

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/S-7/GH/5115-5118 .

Dated: 05/06/2023

In the matter of:-

Smt. Lajwanti Jain

.....Complainant

VERSUS

Shivaji CGHS Ltd.

.....Respondent

ORDER

1. This order shall dispose of the proceedings initiated in pursuance of directions of Hon'ble High Court of Delhi vide order dated 23.11.2015 in W.P. (C) No. 10785/2015 & C.M. No. 27717-18/2015.

2. Whereas, the Hon'ble High Court vide order dated 23.11.2015 in the W.P. (C) 10785/2015 and C.M. Nos.27717-18/2015 in the matter of Smt. Lajwanti Jain Vs. RCS & Anr. had ordered as under:

"1. The petitioner complains that the miscellaneous petition filed vide Diary No.2269 dated 11th April, 2014 with the office of the Registrar of Cooperative Societies is pending without a single hearing being given to the petitioner. The record discloses that the petitioner is a senior citizen who is 77 years old.

2. The petitioner is claiming that she is the senior most member in the category of applicants, eligible for allotment of HIG Flats in the respondent No. 2-society. It is further stated that only a





single HIG Flat remains for allotment in the society. This position is disputed on behalf of respondent No. 2-society. Having regard to the above facts, the above miscellaneous petition certainly needs urgent consideration.

In view of above, we direct as follows:-

(i). The petitioner shall appear before respondent No. 1/Registrar of Cooperative Societies on 2nd December, 2015 at 11 a.m., when a date for hearing in the miscellaneous petition noted by us above shall be appointed;

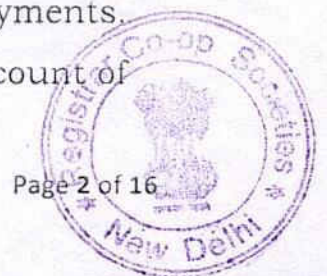
(ii). The miscellaneous petition shall be disposed of by the respondent No. 1/Registrar of Cooperative Societies within a period of two months from the date of first hearing in the miscellaneous petition;

(iii). The respondent No. 2-society shall not effect allotment of one HIG Flat in the society during the pendency of the matter before the RCS. If allotment is being contemplated to a person other than the petitioner, such flat shall not be allotted for a period of eight weeks, after the disposal of the petitioner's miscellaneous petition by the RCS."

3. Brief history of the case:

- (i) It is noted that the Society was incorporated in the year 1971 under the Delhi Cooperative Societies Act, 2003 it had enrolled certain members and was awaiting allotment of land, which efforts were fructified on 25.7.1991 when two acres of land was allotted to the Society. Initially 120 members were enrolled. While the construction on the said plot of land was going on, demands for making instalments towards the said construction were made by the said Society on its members from time to time. Some of the members defaulted in making the payments. The Society, on 27.9.1998, expelled 22 members, on account of





default in making timely payments of the instalments demanded for. The list of the expelled members was sent to the Registrar of Cooperative Societies on 3.10.1998. In place of these expelled members, the Society enrolled new members, for which purpose resolution was passed on 28.3.1999 for enrolment of new members. The Managing Committee invited applications through advertisement dated 31.3.1999. After scrutinizing the applications of those who responded to the said advertisement, the Society enrolled new members on 11.4.1999. They paid equalization amounts and were granted share certificates. List of these newly inducted members was also sent to the Registrar for his approval. Pending the approval, the Governing Body of the Society, in its meeting held on 16.5.1999, passed a resolution approving them as the members of the Society and also took a decision that those members who had not paid their dues in time will not be eligible on priority. The relevant resolution i.e. resolution No. 4, passed on that date reads as under:

"Resolution No.4


The members present unanimous (sic-ly) suggested to the management to make it a practice, those who have not paid their dues in time there seniority would be withdrawn and shall not be eligible for allotment on priority."

