

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

110001

Case No./RCS/47/55/Coop/GH/NW/ 2862-2875

Dated: 25/11/22

Order

In the matter of:-
Jhulelal Sindhu Nagar CGHS Ltd.

This order shall dispose of proceedings under section 118(7) read with Section 77(2) of Delhi Cooperative Societies Act, 2003 against the erstwhile president, Secretary, Treasurer and other members of the Managing Committee of Jhulelal Sindhu Nagar Cooperative Group Housing Society Ltd.

Whereas, Jhulelal Sindhu Nagar Cooperative Group Housing Society Ltd. is registered with this office at Regn. No. 55 under the provisions of the Delhi Cooperative Societies Act, 1972 and Delhi Cooperative Societies Rules: 1973 and is deemed to have been registered under Delhi Cooperative Societies Act, 2003 and Delhi Cooperative Societies Rules, 2007. Show Cause Notice was issued to the erstwhile office bearers of the Managing Committee of the society vide No. F. 47/55/Coop/GH/RCS/NW/1343-1353 dated 16.12.2008 requiring them to explain as to why action be not taken against them u/s 118(7) read with Section 77(2) of the Delhi Cooperative Societies Act, 2003. Briefly the allegation in the show cause notice was that these office bearers (hereinafter refer to as respondents) gave possession of all the flats in the society without any draw of lot conducted by the DDA/without the recommendations of the Registrar Cooperative Societies.

Whereas, the then RCS had made the below mentioned observations in its order dated 30.05.2011

1. Replies were filed by respondent No. 3,4,7,8,9 & R 11/society. During the proceedings respondent No. 1,3,6 & 7 died. Applications were filed for bringing on record the L.Rs. of respondent No. 3 & 7. However, no application in this regard was moved by the legal heirs of R-1, 6. Apart from the replies, written submissions were filed by respondent No. 8.
2. Whereas, replies filed by respondent No. 3,4,7,8 & 9 raise almost similar issues and therefore can be discussed together. The main issues raised in these replies are summarized as under:

(a) It has been stated that as per the audit report for the year 1999 -2000 allotment of flats was done by the society in the year 1988-89, 1994 & 1996. However, it has been



stated that notices have not been issued to all the members responsible for these allotments

(b) It has been stated that vide directive No. F.36/Policy/RCS/1289 dated 13.03.1996, one time amnesty was granted to the society to regularize the allotment of flats by following the procedure laid down in the said directive. It has accordingly been stated that the members who have been in the Managing Committee till the issuance of the aforesaid directive dated 13.03.1996 enjoy the immunity under the amnesty granted by the said directive in respect of allotments made prior to 13.03. 1996

(c) It has been stated that the criminal liability cannot be assigned with retrospective effect for the period when no such statute existed. It has been stated that the provisions of section 77 and 118 came into force from 01.04.2005 and will only apply to the allotment of flats made after 01.04.2005.

(d) It has been stated that office of Registrar Cooperative Societies by resorting to section 35 for the appointment of Returning Officer to conduct the elections in the society has already taken the stand that the members of the previous Managing Committee which assumed office after the said provisions came into force on 01.04.2005 are criminal liable u/s 118.

(e) It has been stated that the allotment of flats has been made by the different Managing Committees during different years and no such proceedings can be concluded till the person responsible for each of these self allotments are identified and proceeded against.

Whereas, in the reply filed by the R-11/society, it has been stated as under:

- (1) That the content of the show cause notice is vague as it does not disclose as to who were the office bearer of the Managing Committee in respect of each allotment of flats made by the society.
- (2) That it is incorrect that GPA holders are being deprived of the benefit of section 91 of Delhi Cooperative Societies Act, 2003. The society/R-11 has referred to the challenge to section 91 which is pending before the Hon'ble High Court of Delhi. It may be stated here that this reply by the society has been prompted by an allegation in the show cause notice that GPA holders are being deprived of the benefit of Section 91 of the Delhi Cooperative Societies Act, 2003. However, instead of replying to the main issue, the society has chosen to elaborate upon the challenge to section 91 which is not the matter under consideration at the moment.

