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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8371/2024 & CM APPL. 34484/2024, CM APPL. 34485/2024**

Date of decision: 30th January, 2026
Uploaded on: 5th February, 2026

R K TOLANI

.....Petitioner

Through: Mr. Amit Sharma and Ms. Rashi Kaushik, Advs.

versus

ESIC FRIENDS CO-OPERATIVE GROUP HOUSING SOCIETY
LIMITED & ORS.Respondents

Through: Mr. Sandeep Kumar, Adv for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner– Mr. R.K. Tolani, having a long and chequered history.
3. According to the Petitioner, he originally became one of the founding members of the ESIC Friends Cooperative Group Housing Society Ltd. (*hereinafter, 'the Society'*) in the year 1981. He was further re-issued the share certificate of the Society in 1997.
4. The Petitioner is stated to have taken a loan from the LIC in 1999 for the allotment of his flat in the Society and thereafter, regularly paid the instalment amount.
5. Sometime in 2007, the grievance of the Petitioner was that the cost of



the flat was increased from Rs. 1.20 Lakhs to 3.60 Lakhs, then to 4.95 Lakhs and thereafter, to Rs.6.85 Lakhs. Thus disputes arose between the various aggrieved members and the Society, which led to filing of a Petition u/s 70 of the Delhi Cooperative Societies Act, 2006 (*hereinafter, 'the DCS Act'*), for arbitration and for adjudication on the allotment of flats.

6. With respect to the said disputes, claim petition was admitted *vide* order dated 25th March, 2008 passed by the RCS and reference was made for adjudication of disputes. In the said order, one Mr. Mohan Lal Dawar was appointed as the Sole Arbitrator to adjudicate upon the disputes.

7. The Society then challenged this order dated 25th March, 2008 and an appeal was filed u/s 112 of the DCS Act. The said appeal was rejected by the Cooperative Tribunal, Delhi, *vide* order dated 1st June 2009.

8. The said order dated 1st June 2009, passed by the Cooperative Tribunal, Delhi, was challenged by the Society before this Court in ***Writ Petition (Civil) No. 8998/2009*** titled ***ESIC Friends Cooperative Group Housing Society Ltd. vs. Sh. R.K. Tolani & Ors.***

9. In the said writ petition, Id. Division Bench of this Court, *vide* order dated 10th February, 2010, issued various directions to the following effect:

*"17. For the time being, we are only taking a *prima facie* view without opining in any manner on the merits of the rival contentions or the claims made by either party. Balance of convenience, interests of justice and equity persuade us to pass certain directions. We are of the considered opinion that in case the writ petition ultimately fails, there can be no adequate monetary compensation for the loss of home to a person for all these years. On the other hand, appropriate orders for restitution can be passed, if the petitioner succeeds.*



10. In view of the above position, having regard to the facts and circumstances aforesaid and in the interests of justice, we issue the following directions:-

- (i) The respondent no.1 shall deposit an amount of Rs.2,00,000/- in this court within a period of four weeks from today. This amount as and when deposited shall be kept in a fixed deposit initially for a period of 13 months by the Registrar, to be kept renewed till final outcome of the writ petition;
- (ii) Other than any requirement of further payment to the petitioner, the respondent no.1 shall complete all formalities which are required to be completed in terms of the Schedule 7 of the Delhi Cooperative Societies Rules, 2007;
- (iii) The counsel for the petitioner shall be duly informed of the said deposit and completion of formalities by the respondent no.1. The petitioner society shall inform the Registrar, of Cooperative Societies of the compliance of steps (i) and (ii) above within two weeks of the issuance of the intimation at (iii) above.
- (iv) Subject to the completion or directions at serial nos. (i). & (ii) above and communication thereof to the Registrar of Cooperative Societies by the petitioner, the Registrar of Cooperative Societies shall forward the name of the respondent no.1 to the DDA for holding of a draw of lots from the available flats within a period of four weeks from the receipt of the intimation of compliance by the respondent no.1.
- (v) The respondent no.1 shall be allotted and handed over possession of the flat as per the draw of lots, in any case, within a period of four months from the date of the communication of compliance at (iii) above.
- (vi) the allotment and possession shall abide by final



outcome of the writ petition;

(vii) the respondent no.1 shall not transfer, alienate or part with possession or make any permanent alterations or constructions in the allotted flat other than such essential to render it habitable.

viii) if ultimately so ordered, the respondent no.1 shall be liable to restore the flat to its original position before restoration of possession to the petitioner.

