant Registrar (Section-VI) and on 22.07.2020, in compliance of Rule 19 of DCS Rules 2007, the society sent one letter to Assistant


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Registrar (Section-VI) informing him of the public notice for enrollment of 19 members which was to be published in the newspaper on 23.07.2020.

In response to the public notice for 19 vacancy in the Society, only 13 persons submitted their forms and were duly enrolled by the Society and intimation in this regard was sent to the Office of RCS on 31.08.2020. None of the Respondent Nos. 20 to 23 deposited their default amount in compliance of order dated 25.06.2020 within the stipulated period of one month, hence the Society after expiry of one month sent the demand drafts of the deposit money to Respondent Nos.: 20 to 23 and intimation in this regard was duly submitted in the office of RCS on 04.08.2020.

The remaining four Respondents (Respondent Nos. 20 to 23) who were given time to pay the dues filed one application dated 13.07.2020 to review the Order dated 25.06.2020 of Additional Registrar, RCS on the basis of the Inquiry Report dated 09.03.2020 of Sh Sanjay Sharma, Ld Inquiry Officer. The Society filed a detailed reply to the said application. Arguments were adduced on several dates before the Hon'ble Court of Additional Registrar, RCS and at last on 05.01.2021, the Society received one order (3 pages), whereby the order dated 25.06.2020 is withdrawn and expulsion proceedings against all the 19 Respondents and also other four contested Respondents were dismissed. It was held by the Additional Registrar, RCS vide Order dated 05.01.2021 that:-

" Taking into consideration, the irregularities in the society pointed out by the inquiry officer and brought to the notice by the above mentioned four members alleging that there is no legal entity present in society for whom they will make payment and veracity of said Managing Committee is ambiguous, it would in the interest of justice that the aforesaid expulsion order dated 5.06.2020 is treated as withdrawn and dismissed.

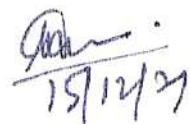
The applicant society has preferred the present application dated 04.02.2021 for recall of the order dated 05.01.2021 of Additional Registrar, RCS on several grounds as detailed below:-


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- i. Because inadvertently the whole order dated 05.01.2021 is based on inquiry report under section 62 given by Sh. Sanjay Sharma, which is factually incorrect on which the Society has already filed his objection.
- ii. Because inadvertently this Hon'ble Court failed to consider that even at the time of passing the order dated 25.06.2020, the inquiry report dated 09.03.2020 was already before the office of Registrar Cooperative Societies and only after going through all the contents the detailed order was passed by this Hon'ble Court.
- iii. Because inadvertently this Hon'ble Court failed to consider that after expiry of the 180 days, the society filed one representation before this Hon'ble Court along with copy of the resolution to expel the remaining 23 members, on 18.11.2019, who were deemed expelled as per section 86 (3) read with rule 99 (3) of the Delhi Cooperative Societies Act and Rules. The said order was also intimated to the members through speed post, as per the Delhi Cooperative Societies Act, 2003.
- iv. Because inadvertently this Hon'ble Court failed to consider that the Hon'ble High Court of Delhi in Writ Petition (C) No. 1746/2014, titled as Delhi EPDP Cooperative Group Housing Society vs. Registrar Cooperative Societies, vide judgment dated 29.05.2015, crystallized the provisions of law, which says after 180 days this Hon'ble Court become infructuous and if the society has intimated the members after expiry of the 180 days about deemed expulsion in such circumstances the deemed expelled members have only remedy to file the appeal under section 86 (4) of the Delhi Cooperative Societies Act, 2003 before the Hon'ble Delhi Cooperative Tribunal. The relevant contents of the judgment is reproduced as under:

"..9. We have heard the learned counsel for the parties at considerable length and have given our conscious consideration to the arguments advanced by them.

10. Before we embark and deal with the controversy at hand, it would be relevant to reproduce Section 86 of the said Act and Rule 99 of the said Rules as under:


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"Expulsion of a member.