Whereas, Sh. Ram Chand Balani & Other residents of Jhulelal Sindhu Nagar CGHS Ltd. filed a writ petition WPC No. 6289/2008 before the Hon'ble Delhi High Court as



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the petitioners are aggrieved by the functioning of the Respondent No. 2 society and approached the respondent No. 1/Registrar for taking necessary action. Because of alleged failure of the respondent 1 to take steps in accordance with law and thus the 118 of Delhi Cooperative Societies Act, 2003 also prayed for supersession of the management of the committee and restrain the current management from conducting the affairs of the society. The writ petition was disposed of vide order dated 16.08.2010 which read as under;

"In so far as the later part of relief is concerned, the occasion arises if some irregularity is found by the respondent No.1 and directions are passed in that behalf. "Learned counsel for the respondent No.1 states that the enquiry has been completed under Section 118 of the said Act and an order is to be passed shortly." Learned counsel, on instruction, states that the "order is expected to be passed not later than one month from today. We take the aforesaid statement on record and dispose of the writ petition accordingly." Needless to say that if the petitioner is aggrieved by the order passed by the respondent No.1, remedy in accordance with law is available to the petitioners."

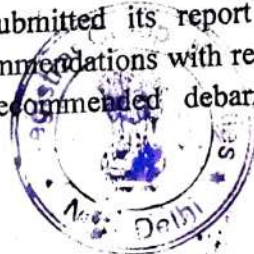
Thereafter, the then RCS had kept the proceedings in abeyance vide its order dated 30.05.2011 with the following observations;

"A committee headed by K.K. Mathur former Chief Secretary of Govt. of NCT of Delh with Sh Y D. Bankata, IAS Retd as another member has been constituted by the Hon'ble Lt. Governor of NCT of Delhi to give their recommendations on terms of reference for this Committee. The First term of reference was as under:

To suggest measures which could be taken for verification of membership for such cooperative societies which have held self draw of lots in violation of DCS Act and Rules The said committee is functioning and is expected to give its report by the end of this month.

The committee is also expected to give recommendations upon criminal liability of the office bearer of the society who are responsible for conducting such self allotment of flats. Since the Committee shall be giving its recommendations in respect of such societies, the same would cover the present society a well. It is accordingly felt that any decision with respect to the impugned show cause notice may be premature since it may amount to over reaching the findings of the committee. Till the time the committee gives its recommendations and the Govt. of NCT of Delhi takes a decision thereon, the present proceedings are kept in abeyance".

Whereas, Mathur Committee submitted its report in June 2011 however, the Committee did not give any recommendations with respect to the criminal liability of the MC members but only recommended debarment of MC members from



participating in future elections of the Management Committee. The report of the Committee was placed before the Hon'ble Lt Governor and the Hon'ble L.G. vide order dated 20.9.2011 accepted the report of the Committee however did not favour the debarment of the MC members. Permission was also given to invite such other societies like the present one to provide them one time opportunity for regularization.

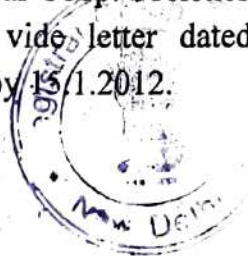
On the recommendations of Mathur Committee report, a Notification dated 17.10.2011 was issued wherein one time exemption to 26 societies was granted u/s 127 of DCS Act, 2003. The said notification dated 17.10.2011 provided for regularisation of the self-draw conducted by the 26 specific Cooperative Group Housing Societies listed in the body of the said notifications itself by granting one time exemption from operation of sub-section of Section 77 of DCS Act, 2003 on the following conditions:

"1. However, the members and other office bearers of the CBI investigated societies who have been charge sheeted by CBI shall not get the benefit of such regularization and their names shall not be sent to DDA till the criminal cases pending against them are finally decided as in the case of other CBI investigated societies.

