

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

No. F.47/Expul-86/107644219/2021/4155-58

Dated: 27/3/23

ORDER

In the matter of:-
The Navketan CGHS Ltd.
(Through President/Secretary)

VERSUS

.....APPLICANT

Sh. Pradeep Bambery

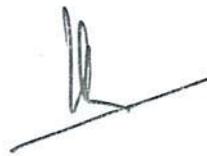
.....RESPONDENT

This order shall dispose of proceedings initiated under section 86(1) of DCS Act, 2003 read with Rule 99 of DCS Rules, 2007 against Sh. Pradeep Bambery, Member of The Navketan CGHS Ltd. vide Notice dated 07.04.2021.

Whereas, the Applicant Society has moved a proposal vide its letter dated 07.03.2021 for approval of expulsion of Respondents from the membership of the society under Section 86 of DCS Act, 2003, read with Rule 99 of DCS Rules, 2007, the respondent involved in certain activities which are detrimental to the interest.

Whereas, notice for hearing dated 27.07.2021 was issued to the parties. Further, the society is directed to submit the reply on the below mentioned points:-

1. Whether 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, and;
2. Whether the copy of the petition has been served to the respondent.
3. Whether resolution has been passed by not less than three-fourths of the members of the committee present.
4. Whether subject to the provision 86 of the Act a Cooperative housing society which has been allotted land, before expelling a member has given 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.





5. If the resolution has been referred to the O/o of RCS for approval within a period of thirty days after the resolution for expulsion is passed by the committee.

Whereas, the Sh. Vinayak Mishra, Advocate for Sh. Pradeep bambery filed reply dated 26.07.2021 wherein he had submitted as under

1. That At the outset, it is submitted that the Respondent is an NRI based out of Australia and has been unable to travel back to India on account of the Covid-19 pandemic. As such, not only is the Respondent not able to attend the present proceedings in person, but also does not have access to the records pertaining to his property being Flat No. B-5/44, Azad Apartments, Sri Aurobindo Marg, New Delhi-110016 ("Flat").
2. That the three purported Show Cause Notices issued by the Applicant society allege that the Respondent is liable to be expelled basis the allegation that he has wilfully submitted false documents which action is detrimental to the interest and proper working of the Applicant society. However, the Resolution purportedly passed on 21.02.2021 seeks to add another reason for expulsion i.e. the various complaints/ representations filed by his tenant against the Applicant society. According to the Resolution, these actions by his tenant have also brought disrepute to the Applicant society for which the Respondent is sought to be made liable and punished.
3. That, the initial ground taken by the Applicant society is that by attempting to execute a tripartite lease agreement in his capacity of Urmila HUF (as opposed to his own personal name as per the records of the Applicant society), the Respondent has sought to cause a loss of tax revenue to the Government of India. The Applicant society in the Resolution further takes note of the fact that the rent mentioned in the tripartite agreement is much lower than the prevailing market rent.
4. It must first be noted that the tripartite lease deed referred to by the Applicant society which forms the basis of their expulsion proceedings was never executed. As such, there is no question of any loss of tax revenue being caused to the Government of India. Moreover, even if it were to be assumed for the sake of argument that there was in fact a loss of tax revenue on account of the actions of the Respondent, the same cannot by any stretch of imagination have brought disrepute to the Applicant society or have in any other way caused detriment to the interest or proper working of the Applicant society.
5. That, even the allegation that the Respondent submitted false documents does not satisfy the requirement of Section 86(1)(b) inasmuch that provision allows for expulsion of a member only in case he makes a false statement or submits a false document for the purpose of obtaining the membership of a co-operative housing society. In the present case, the Applicant society has



admitted that the Respondent validly obtained membership therein in March 1992 upon the demise of his father and the Applicant has not alleged that the Respondent falsified any records for the said purpose.

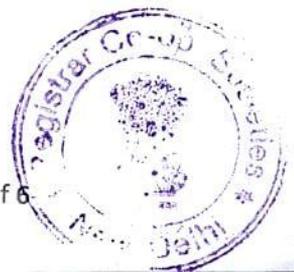
6. That, the additional ground taken by the Applicant society for justifying the expulsion of the Respondent is that his tenant by filing various complaints, representations etc against the Applicant society has brought disrepute to it and has interfered in its proper working. Not only was this ground never raised in any of the purported Show Cause Notices sent by the Applicant society to the Respondent, but it is also entirely misconceived and illegal. All complaints/representations etc filed by his tenant of his own accord without any intimation to or encouragement from the Respondent. In fact, the Respondent only came to know of these various complaints etc having been filed by his tenant subsequently and he did not in any manner or form collude with his tenant to file or prosecute the same. It is not permissible for the Applicant society to attempt to expel the Respondent from its membership on account of acts done by his tenant Mr. Bhargava. If the Applicant society has objections to the actions and behaviour of any sub-leasee, the society's bye laws authorize the Applicant society to avail of its remedies and proceed against the sub- leasee. In any event, it is submitted that the Respondent has issued a notice to vacate to Mr. Bhargava his tenant directing him to vacate the Flat by 31.07.2021.