- (ii) Whereas, the expulsion of members by the Society needed the approval of the Registrar, without which expulsion could not come into force. The case of 20 members expelled by the society as defaulters was sent to the Registrar of Cooperative societies for approval. Out of those 20 expelled members, case of 19 was taken up. With regard to one member, namely Shri A.N. Mohan, the Registrar noted that his case would be dealt



in separate proceedings. Notices to 19 defaulted members were sent by the Registrar. The Registrar had directed the Society to submit the complete statement regarding defaulters and payments made by them on 28.10.1999. On the next hearing, i.e. on 16.11.1999, the Secretary of the Society informed the Registrar that there were outstanding dues pending against 11 members. Total 11 members appeared before the Registrar on the date fixed. The Secretary of the Housing Society informed that that two members, namely, Gurdeep Singh Bedi and Sanjay Kumar Jain had cleared the outstanding dues and proceedings against them may be dropped and accordingly orders were passed dropping proceedings against the aforesaid two persons. Regarding the remaining 9 defaulters who were present, it was noted that they were ready to make payment if time was allowed to them. They were directed to clear the dues within one month's time from 16.11.1999. For the remaining 8 members who were not present on 16.11.1999, the Registrar noted that 3 of them had appeared on 28.10.1999 but did not appear on subsequent dates and had also not made payment. He inferred there from that they were not interested in continuing with the membership of the Society. The remaining 5 defaulted members out of 8 never appeared in spite of notices issued to them nor made any payment. Thus, in respect of these 8 members, the Registrar approved the expulsion vide his orders dated 3.12.1999.

- (iii) Whereas, out of 19 members expulsion only in respect of 8 members was approved by the Registrar. Further, the expulsion of two other members was also approved vide orders dated 26.2.1999 and 8.4.1999 by the Registrar. In this way these persons, 10 in all, whose expulsion was approved,

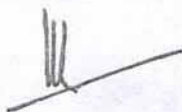


preferred Review Petition under Section 80 of the Act before the Financial Commissioner challenging orders dated 26.2.1999, 8.4.1999 and 3.12.1999 passed by the Registrar. These petitions were disposed of vide orders dated 20.4.2000 by the Financial Commissioner on the basis of the agreed solution between the parties whereby the Society agreed to admit those persons also as members of the Society, subject to their making payment of the balance amount along with interest. This becomes manifest from the following paras of the order dated 20.4.2000 passed by the Financial Commissioner:

"6. While hearing the arguments it transpired that the society has no objection to admit the petitioners as members of the society provided they agree to make the payments of the remaining dues pending against them with upto date interest within the time fixed by this court. This was readily accepted by all the petitioners herein.

7. In view of the above agreed solution between the parties, all these ten cases are hereby disposed of with the observations/directions that the respondent society shall supply the statement of pending dues against the individual petitioners within 15 days from today and the petitioner shall clear all the dues pending against them with upto date interest within 20 days of the receipt of the letter from the society, falling which their expulsions shall stand as confirmed."

- (iv) Whereas, as per the provisions of the Act and Rules, the Society cannot enroll new member without the approval of the Registrar. But, the Society had enrolled new members without taking prior approval of the Registrar and after enrolling them as members and collecting equalization amount there from and granting them share certificates, the Society had sent the list

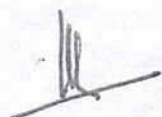


for approval of membership of these petitioners to the Registrar on 15.4.1999. When nothing was heard regarding the said approval, the Society sent letter dated 4.8.2000 to the Registrar submitting information regarding the payments made by them and stated that it was causing great prejudice to those persons who had made prompt payments. Vide orders dated 9.10.2000, the Registrar refused to approve their membership. Against this action of the Registrar, the Society made representation dated 30.10.2000 inter alia stating that because of the prompt payment made by these persons/petitioners, the Society was able to complete the construction of the flats in time and, therefore, they should not be left out of the allotment and deprived of their legitimate dues.

