



2026:DHC:2064-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 16<sup>th</sup> December 2025**  
**Pronounced on : 12<sup>th</sup> March 2026**  
**Uploaded on : 13<sup>th</sup> March 2026**

+ **WP(C) 2819/ 2018**

**BIMAL KUMAR JANA**

S/O. LATE PRAFULLA KUMAR JANA  
FLAT NO. 504, DELHI EPDP CGHS LTD.  
PLOT NO. 19, SECTOR-4, DWARKA  
NEW DELHI-110078

.....Petitioner

Through: Petitioner in person (through VC).

versus

**SMT. SANTA DEY & ORS.**

**1. SMT. SANTA DEY**

FLAT NO. 336, DELHI EPDP CGHS LTD.  
PLOT NO.19, SECTOR-4, DWARKA, NEW DELHI-110078.

**2. DELHI EPDP CGHS LTD.**

PLOT NO. 19, SECTOR-4, DWARKA, NEW DELHI-110078,  
THROUGH ITS SECRETARY/ PRESIDENT

**3. SMT. APARNA BANERJEE**

FLAT NO.602, DELHI EPDP CGHS LTD.  
PLOT NO.19, SECTOR-4, DWARKA, NEW DELHI-110078

**4. SMT. SUNITA CHATTERJEE**

D/O SMT. APARNA BANERJEE  
R/O FLAT NO.351, DELHI EPDP CGHS LTD.  
PLOT NO.19, SECTOR-4, DWARKA, NEW DELHI-110078

**5. REGISTRAR OF CO-OPERATIVE SOCIETIES**



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OLD COURT BUILDING, PARLIAMENT STREET  
NEW DELHI-110001

**6. THE FINANCIAL COMMISSIONER**

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI  
5 SHAM NATH MARG, DELHI-110054 .....Respondents

Through: Mr. Anuj Kumar Sharma, Advocate  
for R-1.  
Mr. M. Qayam-ud-din, Ms. Unzila  
Fatima, Advocates for R-2.  
Ms. Anju Bhattacharya, Ms. Nisha R.  
Chauhan, Mr. Vinod Fulara, Ms.  
Nandita Chandra, Advocates for R-3  
& R-4.  
Mr. Anubhav Gupta, Panel Counsel  
(Civil) GNCTD for R-5 & R-6.

**CORAM:**

**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE**

**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

1. The present writ petition has been filed for issuance of Writ of Certiorari for quashing of the order dated 09<sup>th</sup> October 2013 passed by the Registrar of Co-operative Societies ('RCS'), in Case No. F.47/593/SW/GH/Coop/846-853 whereby Show Cause Notice ('SCN') dated 14.03.2011 was disposed in favour of respondent no.1, as she was not found to be disqualified under *Rule 25(1)(c) of the Delhi Co-operative Societies Rules, 1973* ('DCS Rules, 1973') and the subsequent order of the



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learned Financial Commissioner in Revision Petition no. 236/2013 dated 18<sup>th</sup> July 2017 whereby the order of RCS was upheld.

### **Factual Matrix**

2. Petitioner in this case was allotted *Flat no. 504* in the respondent no.2/ Society through lottery on 06<sup>th</sup> August 2000, whereas respondent no.1 having *Membership No. 714* was allotted *Flat no. 351* in respondent no. 2/ Society *vide* draw of lots for allotment of flats held on 06<sup>th</sup> August 2000 and subsequently confirmed on 27<sup>th</sup> September 2000.

3. Respondent no.1 is wife of *Sh. Amal Kumar Dey*, who was allottee of *Flat no. 257, Ground Floor, Category-II, SFS, Pocket-2, Sector-19, Dwarka, New Delhi* of plinth area of *92 sq. mtrs.* approximately, allotted by the Delhi Development Authority (**DDA**) on 18<sup>th</sup> June 1996. It was alleged that this fact was concealed by respondent no.1 while filing affidavit for acquiring membership in respondent no.2/ Society *vide Membership No. 714*.

