

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

No. F.RCS/ARCS /H (Sec-6)/U/s-86/2023/298 - 301

Dated: 13/3/24

Order

In the matter of:-

RAJASTHAN CGHS Ltd.
(Through President/Secretary)

.....APPLICANT

VERSUS

Sh. PRAVEEN KUMAR JAIN (M.S No. 18/5)

.....RESPONDENT

This order shall dispose of the proceedings initiated vide notice under section 86 of DCS Act, 2003 on the proposal of the society dated 07.10.2022 for approval of expulsion of Sh. Praveen Kumar Jain, member of Rajasthan CGHS(Membership No. 18/5).

Whereas, an application dated 07.10.2022 has been filed by the society regarding proposal for approval of expulsion of Sh. Praveen Kumar Jain, R/o Flat No. C-604, Rajasthan CGHS Ltd. Plot No. 36, Sector-4, Dwarka, New Delhi-110078 having Membership No. 18/5 from the society.

The society submitted that the Managing Committee of the Society has followed the due procedure/action in the matter of Expulsion of one of the member of the Society, Sh. Praveen Kumar Jain, Membership No. 18/5. The society has enclosed copies of minutes of SGBM's, copy of three SCN issued to Sh. Praveen kumar Jain and copy of MC meeting dated 11.09.2022 wherein the society has expelled Sh. Praveen Kumar Jain.

Accordingly, the notice for hearing was issued to the parties.

The petitioner society vide its letter dated 18.04.2023 has submitted that, society is of the view that this Hon'ble authority has neither taken the Cognizance within 30 days from the date of submission of the resolution of expulsion to the Registrar i.e. from 07.10.2022 nor has passed a final order either approving or rejecting the expulsion of the concerned person i.e. Mr. Praveen Kumar Jain from the membership of the society. Thus qua this the Registrar has become functus officio and therefore the Society in exercise of its Power conferred upon it under the provision of sub section 3 of section 86 of the DCS Act, 2003 read with Rule 99(3) of the DCS RULES 2007 has



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already issued the order of his deemed approval of expulsion from the membership of the society on 07.04.2023.

The Society further submits that after the passage of 180 days from the date of submission of the resolution of expulsion to the Registrar and issuance or and service of the order of his deemed approval of expulsion from the membership of the society on 07.04.2023 the question of participation of the society does not arise as the Society has followed the provisions of the 86(3) DCS Act 2003 and Rule 99(3) of DCS Rule 2007. Post expulsion as above, the said DCS Act & Rules do not provide any scope for further hearing of the case, by the Registrar. Hence, this notice is ultra virus and contrary to law after exercising the power conferred upon the society in this regard and In view of the same it is not obligatory on the part of the society to take part in such hearing as fixed by your above referred notice and the proceeding be kindly terminated as it is already terminated by the efflux of time of 180 days w.e.f. 07.10.2022

The petitioner society vide its letters dated 05.07.2023 has again reiterated their earlier reply dated 18.04.2023 and submitted that the Society has taken a legal stand that your office has become functus officio and the concerned person Mr. Praveen Kumar Jain is no more member of the society as he stood expelled. The society further submitted that society will not take part in such hearing as fixed by your above referred notice and proceeding be kindly terminated as it is already terminated by the efflux of time of 180 days w.e.f. 07.10.2022.

Sh. Praveen Kumar Jain, respondent has filed written submission through E-mail dated 29.11.2023 wherein he submitted that:-

1. Complainant society proposal is mainly hovering around the allegations of complaints made by him to DDA, MCD, RCS and Fire Department. Regarding the FIR mentioned by the complainant, it is stated that the same has been quashed by the Hon. High Court of Delhi and the other complaints have been inquired by the police and have been filed as frivolous. It is the basic tenet of criminal jurisprudence that everyone is presumed to be innocent until proven guilty. Any other allegation if any is vehemently denied and the complainant is put to strict proof hereto. Making complaint to lawful authority does not bring any disrepute either to any person, authority or society. This has been clearly mentioned under section 499 explanation 8 of IPC. Further the Hon. Supreme Court has made it very clear vide Kishore Balakrishana Nand vs State of Maharashtra that making complaint to lawful authority does not lead to defamation.
2. Writing to lawful authority for redress of grievance is a HUMAN RIGHT besides fundamental right to speech guaranteed under article 19(1)(a) of the