86. (1) *Notwithstanding anything contained in this Act and the rules framed thereunder, the committee of a co-operative housing society may, by a resolution, expel a member on any one or more of the following grounds, namely - (a) if he has been a persistent defaulter in respect of any dues of the cooperative housing society; or*


(3) On the receipt of the resolution for expulsion, the Registrar shall take cognizance of such resolution within thirty days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of one hundred and eighty days and if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved:

(4) Any party aggrieved by the order of the Registrar or deemed approval of expulsion, as the case may be, under subsection (3) may, within sixty days from the date of such order, appeal to the Tribunal"

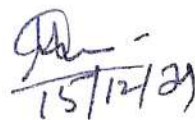
"99. Expulsion of a member

(3) The Registrar shall decide the expulsion case within the period of one hundred eighty days from the date of the receipt of the resolution for expulsion of a member from the cooperative housing society and shall convey his decision in writing to such member. If the resolution of the co-operative housing society for expulsion of a member is not approved by the Registrar within the said period of one hundred eighty days, the resolution for expulsion of the member shall be deemed to have been approved and the committee shall convey this decision of expelled member and the Registrar within a period of thirty days after the expiry of one hundred eighty days time limit through the registered Post. If the approval of the deemed expulsion is not conveyed to the members and the Registrar within the above period of thirty days, thereafter, the resolution of expulsion shall be null and void.

(4) Aggrieved member shall have the right to file an appeal to the Tribunal within sixty days from the date of order of the Registrar or intimation of deemed expulsion."



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- v. Because inadvertently this Hon'ble Court failed to consider the judgment passed by the office of Registrar Cooperative Societies in the matter of Talaganj Cooperative Group Housing Society vs. Hawa Singh Khatri & Ved Wati whereby the expulsion proceeding after 180 days was deemed to be approved the aggrieved party was directed to file the appeal before the Tribunal and the said order was also applicable to the Hon'ble Court.
- vi. Because inadvertently this Hon'ble Court failed to consider that as per section 86 (3) & (4) read with rule 99 (3) & (4) of the Delhi Cooperative Societies Act and Rules, the Delhi Cooperative Societies Act and Rules, after 180 days the office of Registrar Cooperative Societies become functio-officio and law laid down by the Hon'ble Supreme Court of India and earlier Privy Council has categorically held in case Nazir Ahmed Vs. Emperor AIR 1936 PC 253 and Mehsana District Central Cooperative Bank Ltd. & Ors Vs. State of Gujarat & Ors. AIR 2004 SC 1576 and our own High Court in Catena of Judgments that if "Statute prescribes a things to be done in a particular manner, it has to be done in a same manner or not at all".
- vii. Because inadvertently this Hon'ble Court failed to consider that even otherwise from the perusal of the enquiry report it revealed that the enquiry officer in its report at page NO. 44 categorically mentioned that the expulsion proceedings will be dealt by the office of Registrar Cooperative Societies as per Delhi Cooperative Societies Act and Rules.
- viii. Because this Hon'ble Court failed to consider that in compliance of the order dated 25.06.2020, the Society has already enrolled the 13 members after compliance of the rule 19 of the Delhi Cooperative Societies Rules, 2007 strictly and the payment receipt from these members have already been given to the resigned members as well as to the persons from whom the Society took the loan in the past and at present the impugned order will implicate the Society in so many


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litigations and the impugned order cannot be executable as on date as the Society cannot rollback.

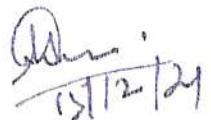
- ix. Because this Hon'ble Court failed to consider that none of the Respondents (19) even filed their reply before this Hon'ble Court and they are the deemed expelled members of the Society, hence no benefit can be attributed to any of these Respondents in any manner as they have not pleaded anything in their favour before this Hon'ble Court.
- x. Because this Hon'ble Court erred to give finding on the basis of the enrolment of Sh. Ranjit Singh Membership No. 131 and Sh. Devender Singh Membership No. 132, however it is submitted that the Audit of the Society was not conducted since the year 1990 till 2009 when the Administrator was appointed by the office of Registrar Cooperative Societies, and only on the several requests made by the Administrator the office of Registrar Cooperative Societies appointed seven auditors to conduct the audit of the from 1990 to 2009 and the audit was conducted in one go for all these years. It is further submitted that the Inquiry officer has wrongly mentioned the said finding only on the basis of submissions of the complainant whereas the Audit report which is also duly filed before the office of Registrar Cooperative Societies of the year 1993-94, does not depicts the name of these two members in the list of members and their names are only mentioned in the year 1994-95. It is submitted that inquiry officer failed to consider that even if they would have name in the year 1993-94 it would have been the mistake of the Administrator and the auditors of that particular time. It is further submitted that the inquiry officer has further submitted that the challenge to the membership of these members can be dealt in separate proceedings as per provisions of DCS Act. It is submitted that it is settled law that the challenge to the claim of membership of any member cannot be done behind his back, and even the Complainant were given liberty to do the same, but no action has been done till date as per the knowledge of the Society by


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the Complainants, and thus it does not require any further action on behalf of the Registrar Cooperative Societies.