- (v) Thereafter, on 17.12.2000, the Society passed resolution to conduct draw of lots on 31.12.2000 for the allotment of ready flats. Relevant portion of this resolution is as under:

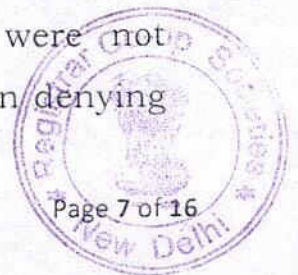
"It was further decided by the members present in the house that since the Ld. Registrar Cooperative Societies Delhi has failed to consider the representations sent by the society or approval of list in accordance with GB resolution dated 16.5.1999 of prompt payment by members at the society and therefore, the GB has authorized the secretary to get the list prepared by society at the notice board of the society and to issue necessary letters of the members to conduct the draw of lots and allotment of ready flats on 31.12.2000.

The members present in the house also resolved that the Hony. Secretary shall send intimation letter to this effect to Ld. Registrar Cooperative Societies, Delhi and concerned offices of DDA. The members present in the house also unanimously resolved that after conducting the draw of lots, the allotments



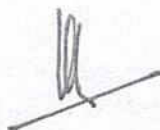
of flats shall be made to respective members at the spot and the vacant, peaceful physical possession of the flats shall be given to the respective members after making payments due towards the society and after obtaining NO Dues Certificate as on 31.12.2000 from the society. The members shall continue to make prompt payment/contributions as and when demands shall be raised by the society. The members further unanimously resolved that all the members shall be responsible for the draw and allotment of flats."

- (vi) Whereas, intimation of proposed draw of lots to be conducted on 31.12.2000, was sent to the Registrar as well as DDA on 18.12.2000. As scheduled, the draw of lots was held on 31.12.2000, in which names of the newly enrolled members were also included treating them as eligible for getting allotment of the flats. They were also given possession of the respective flats which came to be allotted to them as a result of the said draw of lots.
- (vii) Whereas, in the meantime, due to various irregularities in the conduct of the affairs of the Society, including illegal and unauthorized allotment of the flats to the newly enrolled members which was a violation of the directions of the Registrar when even their membership was not approved by the Registrar. Hence, the Managing Committee was superseded and Administrator was appointed vide orders dated 3.5.2001.
- (viii) Whereas, the narration of events, reveal that expelled members were taken back in the Society and the newly inducted members were not approved by the Registrar. Still, in the draw of lots, on the one hand names of these erstwhile expelled members were not included and of those who were not approved as members, were included. This resulted in denying



the possession of the flats to continuing members and instead giving the newly enrolled members whose induction as members on that date was not approved. This forced some of those erstwhile expelled members to file writ petitions before the Hon'ble High Court seeking quashing of draw of lots held on 31.12.2000. These writ petitions were consolidated, heard and disposed of vide common judgment dated 7.1.2002 rendered by a learned Single Judge of the Hon'ble High Court. Operative portion of the said judgment giving directions reads as under:

"8. Counter affidavit has been filed on behalf of the Registrar of Cooperative Societies and Delhi Development Authority. Mr. R.N. Bhardwaj appearing on behalf of the Administrator, Shivaji Cooperative Group Housing Society Ltd. adopted the reply filed by the Registrar of Cooperative Societies as the reply on behalf of the Administrator also. In the reply the Registrar has stated that the draw of lot held by the Society was in violation of the Directive dated 31.5.1984. It is also stated that Civil Authorities have been informed not to provide basic amenities. It is admitted that the draw of lot was not conducted by the DDA in the presence of the office bearers of the Society and the nominee of the Registrar of Cooperative Societies. Some of the members whose names were included in the draw of lot were not those whose names had been cleared by the Registrar of Cooperative Societies but were newly enrolled members. Learned counsel for the petitioner also placed reliance on a decision of a learned Single Judge of this Court in CW No. 4019/1998 titled Ashwini Kapoor v. DDA and others reported at Volume 86 (2000) DLT 50. Learned counsel has also placed reliance on a decision of a learned Single Judge of this court in