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constitution and limitations on fundamental right to speech are detailed under article 19(2) of the constitution which are exhaustive while the rights described under article 19(1)(a) are non- exhaustive as held by Hon. Supreme Court vide Kaushal Kishore vs State of UP (popularly known as Azam Khan Case). He has not violated any of the restrictions as described under article 19(2) of the Constitution.

3. As per rule 99, thirty days after the expiry of the 3rd notice the MC is supposed to call the member to give explanation. after considering the reply by the member. In the present case the 30 days were to expire on 24th September 2022 and the MC called the member for a personal meeting on 11th September 2022 by which time the respondent had not replied to the 3rd show cause notice. Calling the member without considering his reply is violation of rule 99 and further no newspaper notice has been issued which is mandatory. In the proposal the complainant society has mentioned that no reply has been received by the society in response to show cause notice which is a blatant lie. The reply to 3rd notice was submitted to society office on 20.09.2022 which fact the society has concealed.
4. On 07.04.2023 the President of the erstwhile MC issued a letter of his deemed expulsion. This is despite the fact that the summons had already been issued by the office of RCS. Since the letter was issued after receiving the summons, it amounts to contempt of lawful authority of Public servant which is punishable under section 182 of IPC. This clearly indicates that the MC has no regard or respect either for DCS act and rules or the Public Servants.
5. The letter dated 07.04.2023 was issued by the then President by impersonating as President since the term of the Management Committee had already expired on 3.3.2023. The then President has exceeded his authority by issuing such a letter having serious repercussions. In terms of section 35(5) of DCS act the Managing Committee had ceased to hold office on 3.3.2023 as the term of the society had expired on the said date and hence the letter dated 7.04.2023 is illegal and without any authority of the Management Committee or the person impersonating as President.

I have gone through the submissions made by the society as well as of the respondent. Based on the observations presented, it is evident that the society did not adhere to the due procedure of law outlined in Section 86 of the DCS Act, 2003, read with Rule 99(1) of the DCS Rules, 2007, regarding the expulsion of Sh. Praveen Kumar Jain.

Firstly, the society passed the resolution for expulsion before the prescribed 30-day period expired, which is a violation of Rule 99(b) of the DCS Rules, 2007. The society should have waited for the full 30-day period to allow for any potential reply from the concerned member before considering expulsion.



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Additionally, it is noted that Sh. Praveen Kumar Jain claims to have submitted a reply to the society within the 30-day period, contradicting the society's statement that no reply was received. This raises questions about the society's handling of the matter and its adherence to procedural fairness.

Furthermore, the order of deemed expulsion issued by the society on 07.04.2023 lacks legal validity because the tenure of the society's Managing Committee had already expired on 03.03.2023, as per Section 35(5) of the DCS Act, 2003. Therefore, any actions taken by the Managing Committee after its term had expired would be considered legally questionable.

In conclusion, it is evident that the society did not follow the proper legal procedures for the expulsion of Sh. Praveen Kumar Jain. The society should review its actions and ensure compliance with the relevant laws and regulations to uphold procedural fairness and legality in its operations. Accordingly, the proposal of the society dated 07.10.2022 for approval of expulsion of Sh. Praveen Kumar Jain, member of Rajasthan CGHS is rejected.



18/5/24

Anil Kumar Singh
Registrar Cooperative Societies

To,

1. Sh. President/Secretary, Rajasthan CGHS Ltd., Plot No. 36, Sector-4, Dwarka, Delhi-110078.
2. Sh. Praveen Kumar Jain (M.No. 18/5) Flat No. C-604, Rajasthan CGHS Ltd., Plot No. 36, Sector-4, Dwarka, Delhi-110078.
3. Incharge Computer Cell for uploading on the website of the Department.
4. ARCS, Housing Section-6 O/o RCS.