4. *Flat No. 351* was subsequently surrendered by respondent no.1 to the Society and subsequently, the present membership of respondent no.1 was acquired after purchasing *Flat no. 336* in the Society from *Sh. Biplab Guha* in the year 2002.

5. DDA, thereafter, issued a SCN dated 16<sup>th</sup> March 2011, to respondent no.1 as to why the membership of respondent no.1 should not be cancelled as membership in the Society has been obtained by furnishing false affidavit and asked for reply within fifteen days. Respondent no.1 failed to reply to the



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SCN and subsequently DDA *vide* letter dated 23<sup>rd</sup> September 2011 requested RCS to cancel the membership of respondent no.1 on ground of double allotment.

6. Petitioner made a complaint to RCS against the respondent no.1 on 09<sup>th</sup> June 2011 for double allotment, on ground that the membership in respondent no.2/ Society was acquired by respondent no.1 by submitting a false affidavit which *inter alia* stated “*that neither I nor my spouse nor any dependent children has owned either in full or part, on leasehold or freehold basis or on Power of Attorney or agreement to sell, in plot or land or house in the National Capital Territory of Delhi*”.

7. A SCN was issued on 14<sup>th</sup> December 2011 by RCS whereby, respondent no.1 was asked to show why her membership should not cease under *Section 25(2) of the DCS Rules 1973*.

**Impugned Order of RCS dated 9<sup>th</sup> October 2013**

8. *Vide* impugned order RCS decided the SCN issued to respondent no.1 dated 14<sup>th</sup> March 2011 as regards her membership. Upon consideration of the submissions of both parties, it was held that the complainant had neither alleged *benami* membership of respondent no.1/ *Smt. Santa Dey* nor established that her husband was the *benami* owner of DDA Flat No.257, Sector-9, Dwarka. It was observed that the said flat was only one unit in a multi-dwelling building and no material was placed to show that the



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proportionate co-share of *Sh. Amal Kumar Dey* in underlying land exceeded *66.72 sq. metres* so as to attract *Rule 25(1)(c) of the DCS Rules*.

9. It was further held that irrespective of the contents of the affidavit filed by the respondent no. 1, disqualification can only be attracted in terms of provisions contained in *Rule 25(1)(c) of the DCS Rules*. Relying upon the interpretation of the said Rule by the Hon'ble High Court of Delhi in *Alimuddin vs. RCS & Ors.*, 63 1996 (DLT) 6655 it was found that no disqualification was proved.

**Impugned Revision Petition dated 18<sup>th</sup> July 2017**

10. As against the order of RCS dated 9<sup>th</sup> October 2013, petitioner preferred a Revision Petition before the Financial Commissioner, wherein again it was held that no ground for disqualification of respondent no.1 was made out. It was found that petitioner failed to establish that the share of land attributable to the DDA flat owned by the husband of respondent no.1 exceeded *66.72 sq. meters* so as to attract disqualification under *Rule 25(1)(c)(i) of the DCS Rules, 1973*.

11. Further, it was held that complaint having been filed in 2010 in respect of an allotment made in 2000 was barred by limitation in view of *Section 87* of the *Delhi Cooperative Societies Act, 2003* read with the *proviso to Rule 100* of the *Delhi Cooperative Societies Rules, 2007*, which prohibit raising such grounds after three years of allotment. The plea of retrospective application was rejected, it being held that the applicable law is the one in



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force on the date of raising the grievance. Finding no illegality or infirmity in the impugned order, the revision petition was accordingly dismissed.

### **Expulsion of Petitioner**

12. During this period, the Society during a Special General Body Meeting ('**SGBM**') dated 27<sup>th</sup> June 2010, expelled the petitioner under *Section 86 (1)(a) DCS Act, 2003* and *Rule 99 DCS Rules, 2007* for anti-society activities and filing false and frivolous complaints and litigations. Final Show Cause Notice dated 26<sup>th</sup> January 2011 was also served upon the petitioner providing an opportunity for personal hearing. Petitioner attended the meeting held on 10<sup>th</sup> April 2011.