List this petition for consideration on 10th May, 2010.

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10. Further, in the said order, the Court took into consideration the fact that Mr. Tolani- the Respondent had made a payment of more than approximately Rs.5,84,860/- upto the year 2000 and that he is similarly placed with seven other Petitioners in **W.P.(C) 13556/2001**. The said relevant portions of this order dated 10th February, 2010, are set out below:

“10. It is admitted by Mr. Sandeep Kumar, learned counsel for the petitioner that Shri V.P. Saini has paid only an amount of Rs.6,33.000/- and has been allotted Flat No 231 in the petitioner society It is also an admitted position that possession of the flat was handed over to Shri Ved Prakash Saini in April, 2001 and he continuous to enjoy the possession thereof

11. Our attention is also drawn to WP (C) No 13556/2001 entitled C.P. Dharmesh & Six Others Vs.

Registrar Cooperative Societies to ors. The seven petitioners in this petition are members of the ESIC friends. Cooperative Group Housing Society (present petitioner) similarly situated as the respondent in the



present writ petition All these petitioners are stated to have made payment of amounts between Rs.6,00,000/- to Rs 7,00,000/- These seven persons have been allotted flats and have been put in possession thereof as back as in the year 2001. 12. The record which has been produced before us shows that it is an admitted position that the respondent before us has made payment of approximately Rs 5,84,860/- upto the year 2000 There is no dispute that respondent is similarly placed as Shri V.P. Saini and the seven petitioners in WP (C) No.13556/2001.”

11. The above order of the Division Bench was considered by the 1d. Arbitrator- Mr. Mohan Lal Dawar and he came to the following conclusion in order dated 28th February, 2010:

“Thereafter the Hon'ble High Court in the same order dt. 10.2.2010 given certain directions to the society as well as the claimant herein for compliance and adjourned the said writ petition to 10.5.2010 for consideration. A copy of the said order is also placed before the undersigned by the claimant along with application dt. 24.2.2010.

As stated above since the main relief of the claimant in the present case was only to the extent that he be treated at par with others and be allotted flat and handed over the possession of the flat without charging any further amount than the amount i.e. Rs.5,85,860/- upto 2000, he has already paid to the society, till the finalization of the cost of the flat by an expert committee as per the order of the Registrar passed on 17.2.2003. The order dt. 10.2.2010 as passed by the Hon'ble High Court of Delhi has already taken care of the aforesaid relief as sought by the claimant in the present claim petition. The present claim petition of the claimant



therefore stands disposed of in view of the directions given by the Hon'ble High Court of Delhi in its order dt. 10.2.2010 to both the parties.”

Thus, the award, in effect, reiterated the order passed by the Division Bench dated 10th February, 2010.

12. As can also be seen from the above order dated 10th February, 2010, Mr. Tolani, who was Respondent No.1 therein, was directed to deposit an amount of Rs. 2 lakhs in Court within a period of four weeks.

13. The said deposit was duly made by Mr. Tolani on 9th March, 2010. The formalities were then to be completed of any other deposit which were to be made and within two weeks thereafter, the names were to be forwarded for the draw of lots and possession of flat was to be handed over.

14. The case of Mr. Tolani is that the total payment of Rs.7,85,860/- has been made by him. Despite the same, the possession of the flat was not given to him.

15. This led to another order dated 10th May, 2010, being passed by the ld. Division Bench of this Court in ***Writ Petition (Civil) No. 8998/2009***, wherein the following directions were issued:

“Rule DB.

Learned counsels for respondents 1 and 2 accept notice.

Respondent No.3 is a formal party.