- xi. Because during the time of arguments, the Hon'ble Court specifically directed the registry to call the audit reports from the audit department from the office of Registrar Cooperative Societies for confirmation of the same, but it appears that the same has not been done inadvertently by this Hon'ble Court and the impugned order has been passed.
- xii. Because the Hon'ble Court failed to consider the submission of the Society regarding the raising of the loan from the money lenders without calling the General Body Meeting of the Society, wherein the Society has duly explained that on 18.12.1995, Delhi Development Authority had raised a demand vide letter No.F.7(167)95/GH/DDA/2995, amount to deposit money for allotment of land, but the Society failed to pay the demand due to defaulter members and thereafter the cancellation letter for allotment of land was issued by Delhi Development Authority vide letter No.F.7(167)95/GH/DDA/1934. Dt.15.10.1996, which was then challenged by then Managing Committee of the Society in year 1997 by filing the Writ Petition (C) No.292/1997 before Hon'ble High Court of Delhi and on 07.09.2007, the Hon'ble High Court passed a judgment in favour of the Society, whereby the Hon'ble High Court of Delhi directed the Society to deposit Rs.5,66,25,928/- within 30 days or the offer shall stands cancelled.

The Society had only 15-20 days left to deposit Rs. 5,66,25,928/-. The Society sought permission to raise funds from Private Landers as it was not possible to collect such a big amount from Society members in a short span, however the General Body Meeting it- self shall require a (15) days notice and further members would ask for minimum (60) days time to arrange funds which would have again resulted in cancellation of land, thus the then Managing Committee through their personal goodwill and after intimating the Hon'ble High



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Court arranged these funds and approached the Delhi Development Authority on 05.10.2007, but the same was refused by the Delhi Development Authority over the counter.

The Society aggrieved with the action of the Delhi Development Authority, filed one application in Writ Petition (C) No. 292/1997, vide C. M. 16461/2007, the Hon'ble High Court of Delhi took the cognizance of the said fact and on 26.11.2007, the Hon'ble High Court of Delhi directed the Society to deposit the said amount with the Registrar General of this Hon'ble Court within seven days in the form of FDR and in compliance of the same, on 03.12.2007, the Society deposited a demand draft of Rs. 5,66,25,928/- with the Delhi High Court through pay order.

Thereafter the previous Managing Committee of the Society was superseded by the office of Registrar Cooperative Societies and the Administrator was appointed in the Society in the year 2009, who got conducted the General Body Meeting of the Society wherein this issue of loan was also placed, and even a detailed report was also filed by the Administrator, in the said report, the Administrator categorically mentioned that the Society after taking the loan from group of lenders deposited the amount of Rs. 5,66,25,928/- in the Hon'ble High Court of Delhi and now there is a requirement to issue proportioned demand to the members of the Society to repay the loan.

- xiii. Because the Hon'ble Court inadvertently failed to consider the submission made by the Society on the inquiry report dated 09.03.2020 in which the Society has categorically explained each and every objections which were raised unnecessary by the inquiry officer, even otherwise, as per the settled law the Society cannot be punished twice for the same offence, even in the year 2009, when the Administrator was appointed in the Society all these aspects were duly considered by the office of Registrar Cooperative Societies.
- xiv. Because inadvertently this Hon'ble Court failed to consider that in the whole report, the inquiry officer has only blamed the Managing


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Committee prior to 2009 and the present Managing Committee has not been blamed for any procedural irregularity, even otherwise as per section 39 of the Delhi Cooperative Societies Act, 2003, the procedural irregularities are condonable and the act of the erring Managing Committee cannot be set aside on the point of procedural irregularities.