13. RCS approval for expulsion was sought in terms of *Section 86(2) of Act of 2003*. *Vide* order dated 10<sup>th</sup> April 2012, RCS rejected the expulsion of petitioner. The Society approached this Court *vide* WP(C) 2874/2014, however *vide* order dated 15<sup>th</sup> May 2012 the same was withdrawn with liberty to approach the Delhi Co-operative Tribunal ('**DCT**'). DCT *vide* order dated 03<sup>rd</sup> March 2014 in Appeal No. 99/2012/DCT set aside the order of RCS and remanded the case to RCS for deciding afresh, providing that the computation of period of 180 days shall begin from 18<sup>th</sup> March 2014.

14. Thereafter, the Society preferred WP(C) 1746/2014 in this Court for quashing the order of DCT dated 03<sup>rd</sup> March 2014 and for upholding the expulsion of petitioner having been deemed approved after the lapse of 180 days of receipt of resolution of expulsion in terms of *Section 86(3) of the Act*



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of 2003. In aforesaid writ petition *vide* order dated 29<sup>th</sup> May 2015 it was held that the period of 180 days prescribed under *Section 86(3) of the DCS Act, 2003* is mandatory and begins from the date of receipt of the expulsion resolution by the RCS. Failure of the Registrar to take cognizance and pass a final order within this statutory period results in deemed approval of the expulsion. The Tribunal had no jurisdiction to alter or reset the commencement of the 180-day period, and its directions to that effect were held to be illegal. Therefore, order dated 03<sup>rd</sup> March 2014 passed by DCT and also the order of RCS dated 10<sup>th</sup> April 2012 was set aside.

15. Petitioner against the order dated 29<sup>th</sup> May 2015 filed a Review Petition No. 378/2015, however, on 14<sup>th</sup> August 2015 the same was withdrawn with liberty to seek legal remedy before the DCT under the DCS Act, 2003.

16. It is the submission of petitioner he is a *bona fide* member of respondent no.2/ Society and therefore has *locus* and legal right to file the present writ petition. Further, that writ petition does not only lie against public officials or government and also against individual. Any citizen of this country can approach any Judicial/ Quasi-judicial authorities against any corrupt practices/ illegalities.

17. The Special General Body Meeting (*'SGBM'*) dated 27<sup>th</sup> June 2010 and the Managing Committee (*'MC'*) meeting dated 17<sup>th</sup> July 2011 were conducted in gross violation of *Rule 46(4), Rule 48(3), and Rule 60(4)* of the DCS Rules 2007, including lack of quorum and denial of due process.



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Consequently, the expulsion proceedings against Petitioner are illegal, *void ab initio*, and *non est*.

18. It is the submission of the petitioner that in Review Petition of WP(C) 1746/2014, liberty was granted to petitioner to approach DCT for appropriate legal remedy under the DCS Act, 2003. The illegal SGBM and MC resolutions were conclusively declared null and void by the Ld. Arbitrator *vide* award dated 10<sup>th</sup> August 2016 in Case No. 1182/JR/B/10-11, which was affirmed by the Delhi Co-operative Tribunal on 16<sup>th</sup> August 2018 in Appeal no. 159/2016/DCT. These findings have attained finality and bind the parties.

19. He submitted that he deemed expulsion letter issued by the Society is void, as it was issued during pendency of proceedings, without statutory approval of the Registrar, and based solely on illegal resolutions already set aside by competent authorities. Therefore, petitioners continue to be a valid member of the Society. This position is supported by directions of the RCS dated 20<sup>th</sup> July 2012 for execution of aforesaid arbitration order.

### **Submissions of Petitioner**

20. Regarding the petitioner's grievance against respondent no.1, he contends that respondent no. 1 procured *Membership No. 714* and allotment of *Flat No. 351* by submitting false affidavits, in violation of Rule 25 of DCS Rules, 1973. Such fraud vitiates the membership *ab initio*.