2. The allotment would be provisional in nature and indemnity bond on non-judicial stamp paper of Rs. 100/- has to be submitted by members as well as President/Secretary of the society. Separate affidavit has to be filed by the members & Secretary of the society to the effect that they had no objection to the manner of conduct and outcome of the self draw 3. The regularisation of self draw shall be subject to payment of penalty by each member who had carried out self draw without the approval of RCS as follows:

- 1) Owners of 02 bedrooms houses- Rs. 15000/-
- 2) Owners of 03 bedrooms houses- Rs. 20000/-
- 3) Owners of 04 bedrooms houses - Rs. 25000/-

Thereafter, the petitioner of WPC No. 6289/2008, filed a Contempt Petition bearing No. 131/2011. An affidavit was filed by the Department in the said contempt case wherein the Hon'ble Court was informed about the policy decision taken by the Govt and it was also informed that Registrar Coop. Societies has issued a notice wherein all the societies have been directed vide letter dated 12.12.2011 to submit their applications in the prescribe format by 15/1.2012.



Thereafter additional affidavit was filed by the then Asst. Registrar before the Hon'ble High Court on 05.07.2013 wherein it was stated that in view of the decision taken by the RCS with the approval of the Govt. of NCT of Delhi regarding one time relaxation for regularization of the self draw, the proceedings initiated under section 118 (7) of the DCS Act, 2003 have lost its relevancy. The para 5 to 8 of the said additional affidavit reads as follows:

1. That with a view to ensure uniformity and for the sake of prevention of any kind of discrimination, the Registrar of Cooperative Societies took a decision to give same treatment to all other such societies, which have also gone for self draw in violation of Section 77 (1) of Delhi Cooperative Societies Act, 2003.
2. That in this respect a circular dated 24.11.2011 was issued calling upon all other societies other than 26 societies named in the Notification of 17.10.2011 to submit their respective documents for consideration of their cases for regularisation of their self draws conducted in violation of DCS Act (either old or new one).
3. That in view of the decision taken by the Registrar of Cooperative Societies with the approval of Govt. Of NCT of Delhi, the proceedings to be initiated under Section 118 (7) of DCS Act, 2003 have lost its relevancy in respect of the violators of this society.
4. That though no specific order for dropping of the proceedings under Section 118 (7) of DCS Act, 2003 has been passed in this matter, but in view of the prevailing circumstances, it is not feasible.

Thereafter, the contempt petition came up for hearing before the Hon'ble High Court on 12.04.2019 wherein the Hon'ble Court has ordered as under:

"Mr. Virendra Kumar, Registrar Cooperative Society (RCS), is present in the Court. There is no compliance of the previous order despite the lapse of time granted on 22.02.2019. The RCS submits that he has taken charge just a few months ago and the case being of a complex nature requires approval of the Government at a policy level. Be that as it may, the orders of this Court of 20.02.2017 remain unmodified and have to be complied with. The respondents are granted six weeks time to file a Compliance Report, failing which further orders are liable to be passed on what ex facie appears to be breach of the Court's order.

Thereafter, the Predecessor of this court has revived the proceedings u/s 118(7) of DCS Act, 2003 and the case was heard on 04.08.2022 wherein R-6. LR of R-2 and the advocate for the society were present. Advocate for the society Sh. Satish Kumar Panchaal informed that R-2,4,7,8,9 and R-11 have expired. Advocate for Sh. Khiya Ram Khilwani(R-6), Sh. Piyush Goel seeks time to file reply in the matter.



