

OFFICE OF THE REGISTRAR COOPRATIVE SOCIETIES DELHI
GOVERNMENT OF NATIONAL CAPITAL OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001

F.No.47/608/Coop/GH/Sec-7/5611-5619

Dated: 27/7/2023

IN THE MATTER OF:
THE SLEUTH CGHS LTD.
Through Its President / Secretary

.....PETITIONER

VS.

1. SH. ADARSH MALOHTRA
2. SH. NAKUL MALOHTRA
3. SH. BHARAT SINGH JADUAN
4. SH. ARUN MALHOTRA
5. SH. VIVEK MALHOTRA

.....RESPONDENTS

ORDER

This order shall dispose of the Application/Petition filed by the society on 10.03.2016 under Rule 24 of the DCS Rules, 1973 read with Rule 19 of the DCS Rules, 2007 and Section 41 of DCS Act, 2003.

Whereas, by the above mentioned petition/application the society requested for cessation of Memberships of respondents from the Society on the ground that they were not eligible to become its members, as at the time of filing of their application for memberships they all were the residents of the Bhopal, Madhya Pradesh thus failed to fulfill the conditions of Rule 24 of DCS Rules, 1973 as well as Rule 19 of DCS Rules, 2007. The society further submitted that the above fact come to the notice of the CBI during investigation and the copy of charge-sheet filed by Central Bureau of Investigation was enclosed. Hence, they were not qualified to be members of Society as per rule 24(v) of DCS Rules, 1973 vide notification No.P.67/Legal/Policy/Coop./92/1594 dt:22.04.1997 which was in operation at the relevant time.

Whereas, Sh. Rajiv Vij, Advocate filed reply on behalf of Sh. Adarsh Malhotra, Sh. Nakul Malhotra & Sh. Bharat Singh for supplying of documents wherein he had submitted that the petitioner society has based its petition/charge/allegation exclusively on the charge sheet filed by CBI alleging that this fact came to the notice of CBI during investigation. He submitted that averments made in the charge sheet



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are mere allegations which cannot be treated as evidence and same are required to be proved.

Whereas, Sh. Rajiv Vij, Advocate filed another reply on behalf of Sh. Vivek Malhotra and Sh. Arun Malhotra wherein he had submitted that petitioner society has based its petition/charge/allegation exclusively on the charge sheet filed by CBI alleging that this fact came to the notice of CBI during investigation. He further submitted that neither the name of Sh. Vivek Malhotra nor the name of Sh. Arun Malhotra is mentioned in the said charge sheet nor any such allegations made therein against them. Hence, the filing of the above mentioned petition against them is totally malafide, illegal and baseless and needs to be dismissed.

Whereas, on proceedings dated 13.10.2016 the ARCS (Housing Section-7) was directed to produce details from office record regarding residential proof of the respondents while they become member of the society. In response to the same the ARCS filed a status report submitting copies of list of members of society, Copy of Form E submitted by the Administrator of the Society on 21.05.2012. In the list of the members submitted by the Society the addresses of the Respondents are Sh. Bharat Singh Jadaun, DG, II/34 A, Vikaspuri, New Delhi, Sh. Nakul Malhotra E-20 Defence Colony, New Delhi. Adarsh Malhotra E-6, IDPL Apartment Pitampura New Delhi, Mr. Arun Malhotra, E-20 Defence Colony, New Delhi, Sh. Vivek Malhotra DG,II/34 A, Vikaspuri, New Delhi.

Whereas, another report was submitted by the Assistant Registrar (Sec-VII/H) on 20.07.2017 pursuant to directions issued vide order dated 13.06.2017 in present proceeding, records the names of all these respondents as members of society with date of their admission wherein it was reported that membership of the respondents were not cleared by Rule-90 Committee and being detained as they were charge-sheeted by the CBI in FIR dated 31.10.2006.

Whereas, the petitioner society filed rejoinder dated 16.07.2019 on the reply of Sh. Vivek Malhotra and Sh. Arun Malhotra wherein the society submitted that the Respondents are not the resident of Delhi as their case of draw of lots has been detained on account of Non production of resident proof of 3 years prior to becoming members of the Society and if the respondents are having the proof of residents then the same shall be placed on record.

Whereas, Sh. Rajiv Vig, Advocate for the Respondents filed an application dated 27.12.2022 for placing on record order dated 24.11.2022 passed by Ld. Special Judge (PC Act) (CBI) 16, Rouse Avenue District Court. He submitted that the cessation of the Membership of the Respondents was sought only on the grounds that the CBI has



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filed a charge sheet in FIR No. RCSIJ 2006E0006 against the Respondent No. 1, 2 and 3 wherein CBI has allegedly found that the respondent No. 1,2 and 3 were not resident of Delhi at the time of their allotment in the petitioner society.