The society has prayed for recall/ set aside/modification of the order dated 05.01.2021 and that the Respondents may be declared deemed expelled members as per the Section 86 read with Rule 99 of the Delhi Cooperative Societies Act and Rules, in the interest of justice.

Summons dated 25.03.2021, 16.04.2021, 07.07.2021, 08.11.2021 and 29.11.2021 were issued on the application dated 04.02.2021 for recall of order dated 05.01.2021 of Ld Additional Registrar, RCS. The case was also listed on 14.12.2021 wherein none appeared on behalf of the respondents.

The society submitted List of Documents with Documents on 06.12.2021. The society submitted Judgment of Hon'ble Supreme Court of India in the matter of K K Velsamy versus N Palanisamy reported as MANU/SC/0267/2011 and Judgment of Hon'ble Supreme Court of India in the matter of Thakur Jugal Kishore Sinha versus Sitamarhi Central Cooperative Bank Ltd., reported as MANU/SC/0349/1967.

I have gone through the Order dated 21.01.2019 of my Ld Predecessor, Orders dated 25.06.2020 and 05.01.2021 of Ld Additional Registrar, RCS , application dated 04.02.2021, entire record and documents in the file submitted by the applicant society and some of the respondents herein from time to time and have heard the Ld Counsel for the Society. Ample opportunities have been given to the Respondents to contest the application dated 04.02.2021 filed by the society. Most of the respondents have not appeared for hearing and have not made any submissions. Two of the respondents sent e mails dated 03.12.2021 stating that they are out station and would appear only on 21.12.2021. However, the proceedings are pending since March 2021. The case was adjourned to 14.12.2021 and kept for Orders on 14.12.2021.


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CONCLUSION:-

After going through all the material on record and, two questions which need to be decided in the present case is maintainability of the present application dated 04.02.2021 and if yes, whether Orders dated 25.06.2020 and 05.01.2021 of Ld Additional Registrar, RCS could have been passed after 180 days of the dossier submitted by the society on 26.09.2018 seeking approval of expulsion of 52 members.

The application dated 04.02.2021 has been filed for recall of order dated 05.01.2021 of Ld Additional Registrar, RCS which has in turn withdrawn and dismissed his own Order dated 25.06.2020 on the ground that no legal entity is present in the society to whom the 23 members will make the payment and veracity of the Managing Committee is ambiguous. As a result, 23 members of the society are not expelled.

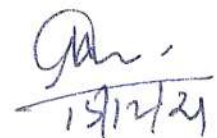
Section 115 of DCS Act 2003 reads as follows:-

115. (1) The Government or the Tribunal or the Registrar on the application of any party may review their own order in any case, and pass in reference thereto such order as they think just :

Provided that no such application made by the party shall be entertained unless the Government or the Tribunal or the Registrar, as the case may be, is satisfied that there has been the discovery of new important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when order was made or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reasons :

Provided further that no such order shall be varied or revised unless notice has been given to the parties interested to appear and being heard in support of such order.

(2) An application for review under sub-section (1) by any party shall be made within thirty days from the date of communication of the order of the Government or the Tribunal or the Registrar.


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It will be apt to mention here the provisions of Section 86 of DCS Act 2003 and Rule 99 of DCS Rules 2007 which read as follows:-

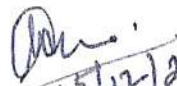
Section 86 of DCS Act 2003 :- (1) Notwithstanding anything contained in this Act and the rules framed thereunder, the committee of a co-operative housing society may, by a resolution, expel a member on any one or more of the following grounds, namely :-

- (a) if he has been a persistent defaulter in respect of any dues of the co-operative housing society; or
- (b) if he has willfully deceived the co-operative housing society by making any false statement or submitting any false document to obtain the membership of such co-operative society; or
- (c) if he has brought disrepute to the co-operative society or has done any other act detrimental to the interest and proper working of the co-operative society :

Provided that no such resolution shall be passed unless the member concerned has been given an opportunity of being heard after service of three registered notices confronting the member with the grounds for his proposed expulsion :

Provided further that no member shall be expelled unless a resolution to that effect is passed by not less than three-fourths of the members of the committee present and entitled to vote at the meeting and no resolution for expulsion shall be valid unless approved by the Registrar.

(2) After the resolution for expulsion is passed as above by the committee, the resolution shall be referred to the Registrar for approval within a period of thirty days.


