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

Date of decision: 16th April, 2026
Uploaded on: 18th April, 2026

\+ **W.P.(C) 6843/2024 & CM APPL. 28525/2024**

PANNA LAL KAPOOR SINCE DECEASED THROUGH LEGAL REPRESENTATIVE PARVEEN KAPOOR .....Petitioner

Through: Mr. Rahul Malhotra, Mr. Chirag Goyal, Ms. Manika Mudgal, Advs. with petitioner in person.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ORS. .....Respondents

Through: Mr. Abhinav Sharma, Adv.

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\+ **W.P.(C) 6845/2024 & CM APPL. 28530/2024**

PAWAN KAPOOR .....Petitioner

Through: Mr. Rahul Malhotra, Mr. Chirag Goyal, Ms. Manika Mudgal, Advs. with Petitioner in person.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ORS. .....Respondents

Through: Mr. Abhinav Sharma, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. These are two petitions filed under Articles 226 and 227 of Constitution of India, *inter alia*, challenging the orders dated 18th October, 2011 passed by the Financial Commissioner in ***Case No. 412/2010-CA*** and ***Case No.***

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412/2010-CA in the Revision petitions filed by the Petitioners under Section 80 of the Delhi Co-operative Societies Act 1972**.** Challenge is also to the order dated 9th January, 2024 also passed by the Financial Commissioner in Review petition being ***Case No. 102/2019*** and ***Case No. 103/2019*** filed under Section 115 of the Delhi Co-operative Societies Act, 2003.

3. The brief background of the present petitions is that there were three brothers - Mr. Kewal Kishan Kapoor, Mr. Panna Lal Kapoor and Mr. Manohar Lal Kapoor.

4. Two brothers viz., Mr. Kewal Kishan Kapoor and Mr. Manohar Lal Kapoor were members of the Respondent No. 2-Arawali Cooperative Housing Society Ltd. (*hereinafter 'Society'*). The membership was obtained by Mr. Kewal Kishan Kapoor and Mr. Manohar Lal Kapoor in the year 1996. In 2001, Mr. Kewal Kishan Kapoor transferred his membership to his brother namely, Mr. Panna Lal Kapoor *i.e.,* the Petitioner in ***W.P.(C) 6843/2024.*** Mr. Manohar Lal Kapoor transferred his membership to his son namely, Mr. Pawan Kapoor *i.e.*, the Petitioner in ***W.P.(C) 6845/2024.***

5. Mr. Panna Lal Kapoor was allotted flat bearing No. A-4 in the Society and Mr. Pawan Kapoor was allotted flat bearing No. H-101 in the Society. A complaint was filed by Respondent No. 3 – Mr. Ashok Aggarwal that the allotment of the Petitioners is liable to be cancelled on the ground that on the date when the Petitioners' predecessors, *i.e.*, Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor obtained the membership of the Society, they and their wives were co-owners of property bearing no. BM – 44, Shalimar Bagh, West, Delhi. Therefore, the disqualification under Rule 25 of the Delhi Cooperative Societies Rules, 1973 was attracted. In view thereof, the allotment deserves to be cancelled as per the complainant.

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6. Pursuant to the said complaint, Show Cause Notices (hereinafter, *'SCNs'*) were issued to both the Petitioners on 12th November, 2002 and the replies to the said SCNs were filed by the Petitioners respectively.

7. The Registrar Cooperative Societies (hereinafter, *'RCS'*) passed an order on 18th April, 2004 and 18th May, 2004 holding that the membership of Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor was liable to be cancelled. The findings of the RCS were that Mr. Kewal Kapoor, Mr. Manohar Lal Kapoor and their wives owned half share in the property, therefore the proviso to Sub-Rule of 25(1)(i)(c) of the Delhi Cooperative Societies Rules, 1973 would not be applicable. The findings of the RCS in the order dated 18th April, 2004 in ***W.P.(C) 6843/2024*** are set out below:

> *"In the instant case the transferor Mr. Kewal Krishan Kapoor was holding property No. BM 44, Shalimar Bagh (WEST) measuring 207 sq metres in his own name and in the name of his wife Smt Promila Kapoor to the extent of ½ consolidated share (103.5 sq mtrs) at the time of transfer of membership in the name of the respondent Shri Panna Lal Kapoor and got the membership transferred by furnishing false affidavits supported by indemnity bonds to keep the lessor fully indemnified against such transfer. The fact remains that the transferor and his spouse were co-owners and in possession of ½ share of Property No BM-44 Shalimar Bagh (West), Delhi measuring 207 sq mts at the time of transfer of membership in the name of Respondent on the basis of General Power of Attorney and agreement for sale since July, 2985 and he was at liberty to get the conveyance deed executed at this convenience which he preferred to get done only on 16th May, 2000. The respondent has tried to create a cloud over the illegal membership of Mr Kewal Krishan Kapoor by*