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21. The plea that *Flat No. 351* was surrendered by respondent no. 1 is false and unsupported by any documentary evidence. Repeated opportunities granted by the Registrar failed to yield proof of surrender or refund. Official proceedings record this failure.

22. The flat was unlawfully transferred through Power of Attorney first to respondent no. 3 and thereafter to respondent no. 4, without compliance with mandatory provisions of DCS Rules.

23. Respondent no.3 was ineligible for allotment, as her spouse was already a member and allottee. The transactions also reveal undervaluation, resulting in evasion of stamp duty and taxes, further vitiating the transfers.

24. Fraud was committed when DCS Act, 1972 and Rules, 1973 were in force. By virtue of Section 141 of DCS Act, 2003, repeal does not protect past frauds. Proceedings were rightly initiated under Rule 25 of DCS Rules, 1973. Rule 100 of DCS Rules, 2007 has no retrospective application.

25. In view of established fraud, binding arbitral and tribunal findings, and continuing illegality, the allotment of *Flat No. 351* deserves cancellation, the illegal transfers deserve nullification, and the flat should revert to the Society, with all consequential reliefs.

### **Submissions Of Respondent no. 1**

26. It is contended that the petitioner has no *locus standi* to challenge the membership or subsequent transfers related to the flat allotted to respondent



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no.1 as petitioner is neither aggrieved by any direct loss nor his legal right is affected by the transaction concerning *Membership No. 714*. Further, the writ under Article 226 is not maintainable; it can lie only against the State or public authorities, not private individuals. Respondent no.1 being a private person, and therefore this is a misjoinder of parties rendering the petition infructuous.

27. Petitioner has filed the present petition on grounds that he is a *bona fide* member of the society, however, he was expelled on 12<sup>th</sup> July 2011 due to filing of frivolous complaints and acting in anti-society activities that includes filing of false and frivolous complaints. This expulsion was upheld by this Court *vide* order dated 29<sup>th</sup> May 2015 in WP(C) 1746/2014.

28. Membership of the Society was surrendered in 2002 by respondent no.1, however, the complaint was raised by the petitioner in 2010 beyond the applicable limitation period. Further, under *proviso* of *Rule 100 of the DCS Rules 2007*, grounds for cessation of membership under *Section 87 of the DCS Act, 2003* cannot be raised after three years from allotment of flat.

29. Finally, there is no documentary evidence of sale, consideration, or fraudulent transfer by respondent no. 1. Mere execution of a General Power of Attorney does not constitute sale, a fact expressly noted by the Financial Commissioner in his order dated 18<sup>th</sup> July 2017. Further, allegations of fraud and illegal sale/transfer *via* Power of Attorney to *Smt. Aparna Banerjee* are denied as irrelevant, since the flat was surrendered in 2002 and no evidence supports the claim of sale.



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30. Petitioner is a habitual litigant who has repeatedly raised identical issues before multiple forums despite consistent rejection. The present writ is frivolous, vexatious, and an abuse of judicial process.

**Submissions Of Respondent no. 2**

31. It is claimed that the writ petition is not maintainable in view of *Section 87 of the DCS Act 2003* read with the *proviso of Rule 100 of the DCS Rules 2007* as petitioner filed complaint beyond three-year period of limitation. Admittedly the plot was allotted to respondent no.1 in the year 2001 and it was surrendered in the year 2002. The present membership of respondent no.1 was acquired after purchasing *Flat no. 336* in the Society in the year 2002, and the allotment was made in the year 2002. Since the period of three years have lapsed since the allotment, the RCS and the Financial Commissioner were correct in disposing of the SCN in favour of respondent no.1.

32. Further, petitioner, not being an aggrieved person therefore, does not have the *locus* to file the present petition. Furthermore, petitioner is not a member as on date as he has been expelled *vide* resolution Dated 17<sup>th</sup> July 2011 and his expulsion has been upheld by this Court *vide* order dated 29<sup>th</sup> May 2015 in WP(C) 1746/2014. The judgment of this Court has attained finality as no Special Leave Petition has been filed against the aforesaid order.



