

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

F.No.47/ARH/SEC-II/348-GH/RCS/2018/6118-6130

Dated: 21/09/2023

In the matter of:-

Mrs. Mamta w/o Sh. Pawan Kapoor

.....Complainant

Versus

Evershine CGHS Ltd.

.....Respondent

**ORDER**

Whereas, the Evershine Co-operative Group Housing Society Ltd is registered vide registration No. 348/GH with this department under the provisions of DCS Act, 2003 & Rules, 2007 framed there under.

Whereas Mrs Mamta Wife of Sh. Pawan Kapoor, Resident of Flat No 39A, Evershine Apartment (Evershine CGHS Ltd) Vikas Puri, New Delhi-110018 has preferred a Petition in the Court of Registrar Coop Societies, Parliament Street, New Delhi Under Section 118/121 of DCS Act, 2003 against the Respondent Society and the Members of the previous Managing Committee of the said society, alleging that they have intentionally and deliberately violated the provisions of Section 91 & 92 of the DCS Act, 2003 in spite of issuing specific directions/orders by the Deputy Registrar, Cooperative Societies vide order dated 29.02.2016 and by the Hon'ble Court of Financial Commissioner vide order dated 09.09.2016 and 15.12.2016.

Whereas, Dy. Registrar Cooperative Societies had passed an order dated 29.02.2016 under section 91 of the Delhi Co-operative Societies Act, 2003 read with Rule 92 of Delhi Co-operative Societies Rules, 2007 wherein the society was directed to grant all the necessary rights of membership as granted to Original member to Smt. Mamta W/o Sh. Pawan Kapoor, as a member within 15 days of issue of the order.

Whereas, the society filed a Petition before the Hon'ble Financial Commissioner, Delhi and Hon'ble Court of Financial Commissioner vide its order dated 09.09.2016 in case No.110/2016 matter titled as "Evershine CGHS Ltd. (P) Vs. Smt. Mamta & Anr.(R)" observed as follows:

*"the perusal of the record revealed that Counsel for petitioner was directed to serve 'Dasti' notice to Respondents. But he failed to even collect 'Dasti' notice for service. Even today, none present on behalf of the petitioner. It appears that the petitioner is not interested to pursue the case. Hence, the case is dismissed in limine. File be consigned to record room after completion"*



182/A4/T  
03/10/23

Pentioner society i.e. Evershine CGHS Ltd. again filed a petition before Hon'ble Financial Commissioner, Delhi vide case No.287/2016 in the matter titled as "Evershine CGHS Ltd. (P) Vs. Smt. Mamta & Anr.(R) and Hon'ble court vide its order dated 15.12.2016 further observed as follow-

*"Heard both the parties on restoration and condonation of delay. Restoration and condonation of delay is not allowed. Counsel for petitioner may file afresh subject to written affidavit that no one in the society has made any encroachment in any of the flats. File be consigned to record room after completion."*

Whereas, in spite of three letters dated 06.04.2016, 25.10-2016 & 06.12.2016 issued by this office to the then Managing Committee of Evershine Co-operative Group Housing Society Ltd., the society failed to grant membership to Mrs. Mamta and thus wilfully and intentionally violated the direction of this office.

Whereas, despite of the above referred directions & Orders, Mrs. Mamta was granted membership of the society as regular member and issued a share certificate on 12.03.2018, after delay of approx 15 months after the Order of Financial Commissioner dated 15.12.2016 referred to above.

The respondent Managing Committee filed reply to the Show Cause Notice wherein they submitted that:

- a) Mrs. Mamta Kapoor purchased the flat no. 39 A in April 2015 from Mr. N.K. Midha. At that time Sh. T.P. Singh was the President of the Evershine Society.
- b) Immediately after purchase of said flat, Smt. Mamta Kapoor started encroachment in the back side by 20 x 2 ft. area and in front side by raising the wall of about 2 ft. high by encroaching of area about 150 sq. ft.
- c) Then Present Management Committee (in question) took over the charge on 28 June, 2015 as Sh. T.P. Singh resigned from the post of President as he was undergoing Enquiry under section 60,61, a Complaint from residents was received on 10.07.15 duly signed by 35 residents for inconvenience being faced by the society because of water logging due to rising of wall and blind curve as it is corner flat and MC accordingly acted on the complaint from residents & took action with request to remove encroachments immediately & also filed a complaint with DDA.
- d) The Management Committee requested Mrs. Mamta Kapoor to remove the encroachment or at least she can at least remove the raised wall of 2 ft. high and bring it to ground level so that there should not be any water logging, as it has been done in many other ground floor flats for past some times and people have no objection to it.
- e) Smt. Mamta Kapoor made it a prestige question for not removing the wall but also made complaint with police for her being a lady is being harassed. Now it is understood that she has managed to obtain a letter duly signed by 5 persons

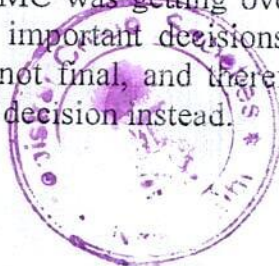


i.e. Sh. Gupta, Present President and Sh. TP. Singh, Ex-President in whose President Ship the encroachment started and Sh. Jaswant Singh (husband of one ex- secretary and two other residents) of the society that the said encroachment is there for last 25 years.

f) With regard to grant of membership of the society, it is intimated as under:

Mrs. Mamta Kapoor, applied for the membership of Society vide her application dated 25.7.2015 received in Society office on 28.7.2015.