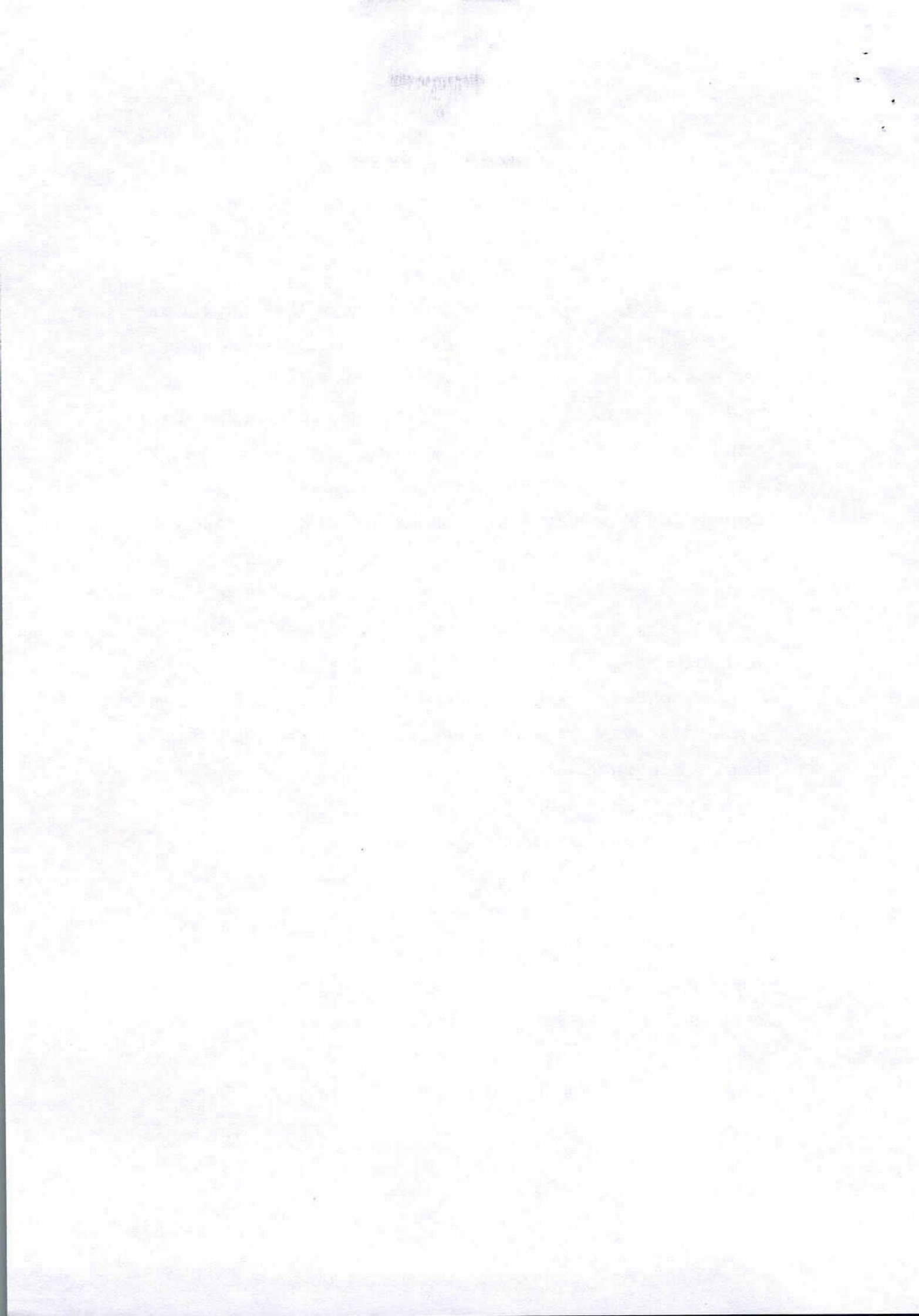
Sushile Devi Bhasker v. INCHB Society Ltd. and others reported in 1991 Volume 45 DLT 518, In support of the contention that the cooperative societies in the allotment of land act as a medium for government action as an intermediary between the public and the State. This is to buttress the argument that the involvement of the State functionary such as DDA has to be there in the draw of lots. In view of the foregoing discussion, and the admitted position that the draw of lot had not been held by the DDA and without the approval of the list of members by the Registrar of Cooperative Societies, there is no option but to quash the draw of lot and direct of fresh draw of lot in accordance with the Directive dated 31.5.1984. The Administrator and the Society shall take consequential action as required for obtaining possession of the flats, if already handed over."