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### Submissions Of Respondent nos. 3 & 4

33. Respondent nos. 3 & 4 have no connection with the membership and allotment of *Flat no. 351* to respondent no.1. As per the records of the Society *Smt. Santa Dey* had surrendered the *Flat no. 351* and membership against the said flat to respondent no.2 and purchased a three-bed *Flat no. 336* in the same society independently from *Mr. Biplob Guha* on 04<sup>th</sup> March 2004 through agreement to sell and thereafter, respondent no.1 again applied for membership against her new flat. Respondent no.3 was allotted *Flat no. 351* by respondent no.2 in consonance with the DCS Act and Rules in her own rights, which were later transferred by her to her daughter respondent no. 4 herein and a Conveyance Deed was executed on 30<sup>th</sup> December 2014 by the DDA.

### Analysis

34. Having gone through the records, heard the submissions of the parties and perused the written submissions, the Court is of the considered opinion that this writ petition is without any merit and ought to be dismissed *inter alia* for the reasons elaborated hereunder:

- I. Petitioner is challenging the order passed by the Finance Commissioner on 18<sup>th</sup> July 2017 (**'FC Order'**) and order passed by the RCS dated 9<sup>th</sup> October 2013. The RCS passed the said order disposing the notice which was issued to *Smt. Santa Dey*/ respondent no.1 herein, wife of *Sh. Amal Kumar Dey*, dated 14<sup>th</sup> March 2011 to show cause as to why her membership in *Delhi EPDP CGHS*



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*Ltd./respondent no.2 should not cease per Rule 25 of the DCS Rules, 1973. The SCN was issued at the behest of petitioner (complainant therein), who on 9<sup>th</sup> June 2011, alleged that Smt. Santa Dey had acquired membership in the Society by submitting a false affidavit to the effect “that neither she nor her spouse owned either full or in part, on leasehold or freehold basis or Power of Attorney or on agreement to sell, in plot or land or house in the National Capital Territory of Delhi”.*

- II. At the outset, what is notable is that the *locus* of petitioner is highly suspect, and the Court finds it difficult to countenance the same. Neither is he the beneficiary of the cessation of membership of *Smt. Santa Dey* nor has he been impacted in any manner whatsoever, either as a member owning flat/apartment in the Society or having been disenfranchised because of membership of *Smt. Santa Dey*. As per the averments in the petition, petitioner himself states that he is an original member of the Society and was admitted to membership w.e.f. 19<sup>th</sup> November 1998 with *Membership No.737* and was allotted *Flat No.504* of which he took possession on 9<sup>th</sup> November 2001. Despite the same, he has chosen to be a complainant in this matter contending that he wants to expose the fraud which is being committed in the Society by granting membership to *Smt. Santa Dey*, despite her apparent violation of the DCS Rules, in that her husband already owned a flat at Dwarka, Delhi at the time when she applied for membership and, therefore, was in violation of Rule 25 of the DCS Rules 1973. Notwithstanding that the Court has assessed the merits of



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the matter which are also untenable and do not support petitioner's case, a note must be made of the observations of the Supreme Court in relation to exercise of extraordinary jurisdiction under Article 226 and *locus standi* of a petitioner who approaches the Court. In ***K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple***, (2022) 5 SCC 710— a judgment passed on 18<sup>th</sup> February 2022, the Supreme Court while considering a petition where an auction allotting a plot of land to the appellant was set aside on the representation of one *Sh. Jagat Kumar*, a non-participant in the auction. In this context, the Court noted as under:

*“ 14. Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction-sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of the highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer.*

*15. In this context, we rely on the following observations of this Court in Jasbhai Motibhai Desai v. Roshan Kumar [Jasbhai Motibhai Desai v. Roshan Kumar, (1976) 1 SCC 671] made in paras 34, 37 and 49, which are as under : (SCC pp. 682-83 & 686)*