Thereafter, the Hon'ble High Court in its order dated 16.08.2022 has ordered the Registrar to complete the proceedings u/s 118(7) r/w section 77 of DCS Act, latest within a period of four weeks from today. The operative para of the order is as under;

“3. It is unfortunate that more than 11 years have passed since the directions contained in the aforesaid order dated 16.08.2010 were issued, and the enquiry U/s 118(7) read with Section 77(2) of Delhi Cooperative Societies Act, 2003 has still not been completed. 4. Learned counsel for the respondents submits that the matter has now been kept for consideration before the Registrar Cooperative Society on 23.08.2022 at 03:30 PM. He further assures that the enquiry U/s 118(7) read with Section 77(2) of Delhi Cooperative Societies Act, 2003 would be completed latest within a period of four weeks from today. 5. The respondents are directed to complete the proceedings U/s 118(7) read with Section 77(2) of Delhi Cooperative Societies Act, 2003 latest within a period of four weeks from today, failing which the Registrar, Cooperative Societies shall remain present in Court on the next date of hearing. Let a compliance affidavit be filed within a period of six weeks from today.”

Further, in the proceeding before the undersigned dated 11.10.2022, Present Sh. Khiya Ram Khilwani in person alongwith his counsel Sh. Sandeep Kumar. Present Sh. Raj Kumar, Sh. Damodar Bajaj and Sh. Gopi Lohani in person. Also Present Sh. Guru Dev Sharma President, Jhulelal Sindhu Nagar CGHS Ltd. alongwith Sh. Satish Kumar Paanchal Counsel for Society.

Sh. Satish Kumar Paanchal, Advocate for Society filed his vakalatnama on record and stated that respondents namely Sh. Jai Kumar, Sh. Hassa Nanad Bajaj, Sh. Amrit Kumar Moolchand, Sh. Mennomal Deep Chand, Sh. Hari Kishan Nandwani and Sh. Shyam Lal Gagan Das have expired.

Sh. Sandeep Kumar, Advocate filed an application on behalf of Sh. Khiya Ram Khilwani and Sh. Gopi Chand Lohani U/o.1 Rule 10 Read with Section 151 of Code of Civil Procedure to implead the other surviving managing committee members of the Society. Sh. Sandeep Kumar, Advocate further stated that on 17.10.2011, a notification was issued with the approval of Hon'ble L.G. for regularization of self draw conducted by the 26 societies which was upheld by the Hon'ble High Court in judgment dated 05.05.2015 and has vacated the stay dated 24.01.2012 in W.P.C No. 519/2012 in the matter of Manohar Lal Vs. Naval Tech. CGHS Ltd. & Ors. He further stated that in the year 2014 fourteen self draw flats were regularized in Mayank CGHS Ltd. and 100 self draw flats were regularized on 16.02.2016 in Vishwakarma CGHS Ltd. He also submitted that as per Section 141 of DCS Act, 2003 r/w Rule 170 of the



DCS Rules, 2007, the criminal liability cannot be assigned with retrospective effect for the period when no such statute existed.

While considering the matter, it was stated that some of the respondent Managing Committee Members has since expired. Hence, the proceeding against them stands dropped.

It is noted that, Mathur Committee submitted its report in June 2011 but the Committee did not give any recommendations with respect to the criminal liability of the MC members but only recommended debarment of MC members from participating in future elections of the Management Committee. The report of the Committee was placed before the Hon'ble Lt Governor and the Hon'ble L.G. vide order dated 20.9.2011 accepted the report of the Committee but did not favour the debarment of the MC members. Permission was also given to invite such other societies like the present one to provide them one time opportunity for regularization.

It is also on the record that on the recommendations of Mathur Committee report, a Notification dated 17.10.2011 was issued wherein one time exemption to 26 societies was granted u/s 127 of DCS Act, 2003. The said notification dated 17.10.2011 provided for regularisation of the self-draw conducted by the 26 specific Cooperative Group Housing Societies listed in the body of the said notifications itself by granting one time exemption from operation of sub-section of Section 77 of DCS Act, 2003 on the following conditions:

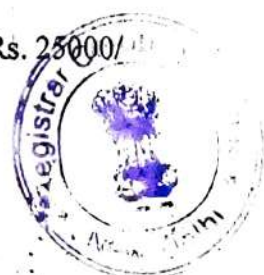
1. However, the members and other office bearers of the CBI investigated societies who have been charge sheeted by CBI shall not get the benefit of such regularization and their names shall not be sent to DDA till the criminal cases pending against them are finally decided as in the case of other CBI investigated societies.