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(3) On the receipt of the resolution for expulsion, the Registrar shall take cognizance of such resolution within thirty days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of one hundred and eighty days and if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved :

Provided that the Registrar, before approving the resolution, shall hear the parties concerned in the manner prescribed and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and compel them to give evidence on oath, affirmation or affidavit and to compel production of documents by the same means and as far as possible in the same manner as provided in the case of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) and the order under this section so passed by the Registrar, shall be final with a right for appeal before the Tribunal.

(4) Any party aggrieved by the order of the Registrar or deemed approval of expulsion, as the case may be, under sub-section (3) may, within sixty days from the date of such order, appeal to the Tribunal.

Rule 99 of DCS Rules 2007:- EXPULSION OF A MEMBER

(1) The cooperative housing society may in accordance with the provisions of sub-section (1) of Section 86, expel a member. However, before passing a resolution for expulsion of the member, the committee shall have to deliberate the case of expulsion in the committee's meeting and shall have to approve the proposal for issue of notice for the expulsion of a member setting out therein full details of the grounds with supporting documents. In all at least three registered notices shall be served on the concerned member with an opportunity to defend his case in writing and also in person to the committee. Each notice should be served on the concerned member with an interval of thirty days. After the expiry of thirty days period of the final notice, the committee shall consider the reply, if


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any, received from the concerned member in its meeting and three-fourths of the members of the committee present and entitled to vote at the meeting, shall approve the proposal for expulsion and pass a resolution.

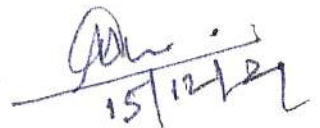
(2) Subject to the provision 86 of the Act a co-operative housing society, which has been allotted land, before expelling a member shall give final opportunity by publishing the notice in the leading Hindi and English newspaper in the National Capital Territory of Delhi informing the affected member to be present in person or through the authorized representative before the Registrar on the date fixed for the final hearing.

(3) The Registrar shall decide the expulsion case within the period of one hundred eighty days from the date of the receipt of the resolution for expulsion of a member from the cooperative housing society and shall convey his decision in writing to such member. If the resolution of the co-operative housing society for expulsion of a member is not approved by the Registrar within the said period of one hundred eighty days, the resolution for expulsion of the member shall be deemed to have been approved and the committee shall convey this decision of expelled member and the Registrar within a period of thirty days after the expiry of one hundred eighty days time limit through the registered Post. If the approval of the deemed expulsion is not conveyed to the members and the Registrar within the above period of thirty days, thereafter, the resolution of expulsion shall be null and void.

(4) Aggrieved member shall have the right to file an appeal to the Tribunal within sixty days from the date of order of the Registrar or intimation of deemed expulsion.

Hon'ble Supreme Court of India in the matter of Mehsana District Central vs State of Gujarat And Ors. reported as AIR 2004 SC 1576 :: (2004) 2 SCC 463 has held that:-

" The Acts and Rules are made to be followed and not to be violated. When the Statute prescribed the norms to be followed, it has to be in that fashion. Converse would be contrary to law."


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The List of important dates in the case are as under:-

Date	Proceedings
28.08.2018	Society expels 52 Members
26.09.2018	Society sends dossier to RCS seeking approval of expulsion of 52 members
23.10.2018	Notice dated 23.10.2018 issued by Special RCS taking cognizance of the dossier within 30 days
15.11.2018	Notice for 1 st appearance before Special RCS
21.01.2019	RCS Expels 29 members No decision taken on remaining 23 members
25.03.2019	180 days from dossier submitted to RCS on 26.09.2018. RCS now becomes functio officio
18.04.2019	Society sends letters to 23 members for deemed expulsion as 180 days expired after dossier submitted on 26.09.2018
18.11.2019	Society writes letter to RCS mentioning letter dated 24.04.2019 submitted by it regarding deemed expulsion of 23 members
24.12.2019	Notice issued by Addl RCS to remaining 23 members
25.06.2020	Addl RCS confirms expulsion of 19 members Gives time to 4 members to pay dues within one month
13.07.2020	4 members namely Sh Arun Chadha, Sh Vinod Kapoor Sh Bijay Khaitan and Ms Pushpa Arora file application for review of order dated 25.06.2020 of Addl Registrar
09.03.2020	Inquiry Report of Sh Sanjay Sharma of Inquiry conducted in the society
21.07.2020	Society refunds money to 19 expelled members vide Order dated 25.06.2020
23.07.2020	Society publishes add in newspaper for 19 Vacancies created in the society
31.08.2020	Only 13 vacancies filled out of 19. Society intimates to RCS