He further submitted that there is no such allegation in the charge sheet against the Respondent No. 4 and 5 and hence prayed that the present petition against Respondent No. 4 and 5 be dismissed immediately with cost as they were unnecessarily and illegally harassed by the petitioner society for the last 6 years.

In respect to respondent No. 1, 2 and 3 Sh. Rajiv Vig submitted that the Ld. Judge (CBI) after carefully examining the material on record placed by CBI found that no offence over charge is maintainable against the Respondent and accordingly they were discharged by the Judge by the Order dated 24.11.2022.

Whereas, Sh. Rajiv Vig, filed another application dated 03.07.2023 on behalf of Respondents for dismissal of petition and referring their names to DDA for allotment of flats. He submitted that the petition filed by the society is solely based on the charge sheet filed by the CBI which is now being disposed of by the CBI court vide order dated 24.11.2022 and Respondent No. 1, 2 and 3 stands acquitted by the Court. He further submitted that after becoming members of the Society the respondents opted for the Penthouse category of flats, the total cost of which was Rs. 51, 61, 520/- and the respondents have already paid the cost of their respective flats which are being duly reflected in the Audit Report of the society.

Whereas, on perusal of the charge sheet dated 31.10.2006 filed by Deputy Superintendent of the Police (CBI) it was noted that the address of Respondent No. 1, 2 and 3 is of Bhopal and in one of the paras of the charge sheet it was mentioned as under:

"It has also transpire during investigation that Sh. Adarsh Malhotra is basically a resident of Bhopal, but he has given a false residential address of RZ, C-156, Mahavir Enclave, Palam, New Delhi and in support of his residential proof, submitted a photocopy of ration card at the time of obtaining membership, though the said address is non existent. Similary, Sh. Nakul Malhotra, nephew of Adarsh Malhotra based at Bhopal, also submitted a false address of RZ-F-73, Mahavir Enclave, Palam at the time of obtaining membership. Investigation also revealed that Sh. Bharat Singh Jadaun, a resident of Bhopal and a close associate of Adarsh Malhotra and Nakul Malhotra, also submitted forged documents in support of his residential address at Delhi bearing No. RZ-1-26, Mahavir Enclave, Palam, New Delhi at the time of obtaining membership.

Investigation has further disclosed that Adarsh Malhotra, Nakul Malhotra and Bharat Singh Jadaun in pursuance of the said criminal conspiracy obtained the membership of the society with the sole purpose of controlling the affairs of the



society and virtually ran the society through Sh. Ashish Lamba, a relation of Sh. Adarsh Malhotra who was shown to have been appointed as the President of the Society w.e.f. 06.07.2003. All three of them viz. Adarsh Malhotra, Nakul Malhotra and Bharat Singh Jadaun were not eligible for the membership of the Society as per the Bye laws/DCS Rules, approved by RCS Office."

Further on perusal of Order of CBI court dated 24.11.2022 at para 83 it was noted as under:

"thus the documents placed on record by CBI itself belie the claim of CBI . There is also no evidence on record of any investigation carried out regarding the residences of Sh. Adarsh Malhotra, Sh. Nakul Malhotra and Sh. Bharat Singh Jadaun at Bhopal. No doubt the addresses of the accused persons in the charge sheet is of Bhopal and they come to attend the proceedings in this case from Bhopal. These facts would, however, not replace 'evidence' against them. More pertinently so, as it is not on record from what date/period they are residing in Bhopal and whether they are not residing in Delhi also."

The Court held (in para 77-83 of the order) that CBI failed to produce any evidence that respondent No.1, 2 and 3 had given any residence proof of Mahavir Enclave, New Delhi to the society to get membership.

The respondents No.1, 2, 4 and 5 have filed the copy of their ration card issued in Nov., 1999 showing their address of A/E 28, Tagore Garden, New Delhi which the respondents claimed to be their ancestral property. Respondent no.3 has filed copy of his ration card issued in Nov., 1999 showing his address of DG 2/34A, Vikas Puri, New Delhi. At other places respondents have given other addresses of Pitampura, Defence Colony and Vikas Puri in Delhi which they claim to be their correspondence addresses give in society. However, nowhere any of respondents gave their address of Mahavir Enclave, Palam etc.

The requirement of 3 years residents of Delhi pertains to period of 3 years prior to date of enrollment, so once a person is enrolled as a member, he is free to go anywhere thereafter and, in this case, respondents were residents of the Delhi in 1999, whereas they applied for membership in 2002-2003. Hence, condition of Delhi residents under rule 24(2) of DCS Rules, 1973 was fulfilled by respondents.