- (ix) After the pronouncement of the aforesaid judgment, the newly enrolled members also approached the Hon'ble High Court and filed WP (C) No. 3409/2002. Their grievance was against non-approval of the list sent by the Society on 15.4.1999 and the prayer was that they be treated to have validly become the members. This writ petition was also disposed of by the Division Bench of the Hon'ble Court by a short order dated 28.5.2002 directing the Registrar to take a decision and pass speaking order. Order dated 28.5.2002 is reproduced in its entirety:

"CW 3409/2002 and CM 5939/02

"Heard. In the facts and circumstances of the case, we consider appropriate to direct the Registrar, Cooperative Group Housing Societies to take a decision and pass a speaking order with regard to the list of members which was sent by Shivaji

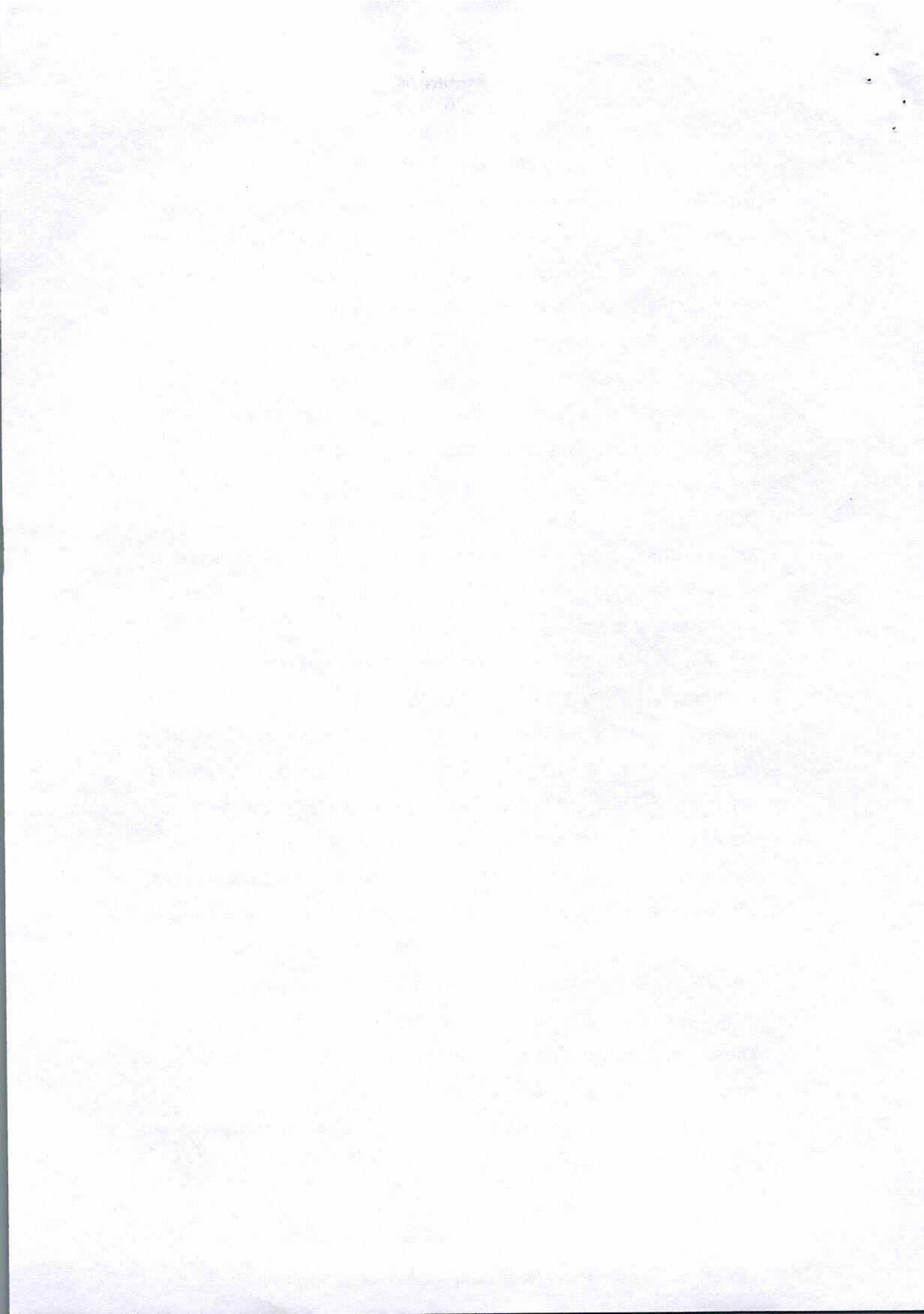




Cooperative Group Housing Society Ltd. on 15th April, 1999. The decision shall be taken by the Registrar. Cooperative Group Housing Societies within eight weeks after hearing the concerned parties. With the above direction, the writ petition and the application are disposed of."

- (x) Pursuant to the aforesaid directions given by this Court in the said writ petition, the Registrar heard the concerned parties and passed order dated 30.7.2002. By this order the Registrar held that enrolment of 22 new members (which included the petitioners herein) was illegal as there was no vacancy on 11.4.1999, since no expulsion was approved and also the strength of the Society was increased on that date. Challenging this order the newly inducted members preferred revision petition before the Financial Commissioner, which was dismissed by the Financial Commissioner on 31.1.2003. The petitioners sought review of the orders passed by the Financial Commissioner, which was also dismissed on 9.12.2004 on the ground that no such review petition was maintainable. Under these circumstances, the newly enrolled members have approached the Hon'ble High Court by filing the writ petition challenging order dated 30.7.2002 passed by the Registrar and order dated 31.1.2003 vide which the Financial Commissioner had affirmed the order of the Registrar.