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getting the same transferred in his name in connivance of each other with ulterior motives and dishonest intentions. The respondent is also not covered by the proviso to Sub-rule 25(1) (i) (c) as the consolidate share of the transferor jointly with his wife was more than the permissible limit of 66.72 sq metres. Thus the plea taken by the respondent is otherwise dishonest to his own knowledge and directly in contravention to the records placed in file and is thus liable to be rejected.

I have gone through the records available on file heard the oral as well as written submissions of both the parties. Rule 25 (1) (c) (i) of the D.C.S Rules, 1973 prohibits a person from becoming a member of a housing society who owns a residential house or a plot of land for the construction of residential house either in his own name or in the name of his/her spouse or in the name of any of his dependent children, on lease hold or freehold basis or on power of attorney or on agreement for sale, provided further that the said disqualification of membership as laid down in sub-rule (1) (c) (i) of Rule 25 shall not be applicable in case of co-shares of property whose share is less than 66.72 sq metres of land. ***The respondent is also not covered by the proviso to Sub-rule 25(1)(i)(c) as the consolidate share of the transferor jointly with his wife was more than the permissible limit of 66.72 sq metres. Thus the plea taken by the respondent is otherwise dishonest to his own knowledge and directly in contravention to the records placed in file and is thus liable to be rejected.***

Sub-rule of Rule 25 also provides that notwithstanding anything contained in the rules or the bye-laws of the co-operative society, if a member becomes, or has already become, subject to any

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disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when disqualifications were incurred. ***In the instant case the original allotee Shri Kewal Krishan Kapoor was disqualified to remain as member of the society under Rule 25 of the DCS Rules, 1973 at the time of transfer of membership in the name of Shri Panna Lal Kapoor and a such the membership of Shri Panna Lal Kapoor is liable to be ceased.***

Therefore, considering the facts and circumstances of the case I. N. Diwakar, Registrar, Co-operative Societies, GNCTD of Delhi, hereby cease the membership of Shri Panna Lal Kapoor having membership No. 200 in Arawali Co-operative Group Housing Society Ltd. u/r 25 of D.C.S Rules, 1973 with immediate effect and the society is directed to take necessary steps for the compliance of this order. "

8. The findings of the RCS in the order dated 18th May, 2004 in ***W.P.(C) 6845/2024*** are set out below:

" In the instant case the transferor Shri Manohar Lal Kapoor was holding property No. BM-44 Shalimar Bagh (West) measuring 207 sq meters in his own name and in the name of his wife Smt. Neena Kapoor to the extent of ½ consolidated share (103.5 sq meters) at the time of transfer of membership in the name of the respondent Shri Pawan Kapoor and got the membership transferred by furnishing false affidavits supported by indemnity bonds to keep the lessor fully indemnìfied against such transfer. The fact remains that the transferor and his spouse were co-owners and in possession of Property No. BM-44, Shalimar Bagh (West), Delhi measuring 207 sq. mts of the time of transfer of membership in the

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name of Respondent on the basis of General Power of Attorney and agreement for sale since July, 1985 and were at liberty to get the conveyance deed executed of their convenience which they preferred to get done only on 16th May, 2000. The respondent has tried to create a cloud over the illegal membership of Shri Manohar Lal Kapoor by gett¡ng the same transferred in his name in connivance of each other with ulterior motives and dishonest intentions. ***The respondent is also not covered by the proviso to Sub-rule 25 (1) (i) (c) as the consolidate share of the transferor jointly with his wife was more than the permissible limìt of 66.72 sq. meters. Thus the plea taken by the respondent is otherwise dishonest to his own knowledge and directly in contravention to the records placed in file and is thus liable to be rejected.***

I have gone through the records available on file, heard the oral as well as written submissions of both the parties. Rule 25(1)(c)(i) of Delhi cooperative Societies Rules, 1973 prohibits a person from becoming a member of a housing society, who owns a residential house or a plot of land for the construction of a residential house either in his own name or in the name of his/her spouse or in the name of any of his dependent children, on lease hold or freehold basis or on power of attorney or an agreement for same, provided further that the said disqualification of membership as laid down in sub-rule(1)(c)(i) of Rule 25 shall not be applicable in case of co-shares of property whose share is less than 66.72 sq. metres of land. ***The respondent is also not covered by the proviso to Sub-Rule 25(1)(i)(c) as the consolidate share of the transferor jointly with his wife was more than permissible limit of 66.72 sq. meters. Thus the plea taken by the respondent is otherwise dishonest to his own knowledge and directly in contravention to***