At request of learned counsels for the parties the petition is taken up for final disposal.

Learned counsels for the parties state that the present writ petition be also disposed of in terms of the directions passed in WP (C) No.3287 /2008 with certain modifications.

The only modifications are:



i. The amount of Rs.2.00 lakh deposited by respondent No.1 with the Registrar of this Court in pursuance to order dated 10.2.2010 be released to the petitioner Society.

ii. The possession of the flat be handed over by the Society to respondent No.1 after completion of necessary formalities within a period of one (1) month from today. This in turn would entail that the Registrar, Co-operative Societies and DDA should take necessary actions expeditiously to facilitate the Society to hand over possession of the flat to respondent No.1.

iii. The costs imposed of Rs.10,000.00 vide order dated 10.2.2010 should be paid to respondent No.1 separately and be not adjusted out of the account of respondent No.1 with the Society.

The petition stands accordingly disposed of.”

16. *Vide* the above stated order dated 10th May, 2010, therefore, the amount of Rs. 2 lakhs were to be released to the Society and Mr. Tolani was to be given the possession of the flat, after competition of necessary formalities.

17. However, the Petitioner's journey did not end here. Further demands were raised against the Petitioner by the Society. Despite repeated letters, when the flat was not allotted to Mr. Tolani, a contempt case was filed by him bearing ***Contempt Case No. 221/2013***, citing inaction and deliberate violation of orders dated 10th February, 2010 and 10th May, 2010 passed by this Court in ***Writ Petition (Civil) No. 8998/2009***.

18. The said ***Contempt Case No. 221/2013*** was, however, dismissed as withdrawn for having been filed beyond the period of limitation.

19. The Petitioner continued to receive notices thereafter from the Society for expulsion from the membership on the ground that the due amounts have not been paid to the Society. In the expulsion notices issued subsequently to



Mr. Tolani by the Society, the following amounts were demanded:

S.NO.	DATE OF THE NOTICE	DEMAND RAISED
1.	26 th July, 2023	RS.13,89,925/-.
2.	18 th October, 2023	RS.14,15,860/-.

20. On 30th December, 2023, a notice of show cause as to why Mr. Tolani ought not to be expelled from the membership of the Society was issued by the Society. A reply to the said show cause notice was filed by Mr. Tolani, wherein he took the stand that the Managing Committee is proceeding in an incorrect and erroneous manner.

21. The present writ petition was then filed challenging the said expulsion notices and seeking the following prayers:

“a. pass a Writ in the nature of mandamus or other writ, order or direction, thereby directing the respondent No.1 to give possession of the Flat by allotting the remaining flat to the petitioner, and/or;
b. pass a writ in the nature of Certiorari or other writ, order or direction, thereby quashing/setting aside the Notice dated 26.07.2023, 18.10.2023 and 30.12.2023 issued by respondent No.1 being illegal and void; and/ or
c. pass a Writ in the nature of mandamus or other Writ, Order or Direction, thereby, directing Respondent No.2 to compensate either through interest @ 24% on the amount of Rs. 2 lakhs deposited by the petitioner w.e.f. the respective date of deposit till date of allotment with possession of flat, and / or compensate the petitioner by paying average annual rent of Flat since May,2010 till its actual allotment with possession of flat;
d. Litigation costs to the petitioner;”



22. *Vide* a detailed order dated 1st June, 2024, the contentions of the parties were recorded by this Court. Notice was also issued in this petition and a direction was issued, stating that the Petitioner's membership or the allotment was not to be cancelled. Further direction was also given to the Secretary and President of the Society to remain present in Court. Relevant portion of the said order dated 1st June, 2024 reads as under:

"6. He states that Respondent No. 1 has issued notices to the Petitioner dated 26th July, 2023 and 18th October, 2023, whereby a demand was raised for an amount of Rs. 13,89,925. He states that watch and ward charges and maintenance charges and penal interest thereon cannot be demanded from the Petitioner without handing over the possession of the flat. He states that further, a show cause notice dated 30th December, 2023 was issued by Respondent No.1-society for expulsion of his membership from Respondent No. 1 society on the ground of non-payment of the amount to the society.