- (xi) Whereas, the Hon'ble High Court club all the petitions together, i.e. the petition of the newly enrolled members and the petitions of the erstwhile expelled members and passed an order on 03.11.2008 while disposing off all the above mentioned petitions. The operative para of the order is as under:





"29. In these circumstances, all these writ petitions are disposed of with the following directions:

(a) The petitioners in WP(C) No.2338-53/2005 and others. Namely, 22 persons who were purportedly inducted on 11.4.1999, shall handover the possession of the flats to the Administrator within four months from today.

(b) These flats shall be allotted to those 22 members who were expelled, subject to the condition that they have paid entire consideration and no further amount is due from them. For this purpose, draw of lots in respect of these 22 flats for the said 22 members shall be held by the Administrator. Thereafter, possession shall be handed over to these members.

(c) In order to accommodate the petitioners and other similarly situated persons (22 in number), the newly inducted members we issue the following directions:

(ci) Due to the increase in the FAR there is an increase in the membership from 120 to 138. Therefore, 18 persons can be accommodated by enrollment thereof as new members out of 22 persons. By draw of lots 18 out of these 22 persons shall be selected and the said list shall be forwarded by the Society to the Registrar, who shall approve their membership, Remaining four persons shall be given refund of the amount paid by them. We are not granting any interest on this amount as during all this period they enjoyed use and occupation of the flats.

(cii) The Administrator shall submit plans for construction of additional flats to MCD/DDA within two weeks from today. These shall be approved within six weeks of their submission, subject to fulfillment of other formalities. Thereafter, the Society shall start construction of the new flats and on completion of





those flats, possession thereof shall be handed over to the newly recruited members.

