

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

No. 455E-GH/F.C. RMD/R.RCS/2017/2719-2723 Dated: 24/5/22.

In the matter of :-

SH. S K Aggarwal

.....PETITIONER

VERSUS

SH. ATUL PURI

In regards: Milan Vihar CGHS Ltd.

.....RESPONDENT

ORDER

This order shall dispose of the proceedings initiated against Sh. Atul Puri, member of Milan Vihar CGHS Ltd. in pursuance of order of the Financial Commissioner dated 20.07.2017 setting aside the order of the RCS dated 13.05.2013 and remanding back the matter to the RCS. In his order dated 20.07.2017 the Financial Commissioner has ordered as under:-

"The impugned order dated 13.05.2013 is set aside and the case is remanded back to the RCS with direction to ascertain whether the wife of R-3 (Atul Puri) had contributed equally in the purchase consideration of the second floor alongwith its roof rights in the property at R-862, New Rajinder Nagar, out of the fund generated through her own sources of income and that the property is not owned by R-3 (Atul Puri) as benami. RCS will dispose of the matter with a speaking order after providing an opportunity of being heard to all the concerned parties."



Whereas, vide order dated 13.05.2013 the RCS had decided the Show Cause notice dated 11.01.2011 issued to Sh. Atul Puri under Rule 20 of DCS Rules, 2007 for disqualification of membership, on the complaint received from Sh. S K Aggarwal, vide letter dated 04.06.2010 as under:-

"There is no dispute that the total area of land on which property NO. R-862 having ground floor plus two floors has been constructed is 200 Sq. Yds. It clearly implies that the proportionate share of the owners of ground floor, first floor and the second floor is 200 Sr. Yds. of land will be 66.67 Sr. Yds. Which is less than 66.72 Sq. Mtrs.

I, therefore, hold that Sh. Atul Puri is exempted from disqualification under Rule 20(1)(c)(i) of DCS Rules, 2007 as per first proviso to the said rule. As a result the question of cessation of membership of Sh. Atul Puri in Milan Vihar CGHS Ltd. does not arise."

Brief facts of the case, as borne from the records, are that Sh. S K Aggarwal, having membership no. 618 in Milan Vihar CGHS Ltd., Patparganj, Delhi, vide his letter dated 04.06.2010, made a complaint that another member, Sh. Atul Puri, having membership 559, is having another flat/property bearing no. R-862, New Rajinder Nagar, New Delhi, jointly with his wife Mrs. Meenoo Puri. Sh. S K Aggarwal requested RCS to cease the membership of Mr. Atul Puri. Accordingly, proceedings under DCS Act, 2003 and Rule 20(1)(c)(i) of the DCS Rules, 2007 were initiated against Sh. Atul Puri. RCS, vide his order dated 13.05.2013 quoted above, held that Sh. Atul Puri is exempted from disqualification under Rule 20(1)(c)(i) of DCS Rules, 2007 and therefore the question of cessation of membership of Sh. Atul Puri in Milan Vihar CGHS Ltd. does not arise. Sh. S K Aggarwal preferred revision petition in the Court of the Financial Commissioner, GNCT of Delhi. The Financial Commissioner, Delhi vide his order dated 20.07.2017 in case no. 118/2013 remanded back the matter to the RCS to ascertain whether wife



of Sh. Atul Puri i.e. Mrs. Meenoo Puri, had held the property as benami and pass a speaking order. Hence this order.

Notices were issued to both the parties who have appeared before this office on various dates. The Petitioner Sh. S K Aggarwal has filed his petition and additional submissions from time to time. Written submissions on behalf of respondent Sh. Atul Puri have also been submitted. The Society has also filed its submissions. Affidavits of Sh. Atul Puri and his wife Smt. Meenoo Puri have also been filed. Counsels for both parties have also argued their case at length on 4th and 5th April, 2022.

The petitioner has submitted that Sh. Atul Puri is a member of Milan Vihar CGHS Ltd., I P Extension, New Delhi having membership no. 559. He has further submitted that Sh. Atul Puri also owned a property bearing no. R-862, New Rajinder Nagar, New Delhi, measuring 200 Sq yards, jointly with his wife Smt. Meenoo Puri, through a registered sale deed dated 30.09.1998, for entire 2nd floor with terrace floor, having an area of about 200 Sq yard on each floor, alongwith undivided proportionate share in the land underneath.

Rule 20

"20. Disqualification of membership

1. No person shall be eligible for admission as a member of a co-operative society if he:-

(a)

(b)

(c) In the case of membership of a co-operative housing society,

i. owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his



spouse or any of dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale.