<u>the records placed in file and is thus liable to be rejected.</u>

Sub-rule 2 of Rule 25 also provides that notwithstanding anything contained in the rules or the byelaws of the co-operative 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 disqualifications were incurred. In the instant case the original allottee Shri Manohar Lal Kapoor was disqualified to remain as member of the society under Rule 25 of Delhi Cooperative Societies Rules, 1973 at the time of transfer of membership in the name of Shri Pawan Kapoor and as such the membership of Shri Pawan Kapoor is liable to be ceased.

Therefore, considering the facts and circumstances of the case I, N. Diwakar, Registrar, Co-operative Societies, GNCT of Delhi, hereby cease the membership of Shri Pawan Kapoor having membership No.57, in Arawali Co-operative Group Housing Society Ltd. u/r 25 of Delhi Cooperative Societies Rules, 1973 with immediate effect and the society is directed to take necessary steps for the compliance of this order.

Announced."

9. These orders were challenged by the Petitioners before the Financial Commissioner, who also came to the same conclusion and held that it has not been established that Smt. Parmila Kapoor, wife of Shri. Kewal Kapoor and Smt. Neena Kapoor, wife of Shri Manohar Lal Kapoor had the resources to purchase one-fourth of the property *i.e.*, BM – 44, Shalimar Bagh, West, Delhi in their own right. The finding therefore, was that Smt. Parmila Kapoor-Shri.Kewal Kapoor and Smt. Neena Kapoor- Shri Manohar Lal Kapoor together owned more than half the property and hence, the disqualification

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was attracted. A review petition was filed in respect of the said orders dated 18th October, 2011 which was also dismissed on 9th January, 2024.

10. The submission of Mr. Malhotra, ld. Counsel appearing for the Petitioners is that the disqualification would not be attracted as firstly, the one-fourth share of the house in Shalimar Bagh was duly reflected in the Wealth Tax returns of the wives and secondly, in any case the area of the said one-fourth share would be less than 66.72 sq. metre.

11. Further it is submitted that the Respondent No. 3 was a chronic litigant who had filed baseless complaints against the Petitioners. It is also argued that since inception, the Petitioners have been in possession of the aforementioned flats.

12. Reliance is also placed upon the decision of a Co-ordinate Bench Court in ***R.K. Aggarwal v. Registrar of Cooperative Societies, MANU/DE/1116/2023*** wherein the Court has held that the phrase *'in the name of'* has been interpreted in the decision in ***Alimuddin v. The Registrar of Cooperative Societies & Ors., MANU/DE/1001/1996*** and for the said disqualification to be attracted, the property has to be in the name of the allottee itself. Ld. Counsel submits that even if the property is held to be *benami* in the name of the wife, the disqualification would not be attracted.

13. As against Mr. Malhotra's submissions, Mr. Abhinav Sharma, ld. Counsel for the RCS submits that on facts, the Financial Commissioner had come to the conclusion that the source of funds was not shown and in fact, the Financial Commissioner has analysed the record and arrived at the factual finding that the property belonged to Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor and not to their wives. Thus, according to Mr. Sharma, the disqualification is attracted and the impugned orders do not deserve to the be

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interfered with.

14. The Court has considered the matter. Firstly, it is relevant to point out that the allegation in this case is that the original membership of Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor deserves to be cancelled. The membership of Mr. Kewal Kapoor was transferred to his brother *i.e.,* Panna Lal Kapoor and the membership of Mr. Manohar Lal Kapoor was transferred to his son *i.e.,* Pawan Kapoor. The flats were allotted in 2001 and for the last 25 years, the flats have been in their possession. The allegation that the disqualification was attracted by the original member has been considered in this context inasmuch as the present members are not attracted with the same disqualification.