*“34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the*



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writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see *State of Orissa v. Madan Gopal Rungta* [State of Orissa v. Madan Gopal Rungta, 1951 SCC 1024 : AIR 1952 SC 12] ; *Calcutta Gas Co. v. State of W.B.* [Calcutta Gas Co. v. State of W.B., AIR 1962 SC 1044] ; *Ram Umeshwari Suthoo v. Board of Revenue* [Ram Umeshwari Suthoo v. Board of Revenue, (1967) 1 SCA 413] ; *Gadde Venkateswara Rao v. State of A.P.* [Gadde Venkateswara Rao v. State of A.P., AIR 1966 SC 828] ; *State of Orissa v. Rajasaheb Chandanmull Indrakumar (P) Ltd.* [State of Orissa v. Rajasaheb Chandanmull Indrakumar (P) Ltd., (1973) 3 SCC 739] ; *Satyanarayana Sinha v. S. Lal & Co.* [Satyanarayana Sinha v. S. Lal & Co., (1973) 2 SCC 696 : (1973) SCC (Cri) 1002] ).

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to



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reject the applications of such busybodies at the threshold.

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner, etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.”

In the aforesaid decision, it was also observed that despite adequate opportunity, if a person has not lodged any objection at an appropriate stage and time, he could not be said to have been in fact, grieved.

16. It is also required to be noted that the sale was confirmed in favour of the appellant by the Commissioner, Endowments Department after obtaining the report of the Assistant Commissioner. Therefore, we are of the opinion that in the aforesaid facts and circumstances of the case, the High Court ought not to have ordered re-auction of the land in question after a period of 23 years of confirmation of the sale and execution of the sale deed in favour of the auction-purchaser by observing that the value of the property might have been much more, otherwise, the object and purpose of holding the public auction and the sanctity of the public auction will be frustrated. Unless there is concrete material and it is established that there was any fraud and/or collusion or the land in question was sold at a throwaway price, the sale pursuant to the public auction cannot be set aside at the instance of



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*strangers to the auction proceeding.”*

- III. However, keeping this issue aside, it is important to examine the matter on merits considering the orders of FC and RCS have both been impugned.
- IV. The gravamen of petitioner’s complaint is a false affidavit being filed by *Smt. Santa Dey* at the time she acquired membership in the Society and was allotted *Flat No.351* with *Membership No.714*, even while her husband *Sh. Amal Kumar Dey* had already been allotted a flat in *Sector 9, Dwarka* by the DDA in June 1996. The issue, therefore, is that the acquisition of the membership by *Smt. Santa Dey* in the Society was in violation of provisions of law in particular Rule 25 of the DCS Rules, 1973. For ready reference, Rule 25 of the DCS Rules, 1973 is extracted as under:

*“Rule 25. Disqualification for 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;*
  - (c) in the case of membership of a housing society:*
    - (i) he owns a residential house or a plot of land for the construction of a residential house in any of the approved or unapproved colonies or other localities in the Union Territory of Delhi, in his own name or in the name of his spouse or any of*



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*his dependent children, on leasehold or freehold basis or on power of attorney or on agreement for sale.*

*provided that disqualification as laid down in sub-rule (1)(c)(i) shall not be applicable in case of persons who are only co-sharers of joint ancestral properties in congested localities (slum areas) whose share is less than 66.72 sq. metres of land;*

*(ii) he deals in purchase or sale of immovable properties either as principal or as agent in the Union Territory of Delhi; or*

*(iii) he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar.*

*(2) Notwithstanding anything contained in the rules or the bye-laws of the cooperative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.*

*(3) A member who ceases to be a member of a co-operative society under sub-rule (2) shall not be entitled to exercise rights of membership or incur liability as member with effect from the date referred to in sub-rule (2) but as from the date he becomes a creditor of the co-operative society in respect of the amount due to him on account of paid-up share capital, deposit, cost of land deposited or any other amount paid by him to the co-operative society as its member. As from the date of his ceasing to be a member of the society under sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative society within 3 months and when the co-operative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative society.*