Whereas, vide reply dated 17.08.2021, the respondent has submitted as under:

1. That, the Respondent is the sole and absolute owner of a flat in the Applicant society which was let out to Mr. Bhargava as a lessee in 2004. Vide e-mail dated 31.05.2021, the Respondent requested Mr. Bhargava to vacate the said flat by 31.07.2021. Mr. Bhargava has failed to vacate the flat within the stipulated timeframe despite repeated reminders and therefore as on date is an unauthorized occupant of the same. The Respondent is in the process of availing of his legal remedies to regain possession of the said flat.
2. It is respectfully submitted that the request made by Mr. Bhargava his tenant that he is an "Interested Party/ Intervenor" in the present proceedings and has consequently requested that he be heard and provided a copy of the complaint is wholly misconceived and untenable. Accordingly, it is humbly submitted that Mr. Bhargava has no locus standi to participate in the present proceedings and ought not to be entertained by this Hon'ble Authority.

Whereas, the appellant society filed rejoinder dated 16.12.2021 to the reply of the respondent wherein the society has submitted as under:

1. That, at the outset, the Appellant herein denies all statements, averments and allegations made in reply filed by the Respondent which are contrary to what is stated hereinafter or is contrary to the records. The Appellant is not filing a parawise to the said reply by the Respondent and reserves its rights to the same, however, nothing that is stated in reply filed by the Respondent to the



notice dated 01.07.2021 issued by the Ld. Additional Registrar of Corporative Societies shall be deemed to be admitted for want to specific denial or traverse unless specifically admitted herein.

2. That, the reply filed by the Respondent to the notice dated 01.07.2021 issued by the Ld. Additional Registrar of Corporative Societies is replete with factual inaccuracies and mendacious statements which are contrary to record. The Respondent has deliberately chosen to suppress vital facts and material documents as well as context while making statements, averments and allegations solely with a view to mislead this esteemed office and to obfuscate the actual events. The Contents of the expulsion proceedings filed by the Appellant against Respondent are reiterated herewith and are not being repeated for the sake of brevity.
3. That, it is denied that the Respondent being an NRI does not have access of Records pertaining to his membership in respect of flat no B-5/44, Azad Apartments, Sri Aurobindo Marg, New Delhi. The said averments by the Respondent are completely vague and nowhere in his reply has the Respondent mentioned, which documents were not in his possession for aptly replying to the notice issued by this office in respect of the ongoing proceedings. Further the documents on which the show cause notice was issued to the Respondent, was executed by the Respondent himself alongwith his tenant Mr Amit Bhargava and thus were already in his possession. Thus, it is wrong to suggest that the documents were either not with the Respondent or the same has not been received by him. In fact, despite having all the documents in his possession, the Respondent failed to provide any reply on merits of the same in respect of the three show cause notices issued to him by the Appellant. In fact, the silence on the part of the Respondent, to appropriately reply on the issues of tax evasion as alleged, shows that the Respondent by submitting false documents to the society is illegally trying to avail tax benefit by showing that the said property and the rent thereof, is being given to an HUF and thus, taking illegal benefits of the tax exemptions. It is submitted, that the Act, provides that no HUF can be a member of the Cooperative Society. That despite being aware of the same, the Respondent in his email dated 11.05.2020 and 12.05.2020, have admitted to having signed the lease deed as a Karta of an HUF.
4. That, it is wrong and denied that the present proceedings have solely been arisen on account of the disputes between the tenant of the Respondent and the Society. It is submitted that the reasons for expulsion have been clearly stipulated in the Show Cause Notices issued to the Respondent, which acts have brought disrepute and is detrimental to the proper functioning of the Appellant Society. It is submitted that that even Bank Account details in which the rent was being deposited as given by the Respondent in his email dated 13.04.2020, was in the name of 'Urmila HUF and not in his individual name, the same being legally untenable. Thus, it is very evident, that the



Respondent has been illegally availing tax benefit by showing that the said property and the rent thereof, is being given to an HUF and thus, taking illegal benefits of the tax exemptions, which is clear violation to the terms of the membership of an Group Housing Society under the Act.