15. The Financial Commissioner has considered the Income Tax and Wealth Tax returns but has held that it has not been proved on record that Smt. Parmila Kapoor and Smt. Neena Kapoor were independent legal entities. The property in Shalimar Bagh was purchased in 1985. The production of the bank statements, etc. could not have been expected as almost 20 years had passed. The Wealth Tax returns which have been placed on record clearly reflect that one-fourth of the property is standing in the name of Smt. Parmila Kapoor and Smt. Neena Kapoor. Despite the returns having demonstrated to have been in the names of the wives, the conclusion on facts that the amount for the same could have been paid by Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor would be in the realm of speculation. There is no evidence to the effect that either Smt. Parmila Kapoor or Smt. Neena Kapoor did not have the resources or that they did not make the payment for the one-fourth share.

16. The Court has to go by the Income Tax returns and Wealth Tax returns which are on record which clearly shows that the Smt. Parmila Kapoor and

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Smt. Neena Kapoor owned one-fourth share of the Shalimar Bagh property respectively. Moreover, even insofar as the disqualification itself is concerned, there is an exemption in the Proviso to Rule 25 (1) C of the Delhi Cooperative Societies Rules, 1973. The said proviso reads as under :

> *"Rule 25:*
> *Disqualification of membership*
> *(1) No person shall be eligible for admission as a member of a cooperative Society if he……*
> *(a) …………*
> *(b)……………*
> *(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 his dependent children on lease hold or free hold basis:*
>
> *provided, disqualification as laid down in Sub-rule (1)(c)(i) shall not be applicable in case of persons who are only cosharers of joint ancestral properties in congested localities (Slum Area)* ***whose share is less than 66.72 sq. meters (80 sq. yards) of land****."*

17. A perusal of the above would show that if the share of the property is less than 66.72 sq. metre, the disqualification would not be attracted. The share of Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor is less than 66.72 sq. metres in the Shalimar Bagh property. Thus, on both these grounds, the original membership of Mr. Kewal Kapoor and Mr. Manohar Lal Kapoor is not in jeopardy.

18. The Proviso thus supports the case of Mr. Kewal Kapoor and Mr.

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Manohar Lal Kapoor and therefore, the disqualification is meritless. This Court in various other decisions has taken a view that the property has to be in the name of the person who has applied for membership It was held in ***R.K. Aggarwal (Supra)***, by the Ld. Division Bench as under:

> *"15. Reference may next be made to J.K. Gupta, Dr. Vs. Registrar of Coop. Societies & Ors., 2010 (116) DRJ 131 (DB). In the aforesaid case, a petition under Article 226 of the Constitution of India was preferred for quashing of order dated 15.05.2008 passed by the Financial Commissioner, Delhi upholding the order dated 05.07.2001 passed by respondent No.1 Registrar of Cooperative Societies ceasing the membership of petitioner with respondent No.2 Society. The petitioner therein was enrolled as a member of respondent No.2 Society vide decision of Managing Committee dated 25.10.1990. A show-cause notice was issued to the petitioner alleging that his wife owned a property at Multani Dhanda, New Delhi which was a disqualification under Rule 25(1)(c) of DCS Rules, 1973. It was claimed by the petitioner that the same was purchased by his wife from her own funds in her own name and the said property was commercial and of small size and as such disqualification under Rule 25 was not attracted. However, the respondent ceased the membership of the petitioner vide order dated 05.07.2001, against which a revision was preferred under Section 80 of the DCS Act, 1972 before the Financial Commissioner on 23.08.2001. The Financial Commissioner dismissed the revision petition vide order dated 17.08.2007 upholding the finding of RCS.*
>
> *It was contended on behalf of the petitioner that membership of the petitioner could not have been ceased under Rule 25(1)(c)(i) of the Rules, had the property at Multani Dhanda been owned by the*

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petitioner in his own name or in the name of his wife. ***It was further contended that the phrase "in the name of" as stated in Rule 25(1)(c)(i) means ownership must be of the member though it may stand benami in the name of his wife or child and reliance was placed upon Alimuddin Vs. The Registrar of Co-operative Societies & Ors., C.W.P. No.5551/1993 reported in 63 (1996) Delhi Law Times 655 (DB).***

The said contentions were opposed on behalf of the Respondent contending that bye-laws of the Society did not permit the Petitioner to become its member. The observations of the Division Bench in para 6 & 7 may be beneficially reproduced:

> *"6. We have considered the submissions made and perused the record. The relevant portion of Rule 25 of the Rules under which petitioner is sought to be disqualified is reproduced as under:- "Rule 25:*
> *Disqualification of membership*
> *(1) No person shall be eligible for admission as a member of a cooperative Society if he……*
> *(a) ……………*
> *(b)………………*
> *(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 his dependent children on lease hold or free hold basis:*

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provided, disqualification as laid down in Sub-rule (1)(c)(i) shall not be applicable in case of persons who are only cosharers of joint ancestral properties in congested localities (Slum Area) whose share is less than 66.72 sq. meters (80 sq. yards) of land."