*(4) If any question as to whether a member has incurred any of the disqualification referred to in sub-rule (1) arises, it shall be referred to the Registrar*



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*for decision. His decision shall be final and binding on all concerned. The power of the Registrar under this rule shall not be delegated to any other person appointed to assist the Registrar.”*

- V. The DCS Act, 2003 was brought into force on 1<sup>st</sup> April 2004 repealing the previous DCS Act, 1972 under which the 1973 Rules had been made. Under the new Act of 2003, new set of DCS Rules were promulgated in 2007 and published in the Gazette on 19<sup>th</sup> October 2007. It is, therefore, clear and categorical that the assessment of the complaint regarding the *Smt. Santa Dey's* qualification has to be assessed in 2001 when the 1972 Act along with 1973 Rules were in force.
- VI. *Rule 25(1)(c)* of the *DCS Rules, 1973* clearly states that a person would be ineligible for admission as a member of the Co-operative Society if they own a residential house or plot of land in any approved or unapproved colonies or localities in NCT of Delhi in their own name or in the name of spouse or any of the dependent children on leasehold or freehold or Power of Attorney or Agreement for Sale basis. However, with a categorical *proviso* that no disqualification shall visit the said person if as co-sharers of a property, the individual share is less than *66.72 sq. mtrs.* of land. No evidence was presented by the complainant that *Sh. Amal Kumar Dey's* holding of the Dwarka flat would amount to ownership of more than *66.72 sq. mtrs.* of land. Neither before the RCS nor before the FC could the petitioner present any proof that the pro-rata ownership of land in the multistorey



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complex at Dwarka would amount to more than 66.72 sq. mtrs. A DDA flat allotted to *Sh. Amal Kumar Dey* was on the ground floor measuring 92 sq. mtrs. and, therefore, in any event, it would be impossible that he would have a share of more than 66.72 sq. mtrs. in the proportionate land considering it was a multistorey society where all the members would have a pro-rata share in the land. The basis for the disqualification was, therefore, not made out as part of the complaint and, therefore, the RCS rejected the same which was also endorsed by the Financial Commissioner.

- VII. The other reason why this petition would fail is the issue of limitation. The alleged disqualification has to be assessed in 2001 when the membership was sought by *Smt. Santa Dey*, whereas the complaint was moved in 2011 for almost a decade later. As per *Rule 100 of the DCS Rules 2007* read with *Section 87 of the DCS Act 2003*, the additional grounds for cessation of membership under Section 87 cannot be raised after three years of allotment of the flat. Considering the complaint was raised in 2011, the provisions of the new Act will apply considering that the *Section 141 of the DCS Act 2003* which provides for repeal and savings and is extracted as under:

*“141. On the day on which the Delhi Co-operative Societies Act, 2003 comes into force, the Delhi Co-operative Societies Act, 1972 (35 of 1972) in force in the National Capital Territory of Delhi shall stand repealed. Provided that the repeal shall not affect –*  
*(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or*  
*(b) any right, privilege, obligation or liability acquired,*



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*accrued or incurred under the Act so repealed; or*  
*(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or*  
*(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.”*

The right accrued to the *Smt. Santa Dey* under the previous Act and the remedy against the said right would continue to be as was by the previous Act. *Rule 170 of the DCS Rules, 2007* also provides for repeal and savings shall also be relevant since it provides as under:

*“170. Repeal and savings:- On the day in which these rules comes into force, the Delhi Co operative Societies Rules, 1973 shall stand repealed : Provided that any action taken, order issued, bye-laws made under the provisions of the Delhi co-operative societies rules, 1973 shall, in so far as it is not in-consistent with the provisions of these-rules, be deemed to have been taken, issued or made under the provisions of these rules.”*