Provided that above clause shall not be applicable,

(a) in case of co-sharers of property whose share is less than 66.72 sq. metres of land; or if the residential property devolves on him by way of inheritance;

(b) in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the transfer of membership of the housing society concerned;

ii. deals in purchase or sale of immovable properties either as principal or as agent in the National Capital Territory of Delhi; or

iii. his spouse or any of his dependent children is a member of any other cooperative housing society.

(Sub Section 2,3 and 4 not reproduced)

The petitioner has further submitted that because Sh. Atul Puri jointly owns two floors out of 04 floors, each floor having area of 200 Sq yard, his proportionate share in the land will be $2/4^{\text{th}}$ i.e. 50% i.e. 100 Sq yards. The petitioner has, therefore, argued that the RCS vide his order dated 13.05.2013 has wrongly held that respondent Sh. Atul Puri has a share of proportionate land equal to 66.67 Sq yards i.e. less than 66.72 Sq meters and has wrongly exempted the respondent from disqualification under Rule 20(1)(c)(i) of DCS Rules, 2007.

The petitioner has further submitted that the sale deed dated 30.09.1998 has been executed by Sh. Atul Puri himself, as constituted general attorney of the registered owner Kasturi Lal Sharma, in favour of Sh. Atul Puri and Smt. Meenoo Puri.



Therefore, there is no financial transactions in the process because Sh. Atul Puri has executed sale deed in favour of himself and his wife Smt. Meenoo Puri. This would show that there is no financial transactions, and therefore, the share of Mrs. Meenoo Puri is benami.

He has further stated that ITR of Meenoo Puri submitted by the respondents show that she has been assessed to meagre taxes and her earnings are not sufficient to procure the property through her own funds. Therefore this property, though acquired jointly in name of Smt. Meenoo Puri, is a property held by Sh. Atul Puri in benami. He has therefore submitted that the membership of Sh. Atul Puri in Milan Vihar CGHS Ltd. may be ceased in terms of Rule 20 of DCS Rules, 2007.

The counsel for respondents have submitted that both Sh. Atul Puri and his wife Smt. Meenoo Puri have filed their individual affidavits which are on record. In his affidavit respondent Sh. Atul Puri has stated that Mrs. Meenoo Puri a PAN card holder and is regular Income Tax assessee since 1980s having her own income from Business/Profession, Agriculture, Interests and Capital Gains as shown in her ITRs for the period 1992-93, 1993-94 and 1999-2000. Mrs. Meenoo Puri has had Capital Gains on her capitals/properties and paid tax on the same as clearly shown in her ITR for the period 1992-93.

In her affidavit Mrs. Meenoo Puri has submitted that she is regular Income Tax assessee since 1980s and has her own income from Business/Profession, Agriculture, Interests and Capital Gains as shown in her ITRs for the period 1992-93, 1993-94 and 1999-2000. She had Capital Gains on her capitals/properties and paid tax on the same as clearly shown in her ITR for the period 1992-93. She has purchased 50% rights and interests of the second floor with roof rights of property No. R-862, New Rajinder Nagar, New Delhi, along with her husband Sh. Atul Puri, from her own funds and resources and it was/is not "Benami" of



my husband. She has further stated that the proportionate land underneath which comes to my share is only 27.86 sq. meters = 33.33 sq. yards which is less than 66.72 sq. meters.

The Counsel for respondent further submitted that Mrs. Meenoo Puri is regular Income Tax assessee since 1980s having her own income from Business/ Profession, Agriculture, Interests & Capital Gains as shown in her ITRs for the period 1992-93, 1993-94 and 1999-2000. Mrs. Meenoo Puri has had Capital Gains on her capitals/ properties and paid Tax on the same as clearly shown in her ITR for the period 1992-93. The counsel for respondents has further submitted that acquiring a property for a proportionate land underneath measuring less than 66.72 sq. meters does not attract any disqualification. It is on record in unequivocal terms that the proportionate land underneath which comes to her share is only 27.86 Sq. meters = 33.33 sq. yds. which is much less than 66.72 sq. Meters. As such membership of Mrs. Meenoo Puri is outside the purview of disqualification under Rule 20 of the DCS Rules, 2007.

The Counsel for respondents has further submitted that from the affidavit and documents/records of Mrs. Meenoo Puri, it is abundantly clear that the 50% share of Mrs. Meenoo Puri in the property i.e. second floor with roof rights of property No. R-862, New Rajinder Nagar, New Delhi was purchased by her from the funds & resources generated by her on her own and not "Benami". It is submitted that acquiring a property for a proportionate land underneath measuring less than 66.72 sq. meters does not attract disqualification and no membership can be ceased on this count. The Sale Deed reveals in unequivocal terms that the proportionate land underneath that comes to the share of Sh. Atul Puri is much less than 66.72 sq. Meters. As such the membership of Sh. Atul Puri is outside the purview of the provision of Rule 20 of DCS Rules, 2007.