(ciii) These 18 persons who were inducted as members on 11.4.1999 had paid the entire consideration in respect of these flats by the end of year 2000 when the draw of lots was held on 31.12.2000. Therefore, they would only pay the additional cost incurred on the construction of these flats meaning thereby from the total construction cost of the new flats, the amount already paid by them shall be adjusted and the balance amount shall be shared by these 18 persons in equal proportion.

Or in the alternative

In case these 18 persons are not agreeable to new constructions at their cost in the manner provided above, it would be open to them to seek refund of the amount paid by them. These persons shall exercise their option in this behalf within two weeks from today to enable the Administrator to proceed further in the matter accordingly."

- (xii) Whereas, Smt. Lajwanti Jain, the petitioner herein was also a party in the above mentioned case vide Writ Petition (C) no. 1445 of 2005 with several other petitioners which was disposed of by the Hon'ble High Court vide its common order dated 03.11.2008 wherein the Hon'ble High Court had pronounced a detailed order regarding the claim of the newly enrolled members as well as of the erstwhile expelled members. Thereafter, the petitioner herein filed another Writ Petition before the Hon'ble High Court being W.P. (C) No. 4792/2012. Separately for allotment of flat in the society, wherein the main contention of the petitioner is that she is the senior most member for the HIG category of flat, awaiting allotment in the





society. Hence, she should be allotted an HIG category of flat preferably flat no. A-10/2 which is a HIG flat and lying unoccupied in the society. The said petition had been disposed of by the Hon'ble High Court vide its order dated 08.08.2012, with the direction to the Administrator to do the needful within two months from today. Thereafter, the petitioner herein filed a Contempt Case No. 105 of 2013 with respect to the Respondent's non-compliance of the direction contained in the Hon'ble Court's Order dated 08.08.2012. However, as a Reply to the Petitioner's Contempt Case, the Respondent Administrator submitted the Status Report and stated that Smt. Lajwant Jain is not the senior most member who will be allotted HIG flat in the society as per the order dated 03.11.2008 and 28.07.2010 passed by the Hon'ble High Court of Delhi in W.P.(C) No. 2338-53/2005 and review petitions. The said contempt petition had been disposed off by the Hon'ble High Court on 11.02.2014.

- (xiii) Thereafter, the petitioner herein filed another petition no. W.P. (C) No. 10785/2015 & C.M. No. 27717-18/2015 before the Hon'ble High Court, wherein the main contention of the petitioner is that the miscellaneous petition filed vide Diary No. 2269 dated 11th April, 2014 with the office of the Registrar of Cooperative Societies is pending without a single hearing being given to the petitioner. The above petition has been disposed of by the Hon'ble High Court on 23.11.2015 with the directions to the RCS to dispose of the petition of Smt. Lajwanti Jain within a period of two months from the date of first hearing in the miscellaneous petition.
- (xiv) Whereas, a petition dated 11.04.2014 has been filed by the petitioner stating that she is the senior most member awaiting



allotment of HIG flat in the society and preferably flat no. A-10/2 be allotted to her. She further submitted that during the course of proceedings before this Hon'ble Court, two Status Reports were filed by the Assistant Registrar (Sec-VII) dated 08.09.2016 and 06.06.2017 wherein the seniority of the Petitioner was placed at S. No. 5 in the said lists overall which included 2 members from the MIG Category.

On hearing dated 24.03.2023 before the undersigned it was noted as under:

"Sh. Virender Kumar Jain, S/o Smt. Lajwanti Jain was present and stated that against membership no. 343 of his mother which was granted in the year 1972, request for allotment/possession of HIG flat is not coming through these many years. This is seventh/eighth round of litigation. He has shown deep concern over the advance age of his mother/petitioner who is 84 years old and submitted that full payment for the HIG flat has already been made to society in December 2000. He has tried to convince the court that as per the report of ARCS twice it has been brought on record that her case is on No. 5 out of which three are for MIG so effectively her possession is at No. 2 and as per his best of knowledge the Member at S.No. 1 Sh. Nathu Ram Jain has some dues against his/her membership and he has expired long back and his membership status is yet to be transferred to anyone.

