

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

F.NO.47/1385/GH/AR/SEC-IV/RCS/2023

1963-67

Dated: 20/8/24

ORDER

In the matter of Dual Membership of Sh Rakesh Gupta.....Respondent

This order shall dispose of the proceedings initiated vide Show Cause Notice dated 23.11.2023 issued u/r 20(1)(c) (iii) & (2) of DCS Rules, 2007 read with Section 41 of DCS Act, 2003 whereby Sh. Rakesh Gupta r/o B-11, Mayfair Garden, New Delhi-110016 was called upon to show cause as to why his membership should not be ceased u/s 41(1)(d) of DCS Act 2003 for incurring disqualification u/r 20(1) of DCS Rules 2007.

The brief facts of the case are as under:-

Sh Rakesh Gupta was enrolled as the member of Modest Ketki CGHS Ltd vide Membership No 545 in the year 2005. Subsequently it was observed at the time of verification that Smt Deepti Gupta wife of Sh Rakesh Gupta is also a member of the same society vide Membership No 544. Accordingly, the membership of the senior member i.e. Smt Deepti Gupta (Membership No 544) was cleared by this office and forwarded to DDA for draw of lots while proceedings were initiated against Sh Rakesh Gupta for cessation of membership u/s 41(1)(d) of DCS Act 2003.

In response to Show Cause Notice dated 23.11.2023, the respondent submitted his reply and stated that he and his wife namely Smt Deepti Gupta applied for membership in the society and categorically mentioned the same address i.e. S-58, Panchsheel Park, New Delhi in their application for membership. It is further mentioned that the Answering Respondent also executed one affidavit at the time of applying the membership and in the said affidavit the Answering Respondent has mentioned the same address as mentioned by his wife namely Deepti Gupta.

The respondent further submitted that he is having separate source of income and the entire payment has been made by the answering respondent from his own account while Smt Deepti Gupta made her payment from her own account. The respondent has also provided the details of payment made by him to the society through his bank account in ING Vyasya Bank. He further submitted that it is settled law laid down by the Hon'ble High Court of Delhi if the husband and wife are having their separate source of income they can hold separate memberships in the society. It is relevant to mention that the



[Handwritten signature]

judgment passed by the Hon'ble High Court of Delhi in WP(C) No. 2531/2012 titled Ratna Mohla Vs RCS has directed as under :

"In order to appreciate the aforesaid controversy the import of the provisions as incorporated under the rules has to be examined. This issue is no more res-integra in view of the judgment of the Division Bench of this Court in Alimuddin Vs Registrar Cooperative Societies, 63 (1996) DLT 655 and WPC No 794/2012, Kalu Ram Vs The Financial Commissioner & Ors" decided on 08.02.2012. There is no prohibition on the Petitioner being a member of Respondent No 2/ society and owing a flat if the funds for the same have come through the sources of the Petitioner and it is not the case where late husband of the Petitioner was seeking a membership or an allotment by providing funds to the wife (Petitioner herein)."

He further mentioned that even an earlier judgment dated 22.12.2009 in WP(C) No. 8426/2008 in the matter of Dr. J.K. Gupta Vs RCS & Ors. has ordered as under:

"..... The same shows property in question is purchased by the Petitioner's wife out of her own funds and the same stands in her own name. The present case is fully covered by the judgment in Alimuddin's case(Supra). It may also be mentioned that proceedings have been initiated against Petitioner for cessation of membership on the ground of ownership of house in the name of his wife in her own capacity. The Respondents were not justified in doing so. In view of the facts and circumstances of the case, we are of the view that disqualification as held in the impugned order under Rule 25 of the Rules is not attracted in the present case....."

In view of above discussion, we are of the view that Petitioner does not incur any disqualification under rule 25(1)(c)(i) of the Rules . We, therefore, set aside the impugned orders dated 15.05.2008 and 17.08.2007 passed by the Financial Commissioner. The allotment of flat be made to the Petitioner in accordance with his seniority."

The respondent further submitted that as per the Act, only the person who is having benami transaction are disqualified to hold the separate membership and the law on this issue was clarified by Hon'ble High Court of Delhi in the case of "Navjivan CHBS Co-op. Society Vs Registrar of Co-operative Societies, Delhi Co-operative Tribunal and Ors. while relying on all the above mentioned judgments in the recent past, the



ds

case titled as "R.K.Aggarwal Vs RCS & Ors" has laid down the law that the disqualification will only be incurred if the transaction is benami.

I have gone through the facts of the matter, the reply submitted by the respondent Sh Rakesh Gupta as well as the case laws quoted by him. It is pertinent to note the provisions of the DCS Act & Rules which provides for disqualification of membership in Co-operative societies. In this regard, Rule 20 (1) of DCS Rules 2007 states as under :

20. Disqualification of membership

- (1). No person shall be eligible for admission as a member of a co-operative society if he:-
- (a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or
 - (b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence, or
 - (c) In the case of membership of a co-operative housing society,
 - (i) owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale:

Provided that above clause shall not be applicable,

- (a) in case of co-sharers of property whose share is less than 66.72sq. metres of land; or if the residential property devolves on him by way of inheritance;
 - (b) in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the transfer of membership of the housing society concerned;
- (ii) deals in purchase or sale of immovable properties either as principal or as agent in the National Capital Territory of Delhi; or
 - (iii) his spouse or any of his dependent children is a member of any other co-operative housing society.



[Handwritten signature]

Further, Hon'ble High Court of Delhi, vide its order dated 06.08.2012 in WPC 2531/2012 titled Ratna Mohla Vs RCS has observed as under:

"In order to appreciate the aforesaid controversy the import of the provisions as incorporated under the rules has to be examined. This issue is no more res-integra in view of the judgment of the Division Bench of this Court in Alimuddin Vs Registrar Cooperative Societies, 63 (1996) DLT 655 and WPC No 794/2012, Kalu Ram Vs The Financial Commissioner & Ors" decided on 08.02.2012. There is no prohibition on the Petitioner being a member of Respondent No 2/ society and owing a flat if the funds for the same have come through the sources of the Petitioner and it is not the case where late husband of the Petitioner was seeking a membership or an allotment by providing funds to the wife (Petitioner herein)."

Thus, it is clear that Hon'ble High Court has clarified that there is no prohibition on both husband and wife being members of a Co-operative Group Housing Society if both have separate source of income and the payment is made to the society by the respective members.

In view of the above mentioned facts and circumstances, I am of the considered opinion that the respondent Sh. Rakesh Gupta may not be disqualified from the membership of the Modest Ketki Cooperative Group Housing Society Ltd under rule 20(4)(c) and (iii) of the DCS Rules, 2007 read with section 41(1)(d) of DCS Act, 2003.

Ordered accordingly.



(Anil Kumar Singh)
Registrar Cooperative Societies

To

- 1 President/Secretary, Modest Ketki CGHS Ltd, Plot No 8 B, Sector-11, Dwarka, New Delhi-110075
- 2 Sh Rakesh Gupta (M.No 545) r/o B-11, Mayfair Garden, New Delhi 110016
- 3 Asstt. Registrar (G/H Section-IV), O/o RCS, Parliament Street, Old Court Building, Delhi - 110001.
- 4 Asstt. Registrar (Computer Cell) with the request to upload the order on the departmental website.
- 5 Guard file.