The Counsel for respondent has, therefore, argued that in view of the affidavits and documents filed on record, facts,



submissions and legal prepositions, it may kindly be held that the 50% share of Mrs. Meenoo Puri in the property i.e. second floor with roof rights of property No. R-862, New Rajinder Nagar, New Delhi was purchased by her from her own funds & resources and it is not held as "Benami" by Sh. Atul Puri, whose membership in Milan Vihar CGHS Ltd. is legal, valid and does not suffer from any disqualification and the order dated 13.05.2013 passed by the then RCS is legal and deserves to be made absolute by this Hon'ble Court, dismissing the complaint of the complainant Sh. S. K. Aggarwal with exemplary costs.

I have carefully pursued the submissions made by the parties and documents submitted by them. I have also heard the counsels for the parties at length. As per Rule 20 of DCS Act, 2003, in case of co-sharers of a property, a person whose share is less than 66.72 Sq. meters of land shall be eligible for admission as a member of a cooperative society. As per the registered sale deed dated 30.09.1998 Sh. Atul Puri and his wife Smt. Meenoo Puri have purchased the 2nd Floor of the property with its terrace/roof for a sum of Rs. 4,90,000/- (Four Lakh and Ninety Thousand Rupees only).

The property consisted of ground, first and second floors. As per certified copy of property tax assessment order of AA&C, Karol Bagh Zone, MCD dated 28.10.1998, the build up second floor with its terrace rights was purchased in the joint names of Sh. Atul Puri and his wife Smt. Meenoo Puri for a sum of Rs. 4,90,000/- through a registered sale deed executed in the September, 1998. Addition of two rooms with amenities at second floor was made sooner after the purchase. The respondent, Sh. Atul Puri, having purchased, jointly with his wife, second floor with terrace/roof rights, is holding 1/3rd of the property. The size of the land is 200 sq. yards. Thus, proportionate share of the respondents in the land would remain 1/3rd of 200 sq. Yards i.e. 66.67 sq. Yards. Individually, share of each respondent would be still lesser.



The Hon'ble High Court of Delhi in its order dated 30.05.2011 in the case of Bindya Aggarwal Vs RCS & Other has observed that the disqualification contained in the main part of the said Rule will be attracted only if their interest "in land", and not the flat, exceeds 66.72 sq. meters. Therefore, in other words where a co-sharer of a property has acquired interest in a flat built on a piece of land, in which, his proportionate share is less than 66.72 sq. meters, the disqualification contained in the main part of the Rule will not get attracted, notwithstanding the fact that the flat area is more than 66.72 sq. meters. As such provisions of Rule 20 of DCS Rules, 2007 would not be attracted and the respondent cannot be said to incur any disqualification on that count. In view of this, the contention of the petitioner that Sh. Atul Puri is enjoying the total area of 200 Sq. yards of the floor, and therefore, he suffered a disqualification under Rule 20 of Delhi Cooperative Societies Rules, 2007 is not tenable.

The Income tax returns of Smt. Meenoo Puri for the year 1992-93, 1993-94 and 1999-2000 have been placed on record. It is observed that joint owner Smt. Meenoo Puri is a income tax assessee having her own income from various sources, interests and Capital gains. The same gets reflected in her income tax returns for the period when the property has been acquired. As per her Income Tax Returns for an Assessment Year 1992-93, Mrs. Meenoo Puri has income from Business/Profession, Agriculture, Interests and Capital Gains and from other sources. She has paid the due taxes. For the assessment year 1993-94 Smt. Meenoo Puri has derived income from Business/Profession and from Agriculture for which due taxes have been paid. For assessment year 1999-2000 she has income from Business/Profession, Capital Gains and from other sources for which due taxes have been paid. She holds a permanent PAN Number issued by Income Tax Department. Therefore, it cannot be said that the property acquired by her jointly with her husband is not from her own income/funds. Therefore, to hold her share of property beneficial for Atul Puri is not tenable. The



averments that Mrs. Meenoo Puri has acquired the property Benami are therefore rejected.

In view of above, it is held that Sh. Atul Puri does not attract disqualifications prescribed under Rule 20 (1)(c)(i) of DCS Rules, 2007 and question of cessation of membership of Sh. Atul Puri in Milan Vihar CGHS Ltd. does not arise.

Ordered accordingly



(Devesh Singh)

Registrar Cooperative Societies

24/5/2022

Date: 24.05.2022

Place: New Delhi