It is pertinent to mention that the present petition has been filed for cessation of membership of the Respondents U/s 41(1) of DCS Act, 2003 which reads as under:

- (1) Notwithstanding anything contained in this Act, a person shall cease to be member of a cooperative society-
 - (a) on his resignation from such membership; or



- (b) on his death, if there is no claim by the nominee or legal heirs within three hundred sixty-five days; or
- (c) on transfer of the whole of his share or interest in that cooperative society; or
- (d) on his expulsion or incurring any disqualification for being a member of that cooperative society.

The clause (d) of the section 41(1) of DCS Act,2003 which has been highlighted in the application is to seek the cessation of the membership/s of the respondents can not to be read in isolation from the preceding clauses of sub-section which are to read as a whole whose combine reading makes it a punitive action on incurring any of the disqualifications given in the clause(a) to (d) during the currency of the membership of Society and not at the stage when they applied for memberships.

The Society before making reference to the Registrar under sub-section(2) of 41 of DCS Act,2003 qua the alleged disqualifications which is not incurred in present case during the currency of such membership by any respondents as required by sub-section(1) was required to give an intimation regarding the cessation of such membership by the registered post to the person concerned along with its copy to the Registrar within a period of 15 days under Rule 35 of the DCS Rules,2007.

There is no such averment in the present application that the petitioner complied with the conditions laid down in Rule 35 of DCS Rules, 2007 which are mandatory to be followed before filing of the present application for decision of this forum in a quasi-legal proceeding. The idea for such compliance before making a reference under section 41(2) of DCS Act, 2003 by the Society is that there has to be a prior decision of the Society as per its bylaws either by its Managing Committee or General body of its members as the case may be in connection therewith so that the concerned member may submit its objections in protest of such decision. Committee alone is not competent to take such decision except by a majority resolution as the entire Management of the Society vests with its Managing Committee. The reference is made to Section 88 of the DCS Act, 2003 which specifically says that management of every cooperative society shall vest in its Managing Committee.

Whereas in the present application there is no such reference of the decision of the Society to cease the membership of the respondents in the supporting affidavit of the then Secretary of the Society, also it is not mentioned that the decision to terminate the membership has been taken by the society. Thus, there is no decision of the society to cease the membership of respondent on the ground mentioned in the present application which otherwise is not maintainable under Section 41 of the DCS Act, 2003 as discussed herein before.



It is clear from the present proceedings that the only reason for not allotting the flats to the respondent was that they were charge-sheeted by the CBI which was filed for revival of the said society is against respondent No.1, 2 & 3 and others, whereas the name of respondent No.4 and 5 should have been forwarded to DDA for allotment of the flats to them as they were not named in the charge-sheet as apparent from its copy filed with the present application to seek their cessation from the membership of society was the complete misrepresentation by the petitioner.

Since the respondent No.1, 2 and 3 have been completely exonerated from the charges leveled against them by special Judge, CBI vide order dated 24.11.2022 acquitting them from allegations made against them in the charge-sheet. Hence, the names of respondent No.1 and 2 and 3 can also no longer be detained for not allotting the flats to them and also in view of the fact that the application filed by society Under Section 41 of the DCS Act, 2003 for cessation of the membership of respondents has been found as not maintainable in law and not supported by any evidence as discussed in present order. Therefore, the names of respondents for allotment of the flats applied by them with the society can no longer be detained for the given reasons in report.

The respondents were enrolled as member of petitioner society in 2002-03, when DCS Act, 1972 and DCS Rules,1973 were in existence whose provisions continues to be applied to them by virtue of section 141 of DCS Act,2003 for clearance of their membership for allotment of the flats under the then existing Act and rules.

Keeping in view the peculiar facts of the present case, I hereby direct to forward names of the respondents to the DDA for holding draw of lots for allotment of their applied flats, as they were enrolled under DCS Act, 1972& DCS Rules,1973. It is ordered accordingly.




Krishan Kumar
Registrar Cooperative Societies

Sent To:

1. Sh. Adarsh Malhotra, R/o E-4 Arera colony, Bhopal-462001(MP)
2. Sh. Nakul Malhotra, R/o E-4 Arera colony, Bhopal-462001(MP)
3. Sh. Arun Malhotra, R/o E-4 Arera colony, Bhopal-462001(MP)
4. Sh. Bharat Singh Jadaun, E-51, Surendra Vihar, Bhopal-462043(MP)
5. Sh. Vivek Malhotra, R/o E-4/6 Arera Colony, Bhopal-462001(MP)
6. Sh. Rajiv Vij. Counsel for the respondent at chamber no-546, Western Wing, Tis Hazari, Delhi-110054
7. President/Secretary/Administrator, Sleuth CGHS Ltd., Sec-19B, Plot No. 6, Pokcet A, Dwarka, New Delhi-110075.
8. ARCS, Housing Section-7 of the Department for issuance of letter to DDA regarding the above mentioned 5 members of the society.
- ✓ 9. In-charge Computer Cell.