5. That, it is settled law, that the tenant is an agent of the landlord and the acts of the tenant are binding upon the landlord and have been done either with his express or implied consent, unless the landlord is able to show otherwise. It is submitted that the Appellant society time and again informed the Respondent that his tenant had been creating constant nuisance in the society in complete disrespect to the spirit of community living in a co-operative manner and issuing threatening emails to other members of the Society and other agencies, which was bringing disrepute to the Society. That despite the Appellant informing the Respondent over numerous emails, about the said ill conduct of his tenant, the Respondent did not initiate any action against the said tenant, rather supported the conduct of his tenant. Therefore, the inaction on part of the Respondent against his tenant, shows, that the same was being done with full knowledge and consent of the Respondent.
6. That, it is submitted that objections raised by the Respondent in his reply are not factually correct. It is denied that the Respondent was denied an opportunity to defend his case both in writing and in person to the committee. It is submitted that correspondences were sent to the email and the official address in the records of the society of the member, however, despite the same, no response was received from the Respondent. That even in his reply to the show cause notices issued to the Respondent, no reply was given on the merits of the allegations against him and thus the allegations not being denied, stands proved against the Respondent.
7. That, on one hand, the Respondent has submitted that he being an NRI, has not visited the country since 2004 and further could not travel on account of the pandemic, while on the other hand has contended that he was not given an opportunity to defend his case in person before the Managing Committee. Even otherwise, it is submitted that the Appellant provided all the opportunities to the Respondent to put forth his case, which the Respondent failed to do so at every given opportunity. That furthermore, the Respondent being an NRI and having not visited the country since nearly 17 years, no effective purpose would have been served by publishing the final notice of expulsion in a leading Hindi and English Newspaper in the NCT of Delhi. However, as submitted above, the Respondent was well informed of the expulsion proceedings vide the email as well as at the address available in the records of the Appellant Society. It is further submitted, that the Resolution for expulsion of the Respondent was passed by all members present and voting in the Managing Committee meeting. It is further submitted that the resolution to expel the Respondent from the membership of the Appellant was done in





managing Committee meeting convened on 21.02.2021 and the Appellant approached your good offices on 07.03.2021, i.e well within the 30 days period after the resolution for expulsion was passed by the committee, and hence requisite compliance was carried out.

Whereas, it is noted that the society has expelled Sh. Pradeep Bambery mainly on two points which are as under:

- (1) He has wilfully submitted false documents which action is detrimental to the interest and proper working of the Applicant society. A tripartite lease agreement dated 27.04.2020 has been signed by Sh. Pradeep Bambery in his capacity as Karta of Urmila HUF (as opposed to his own personal name as per the records of the Applicant society) and the Respondent is illegally trying to avail tax benefits by showing that the said property and the rent thereof, is being given to HUF and thus taking benefits of tax exemptions and causing a loss of tax revenue to the Government of India.
- (2) Mr. Bhargava, tenant of Sh. Pradeep Bambery by filing various complaints, representations etc against the Applicant society has brought disrepute to it and has interfered in its proper working.

The above mentioned objections were made by the society for expelling Sh. Pradeep Bambery, But, I am of the view that the above mentioned averments made by the society does not comes under the purview of DCS Act, 2003 and Rules, 2007 and does not causes disqualification u/s 86 of DCS Act, 2003 read with rule 99 of DCS Rules, 2007 of membership of Sh. Pradeep Bambery. The society is advised to approach the appropriate forum for their grievances against Sh. Pradeep Bambery. In view of the same, I am of opinion that Sh. Pradeep Bambery does not incur any disqualification. Hence, the proposal of Society for approval of expulsion of Sh. Pradeep Bambery u/s 86 of DCS Act, 2003 read with rule 99 of DCS Rules, 2007 is dismissed. Ordered accordingly.




24/3/2023
Krishan Kumar
Registrar Coop. Societies

To,

1. The President/Secretary, Navketan CGHS Ltd. B-1/04, Azad Apartments, Sri Aurobindo Marg, New Delhi-110016
2. Sh. Pradeep Bambery, Navketan CGHS Ltd. B-5/44, Azad Apartments, Sri Aurobindo Marg, New Delhi-110016.
3. ARCS (Housing Section-5) O/o RCS.
4. Incharge Computer Cell with direction to upload the Order on website of department.