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05.01.2021		Addl RCS reviews his own order dated 25.06.2020
05.02.2021		Application dated 04.02.2021 filed for recall of Order dated 05.01.2021 of Addl RCS

The applicant society has filed the application under section 151 of CPC and has relied upon Judgment of Hon'ble Supreme Court of India in the matter of K K Velsamy versus N Palanisamy reported as MANU/SC/0267/2011 and Judgment of Hon'ble Supreme Court of India in the matter of Thakur Jugal Kishore Sinha versus Sitamarhi Central Cooperative Bank Ltd., reported as MANU/SC/0349/1967. I prefer to not to go into this issue of as to whether section 151 CPC is applicable on Registrar Cooperative Societies or not. It is a settled Law that if an application is filed under a wrong section or provision even then the Court can hear the same provided it is within competence of the Court to grant relief prayed for.

Taking into consideration provisions of Section 86(3) of DCS Act 2003 and Rule 99(3) of DCS Rules 2007, Judgment of Hon'ble Supreme Court of India in the matter of Mehsana District Central vs State of Gujarat And Ors. reported as AIR 2004 SC 1576 :: (2004) 2 SCC 463 and the fact that dossier was submitted by the society for expulsion of 52 members on 26.09.2018 and provision of deemed expulsion of 23 members coming into play w.e.f. 25.03.2019 and society informing the deemed expelled members vide letter dated 18.04.2019, a question exists as regards legality of Orders dated 25.06.2020 and 05.01.2021 of Ld Additional Registrar. The issue to be decided is purely legal. I am of the considered opinion that sufficient reasons exist for entertaining the present application. Hence, the present application is maintainable and can be entertained under the provisions of review and I propose to decide the same on merits.


Out of 52 members, 29 were expelled by order dated 21.01.2019 of my Ld Predecessor. Since no decision was taken on remaining 23 members within 180 days of submission of dossier by the society on 26.09.2018, the resolution sent by the society for expulsion stands deemed approved as per the provisions of Section 86(3) of DCS Act 2003 and Rule 99(3) of DCS Rules 2007. I am further guided by Judgment


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dated 29.05.2015 of Hon'ble High Court of Delhi in Writ Petition (C) No. 1746/2014, titled as Delhi EPDP Cooperative Group Housing Society vs. Registrar Cooperative Societies placed on record by the society in this regard. There is no provision in DCS Act 2003 and DCS Rules 2007 wherein the Registrar Cooperative Societies can decide the expulsion proceedings after 180 days of the submission of dossier by the society and that too by rejecting the proposal of expulsion of members. The society has sent intimation of deemed approval of resolution for expulsion to 23 members vide letters dated 10.04.2019 sent on 18.04.2019 in compliance of the provisions of Section 86 of DCS Act 2003 and Rule 99 of DCS Rules 2007. I hold that both the orders dated 25.06.2020 and 05.01.2021 of Ld Additional Registrar are without jurisdiction and need to be recalled and are hereby recalled.

In view of the above discussions, out of the proposal for expulsion of 52 members submitted by the society on 26.09.2018 before Office of Registrar Cooperative Societies, 29 stand expelled vide Order dated 21.01.2019 of the then Ld Special Registrar and proposal for expulsion of remaining 23 members i.e. respondents herein stands deemed approved as no decision has been taken by Registrar Cooperative Societies within 180 days of the submission of dossier by the society on 26.09.2018. Hence the remaining 23 members i.e. respondents herein also stand expelled from the membership of the society.

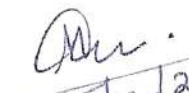
Ordered accordingly.


15/12/2021

(Dr T Philip Thanglienmang)
Special Registrar Cooperative Societies

Copy to:-

1. Assistant Registrar (Section-6)
2. Guard File
13. Computer Cell


15/12/2021

(Dr T Philip Thanglienmang)
Special Registrar Cooperative Societies

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16/12/21
5:00pm

Sr. Assistant