7. Issue notice. Mr. Sandeep Kumar, learned counsel accepts notice on behalf of Respondent No.1. Mr. Sameer Vashisht, learned Additional Standing Counsel (Civil), GNCTD accepts notice on behalf of Respondent No.2 and Ms. Manika Tripathy, learned Standing Counsel for Delhi Development Authority (DDA) accepts notice on behalf of Respondent No. 3. They pray for and are permitted to file their counter affidavits within four weeks. Rejoinder affidavits, if any, be filed before the next date of hearing.

8. Till further orders, the Respondents shall not cancel either the petitioner's membership or his allotment.

9. The Secretary and the President of the Respondent No.1-society shall be personally present in Court on the next date of hearing."



23. The petition has been taken up for hearing today.
24. Ld. Counsels appearing for all parties have been heard today and the various demands being made by the Society have been perused.
25. On behalf of RCS, it is submitted that on 8th October, 2024 the Court had directed the RCS to have a meeting with the managing committee and resolve the disputes with the Petitioner. However, the Society continued to take the position that the Petitioner is in default.
26. This Court, upon hearing the arguments made on behalf of all the parties, is of the view that it is not clear as to whether the amount of Rs. 2 lakhs deposited by the Petitioner pursuant to the orders dated 10th February, 2010 and 10th May, 2010 passed by this Court in **Writ Petition (Civil) No. 8998/2009** has been adjusted in the demands raised, or not.
27. It is further noted that the Society continues to charge watch and ward charges and despite the payment of Rs. 2 lakhs, the Petitioner continues to wait for the last 15 to 16 years after orders have been passed in his favour, and is still not getting the possession of his flat.
28. In the opinion of this Court, such a situation cannot be condoned. Even today, there is no clarity as to how and in what manner the Society is raising the demands on the Petitioner.
29. Accordingly, in the opinion of this Court, the Petitioner's case has to be treated as one which is exceptional in nature, given that the Petitioner has been litigating with the Society despite being one of the founder members of the Society itself since 1981. More than 45 years have passed and the dispute deserves to be brought to an end at this stage.
30. In the orders that have been passed by Ld. Division Benches of this Court on 10th February, 2010 and thereafter on 10th May, 2010, the proper



time schedule was fixed for handing over the possession of flat to the Petitioner.

31. In the order dated 10th February, 2010, it was recorded that four flats are available for allotment and handover possession. The amount, as directed in the order dated 10th May, 2010, was also deposited by the Petitioner.

32. Despite all this, the Society not only continues to hold back the possession of the flat, but also continues to raise demands on the Petitioner.

33. In any event, since the Petitioner has yet not been given the possession of the flat, charging of any maintenance charges, watch and ward charges etc. would be completely unreasonable.

34. Accordingly, it is directed that irrespective of whatever amount may be due to be payable by the Petitioner as per the Society, which this Court is not convinced about, the physical possession of the flat shall be given to the Petitioner.

35. This order shall be treated as the No Objection Certificate by the Society to the RCS, which shall recommend the name of the Petitioner for allotment of the flat to the DDA. The DDA shall thereafter allot the flat to the Petitioner, subject to any conversion charges or other amounts that may be required to be paid to the DDA.

36. With effect from January, 2026, all charges of the Society, including the maintenance and watch and ward charges would be liable to be paid by the Petitioner, subject to the possession being given within three weeks from the date of this order.

37. The Court is inclined to impose heavy costs on the Society. However, if the possession is handed over within three weeks and the dispute is brought to a close, then no costs need to be paid.



38. This order has been passed in the unique facts and circumstances of this case, where the Petitioner has been made to litigate for more than three decades for the flat of the Society, despite being its original member.
39. The present petition is disposed of in these terms. Pending applications, if any, are also disposed of.
40. List on 16th March, 2026 for reporting compliance.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

JANUARY 30, 2026/prg/ss
(corrected and released on 5th February, 2026)