Sh. Varun singh, Advocate for Administrator was present and submitted that there are a number of litigation matter in this society in different forums. While at present 2 HIG flats are vacant out of which one is un-regularised and as per records submitted by the previous administrator in his written submission, the name of Smt. Lajwanti Jain is at S.No. 10 in waiting list.

The petitioner has been directed to submit a representation before the administrator for her claim or her contentions."

On proceedings dated 25.04.2023 before the undersigned it was noted as under:

"Present Sh. Virender Kumar Jain, Son of the complainant along with his counsel Sh. Mayank Gupta and Ms. Shristi Jain. The Ld. Advocate submitted that the freeze strength of the society is 120 and for which 80HIG flats and 40MIG flats has to be built. However, the society has built 44MIG flats and

80HIG flats. He further clarified that there are 10 blocks of HIG flats each containing 8 flats and 5 blocks of MIG each containing 8 flats and one more block of MIG containing 4 flats only, thus, 4 flats are built extra to the sanctioned plan.

He further submitted that since 2018 society has not brought any record to justify the existence of additional four MIG flats. The case of the petitioner is that she was the member of the society since 03/01/1972 and there is a vacant HIG flat that is A10/2, and her claim is for that vacant flat.

The case is heard with reference to various documents filed on records.”

4. Findings

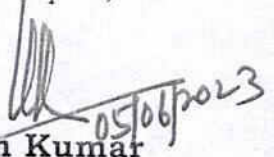
In view of the above, and after perusal of the submissions made by the petitioner as well as the society and various orders passed by the Hon'ble High Court of Delhi and status report filed by the Administrator before the Hon'ble High Court in contempt petition no. 800/2018 wherein the petitioner Smt. Lajwanti Jain was placed at serial No. 10 in the seniority list. I am of considered view that the petitioner, Smt. Lajwanti Jain is not the senior most member awaiting allotment as there are 9 other members who are senior to the Petitioner, Lajwanti Jain who are seeking allotment of flat in the society. Further, it is noted that there are four flats, Flat No. A-10/1, A10/2, A-1/1 and A-1/2 built in the stilt area of the society and as per the sanctioned plan of the society these flats are unauthorised/unapproved.

It emerges that the petitioner is misleading the court by making baseless submissions that four MIG flats are unauthorised/unapproved in the society and flat no. A-10/2 is not among the unauthorised flat and requested that same may be allotted to her. However, as per sanctioned plan of the society flat no A-10/2 is unauthorised flat built in the stilt area of the society and the same flat is not a legitimate flat. Hence,



cannot be allotted. Further, in a separate proceedings, the Housing Section-7, has forwarded a letter to DDA requested them to take appropriate necessary action regarding the unauthorised/unapproved flats in the society.

Further, with regard to the claim of the petitioner for HIG category of flat, it is submitted that the same has to be decided as per the order of the Hon'ble High Court of Delhi dated 03.11.2008 and 28.07.2010 along with the other members and flat No. A-10/2 being unapproved/unauthorized flat cannot be allotted to anyone. Therefore, the petition dated 11th April, 2014 of Smt. Lajwanti Jain is dismissed.


Krishan Kumar

REGISTRAR COOPERATIVE SOCIETIES

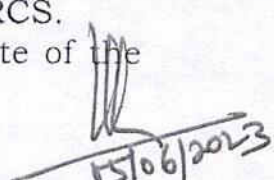
Case No./RCS/S-7/GH/5115-5118

Dated: 05/06/2023

Sent to:-

1. Smt. Lajwanti Jain, R/o 2/21, Sadar Bazar, Delhi Cantt, New Delhi-110010.
2. The Administrator, Shivaji C.G.H.S. Ltd., Plot No. 4/1, Sector-14, Rohini, Delhi-110085.
3. Assistant Registrar Cooperative Societies (Section-7) O/o RCS.
4. Incharge Computer Cell to upload the order on the website of the Department.




Krishan Kumar

REGISTRAR COOPERATIVE SOCIETIES