- VIII. Accordingly, by application of *Rule 100* limitation would be only three years, whereas that was flouted by the petitioner by filing his complaint in 2011. This fact was noted by the Financial Commissioner in its order.
- IX. The other issue which came up was raised by respondent was the surrender of the *Flat No.351* which was originally allotted to *Smt. Santa Dey*. It was contended that the said flat was surrendered by her



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in 2002 and received a refund of her dues. Thereafter, she was allotted a new flat bearing *No. 336* in 2004 through a purchase from one *Sh. Biplab Guha* and was granted membership no. 796. Therefore, the original membership, in any case, did not exist in her name. Moreover, the *Flat No. 351* had been allotted to respondent no.3 who later transferred the same to respondent no. 4 her daughter and acquired *Membership No. 791*. Considering that the membership of *Smt. Santa Dey* could not be considered invalid due to the reasons given above the question of her transferring the property and acquiring a separate flat cannot be brought in question as well.

- X. Respondent no.1 had also contended that the matter has been projected as a sale by petitioner to respondent no. 3 but there was no monetary transaction between the parties and she was included as mere General Power of Attorney which was obtained by the Society as a surety that respondent no.1 does not abrogate the decision to surrender the flat at a later stage. It is only after the surrender of flat when she independently bought another flat and sought membership against the same.
- XI. The RCS had also taken into account the decision of the Division Bench of this Court delivered in *Alimuddin v. RCS (supra)* where it was held in the context of *Rule 25 (1)(c)(i) of the DCS Rule 1973* that the phrase '*in the name of*' in the said rule has been interpreted to mean the ownership must be of the member though it stands *benami* in the name of wife of her child. Even though, there was no allegation



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made that property in *Sector 9, Dwarka*, whether husband was held *benami* in the name of the wife or otherwise the acquisition by *Smt. Santa Dey*, in the society, was held *benami* in the name of husband, the reliance on *Alimuddin (supra)* was to deal with that aspect also which the Court does not find any infirmity with.

35. Winding down the discussion, the Court would like to take judicial note of the fact that petitioner is a busybody having filed multiple litigations in relation to the said Society before this Court and various other forums which has been listed as part of reply to the Revision Petition filed before the Financial Commissioner.

36. However, aside from this, it must also be noted that there is a cloud on the expulsion of petitioner from the society itself. The facts are noted in *paragraph nos. 11-16*. The expulsion which was done by Society on 27<sup>th</sup> June 2010 was rejected by RCS *vide* order dated 10<sup>th</sup> April 2012. The DCT then set aside the order of the RCS on 3<sup>rd</sup> March 2014 and remanded the case back to the RCS for deciding it afresh. The Society preferred writ petition before this Court for quashing the DCT's order and the Court set aside both the RCS's order and the DCT's order by passing order dated 29<sup>th</sup> May 2015.

37. Against this order of the High Court, Review Petition was filed, however, on 14<sup>th</sup> August 2015, the same was withdrawn with liberty to seek legal remedy before the DCT under the DCS Act of 2003. The petitioner preferred an appeal before the DCT which is currently *sub judice* and is listed for hearing on 19<sup>th</sup> January 2026. Additionally, the petitioner invoked arbitration under the DCS Act, 2003 against the society regarding his



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expulsion and by order dated 10<sup>th</sup> August 2016, the termination was quashed with directions to restore the membership of the society. The award was finally upheld by the DCT *vide* Order dated 16<sup>th</sup> August 2018 and the petitioner sought restoration of membership. The Society has filed a petition being *W.P(C) 1906/2023* which was dismissed as withdrawn *vide* order dated 7<sup>th</sup> August 2023.

38. The petition is, therefore, dismissed. Pending applications, if any, are rendered infructuous.

39. Judgment be uploaded on the website of this Court.

**ANISH DAYAL  
(JUDGE)**

**NITIN WASUDEO SAMBRE  
(JUDGE)**

**MARCH 12, 2026/ak/zb**