Rule 25(1)(c)(i) has been interpreted in three decisions of this court,
i.e., O.P. Sethi v Lt. Governor MANU/DE/0678/1991 : 45(1991)DLT 426, Navjeevan Co-operative House Building Society Ltd v Delhi Cooperative Tribunal : CWP 3150/1985 decided on 10.07.1987 and Shri Sita Ram Jain v Registrar of Co-operative Societies : CWP 3203/1992 decided on 15.11.1995.

Relying on the aforesaid judgments, a Division Bench of this court in Alimuddin's case (supra) observed as under:-

"The view taken by this Court has been that to attract the applicability of Rule 25(1)(c)(i), the member of the Society must own a residential house or a plot of land for the construction of a house in his own name or in the name of his spouse or a dependent child. The phrase "in the name of" has been interpreted to mean the ownership must be of the member though it may stand Benami in the name of the wife or a child."
We have also followed the same view in two cases decided by us recently which are as under:-

(i) Jagdish Chander v Lt Governor and Ors, W.P.(C) No. 1646/1995 decided on 22.07.2009 and,

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(ii) Krishan Kumar Sachan v The Lt Governor and Ors, W.P.(C) No. 417/1995 decided on 10.08.2009.

7. In the present case, the membership of the petitioner has been ceased by respondent no. 1 by holding that property bearing no. 8315, Multani Dhanda, Paharganj, New Delhi is held by petitioner as "Benami" and therefore the disqualification as stated in Rule 25(1)(c)(i) is attracted in the present case. The said finding is also upheld by the Financial Commissioner, Delhi vide impugned order dated 15.05.2008. It may be mentioned that the petitioner has throughout contended before the respondent no. 1 and Financial Commissioner as well as stated in reply to the show cause notice that the said property is in the name of his wife who has purchased it from her own funds. There is an affidavit of the petitioner and his wife before the respondent no. 1 in this regard. Petitioner has also categorically stated in the affidavit that his wife is the owner of the same and she has purchased it from her own resources. Petitioner has also placed on record Income Tax Returns of his wife to substantiate the same. Petitioner has also placed on record material to show that the said property is assessed in the name of his wife and in the records of the municipal authorities, the same is mutated in her name. "Agreement to sell" of the property in question is in the name of his wife. But none of these aspects have been considered by the respondent no. 1 or by the Financial Commissioner. The other contention of petitioner is that said property is commercial in nature and, in any event, provisions of Rule 25 of the Rules are not attracted in the present

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case. In support of his contention, petitioner has relied upon notice issued by the DDA to the previous owner of the property under Section 7(3) of Public Premises (Eviction of Unauthorized Occupant) Act. The said notice shows that property is commercial in nature. There is also no finding on aforesaid contentions of petitioner – i.e., about nature of property i.e. whether the same is residential/commercial and as regards the funds as to who had purchased it. The contention that the finding about size of the property is not being given by respondent no. 1 and Financial Commissioner is immaterial in as much as it is not the stand of petitioner that property in question is coming as a share of joint ancestral property. We have perused the "Agreement to Sell" in respect of property in question. The same shows that property is a "house". Even considering the property in question to be residential, the finding given in the impugned order that same is held by the petitioner as "Benami is not based on any material on record. Rather, evidence on record is to the contrary. 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

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the present case…"

<u>In view of above, it was held that the petitioner did not incur any disqualification under Rule 25(1)(c)(i). The orders passed by the FC and RCS were accordingly set aside.</u>"

19. Following the above judgment, this Court is of the view that the disqualification is not attracted even in the present case. Accordingly, the orders of the Financial Commissioner dated 18th October, 2011 and 9th January, 2024 and the orders of the RCS dated 18th April, 2004 and 18th May, 2004 are set aside.

20. The Society has also not filed any reply in the present case. The allotment in favour of Shri Panna Lal Kapoor and Shri Pawan Kapoor shall now proceed forward.

21. Accordingly, subject to the Petitioners having cleared all the maintenance and other charges payable to the Society, let the Society recommend the name of the Petitioners to the Delhi Development Authority (hereinafter, *'DDA'*) for the allotment of the flats in favour of the Petitioners.

22. The Petitioners are also free to apply to the DDA for conversion from the lease hold to free hold, if so advised.

23. The petitions are allowed in above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

APRIL 16, 2026/*ys/ck*

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