- (i) The Management has the time to grant membership within 90 days only after completion/submission of all required document.
- (ii) MC requested the owner many times to remove encroachments so the process of her membership can be initiated.
- (iii) MC was bound with the decision of the GB held on 31.08.2008 which states that "NOC WILL NOT BE ISSUED to the resident/owner of the flat where encroachment /modification has taken place."With the GB resolution in place since 31.08.2008 the MC was bound to follow the decision.
- (iv) Furthermore the Application for membership the documents were incomplete for example the Original share certificate issued to the original allottee was missing with the application as the same was with the bankers, "Original share certificate is mandatory for issuance of the new membership in the name of new owner" as per the society byelaws.
- (v) The new owner therefore lied in the AFFADAVIT submitted with the application of membership which states that "owner shall comply with all the byelaws & Agreement "signed by the 1<sup>st</sup> owner Mr. NK Midha.
- (vi) The owner approached the office of the RCS & filed an Appeal under section 91 of DCS ACT on 27.08.15 in the subject matter with the office of Deputy Registrar Mr. GS Agarwal.
- (vii) MC presented all facts during hearing in writing with the office of Deputy Registrar Mr. GS Agarwal as stated above including the decision of GB was conveyed.
- (viii) The Order was received from the Deputy registrar on 10.03.16 which was placed in MC for review & the MC was surprised as to how Deputy Registrar ignored the decision taken in the GB & in fact it was not the part of the order of Deputy registrar.
- (ix) The MC was within the rights to appeal as per DCS act and the same was filed with the Financial Commissioner subsequently and the decision was given vide order dated 15.12.16, which was not conclusive and the copy was received by our office in 2<sup>nd</sup> week of January, 2017.
- (x) As the term of our MC was getting over in February 2017, it was not correct to take any important decisions as the order of the Financial Commissioner was not final, and therefore the same was Left for the New MC to take the decision instead.

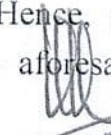


- (xi) To hold elections, RCS appointed administrator cum returning officer Mr. SS Chauhan vide order dated 03.04.17 under section 35(5) for conducting elections of the society for a period of 3 months.
- (xii) The Owner approached the Administrator (Mr. SS Chauhan) also after he took over the charge of our society on the subject matter of issue of membership. The Administrator vide his letter dated 13.10.17 replied to the RCS in the subject matter of the membership of 39A. Even the Administrator appointed by your good offices Opined that "Decision of the GB held on 31.08.2008 could not be set aside/ignored."
- (xiii) With the above submissions it is very clear with the timeline that the previous MC committee were no way at fault as we were bound to follow the GB decisions, byelaws, Agreements & also the order of financial commissioner which was not final in the larger interest of the society.
- (xiv) The New MC was constituted on 5th November 2017, and they gave her the membership on 23 March 2018. Actual delay of 138 Days (5 months approx), therefore the NEW MC is at fault for the delay instead.

In view of the above and after perusal of the submissions made by the parties and orders of various courts, I am of the opinion that though Smt. Mamta should have been given membership of the society after the order of the Dy. RCS, but the society challenged the order of Dy. RCS before the Ld. F.C and Ld. FC passed the final order on 16.12.2016 in the favour of the petitioner. Here it is pertinent to notice that the tenure of Ex MC was expired on 03.04.2017 and an Administrator was appointed in the society on 03.04.2017 who holds the election and the new M.C. was elected on 5th November 2017, thereafter new MC gave the membership to the petitioner on 12.03.2018.

Here it is pertinent to mention that the Ex-MC, against whom the present petition was filed by Smt. Mamta (petitioner) was in power only for 04 months after passing the final order of Ld. FC, hence they cannot be made solely responsible for the delay. Though the Ex-MC acted negligently but the present petition does not attract any provision of section 118 of DCS Act 2003 and Rule 2007 and no sanction against the Ex-MC is made out against the respondents. Hence, no prosecution sanction can be granted against the respondent for the aforesaid reasons. Ordered accordingly.

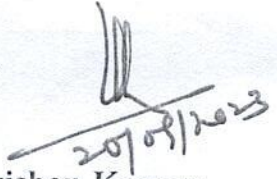


  
20/09/2023  
**Krishan Kumar**  
**Registrar Coop. Societies**

Sent To:-

1. Smt. Mamta, Flat No. 39-A, Evershine CGHS Ltd., D-Block, Vikas Puri, New Delhi-110018

2. Mrs. Sangeeta Kalra R/o Flat No. 16-C, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
3. Mr. V.K Katyal (Secretary) R/o C 1/19, Second Floor, Ardee City Sector-52, Gurgaon, Haryana-122011.
4. Mr. V.K Sharma (treasurer) R/o Flat No. 10 B, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
5. Mrs. Santosh Vaid, R/o Flat No. 34- D, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
6. Mr. Amarjeet Soin R/o Flat No. 31/C, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
7. Mr. K.K Chakravorty, R/o Flat No. 7B, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
8. Mr. B.K Manchanda, R/o Flat No. 23 B, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
9. Mr. J.P Bhandari R/o Flat No. 17/C, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
10. Mr. G D Suneja R/o Flat No. 22-D, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
11. Dr. I.S Alag R/o Flat No. 8-B, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
12. Mr. K Chaudhary R/o Flat No. 28-B, Evershine CGHS Ltd. Plot No. 1, Bodella Phase-I Vikas Puri, New Delhi-110018
13. ARCS (Housing Section-2) O/o RCS.
14. Incharge Computer Cell to upload on website of the Department.

  
20/09/2023  
**Krishan Kumar**  
**Registrar Coop. Societies**