2. The allotment would be provisional in nature and indemnity bond on non-judicial stamp paper of Rs. 100/- has to be submitted by members as well as President/Secretary of the society. Separate affidavit has to be filed by the members & Secretary of the society to the effect that they had no objection to the manner of conduct and outcome of the self draw 3. The regularisation of self draw shall be subject to payment of penalty by each member who have carried out self draw without the approval of RCS as follows:

1) Owners of 02 bedrooms houses- Rs. 15000/

2) Owners of 03 bedrooms houses- Rs. 20000/

3) Owners of 04 bedrooms houses - Rs. 25000/




The above mentioned notification has been upheld by the Hon'ble High Court in judgment dated 05.05.2015 in W.P.C No. 519/2012 in the matter of Manohar Lal Vs. Naval Tech. CGHS Ltd. & Ors

In view of the above facts and after hearing the arguments of the concerned parties, I am of the considerate view that the proceedings initiated under Section 118 (7) of DCS Act, 2003 have lost its relevancy and accordingly the proceedings u/s 118(7) of DCS Act, 2003 initiated against the Managing Committee of the society for violation of section 77(1) of DCS Act, 2003 are dropped.

However, the Assistant Registrar, policy is directed to frame a draft policy for regularisation of the society and similarly placed other societies. The parties are at liberty to avail appropriate legal remedies as per DCS Act, 2003 and Rules, 2007. Ordered accordingly.




(Krishan Kumar)

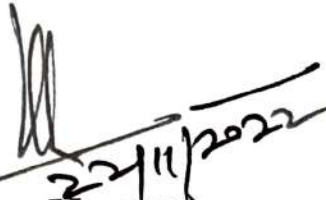
Registrar Cooperative Societies

Case No./RCS/47/55/Coop/GH/NW/2862-2875
To:

Dated: 23/11/22

1. President/Secretary, Jhulelal Sindhu Nagar CGHS Ltd., Road No. 44, Pitampura, Delhi-110034.
2. Sh. Jai Kumar, S/o Joshanmal then President through Jhulelal Sindhu Nagar CGHS Ltd., Road No. 44, Pitampura, Delhi-110034.
3. Sh. Gopi Chand Lohani, then Vice-President, B-226, Ashok Vihar-1, Delhi-110052.
4. Sh. Hassa Nanad Bajaj, then Secretary, 68-D, Kamla Nagar, Delhi-110007.
5. Sh. Laxamn Das Vishan Das, Treasurer, 208, Tarun Enclave, Pitampura, Delhi-110034.
6. Sh. Khiya Ram Khilwani, then Managing Committee Member, B-150, Azadpur, Delhi-110033.
7. Sh. Amrit Kumar Moolchand, then Managing Committee Member, D-12/13, Model Town, Delhi-110009.
8. Sh. Mennomal Deep Chand, then Managing Committee Member, 2524, Basti Punjabi, Delhi-110007.
9. Sh. Hari Kishan Nandwani, then Managing Committee Member, B-28, Deepali, Pitampura, Delhi-110034.
10. Sh. Raj Kumar Maganmal, then Managing Committee Member, 438, Kohat Enclave, Pitampura, Delhi-110034.

11. Sh. Shyam Lal Gagan Das, then Managing Committee Member, 3560, Old Subzi Mandi, Delhi-110034.
12. Assistant Registrar (Housing Section-3), O/o RCS
13. Assistant Registrar (Policy), O/o RCS
14. In Charge, Computer Cell to upload on department website.


22/11/2022

(Krishan Kumar)
Registrar Cooperative Societies