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

\# **CNR No. DLHC010533672026**

DATE OF DECISION: 4th November, 2026
UPLOADED ON: 10th November, 2026

\+ **W.P.(C) 16392/2026 and CM APPL. 76919/2026**

MR.SANTOSH AGARWAL & ANR. .....Petitioners

Through: Mr. Sandeep Bhuraria, Adv. with Ms. Vatsala Pandey Adv.

versus

REGISTRAR OF COOPERATIVE SOCIETIES, GOVT OF NCT OF NEW DELHI & ANR. .....Respondents

Through: Mr. Shashi Pratap Singh, Advocate for RCS.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DINESH BHATT

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by two Petitioners-Mr. Santosh Agarwal and Mrs. Sarita Agarwal under Article 226 of the Constitution of India challenging the termination of their membership by the Respondent No.2 *i.e.*, Vasundhara Apartment Cooperative Group Housing Society (hereinafter '*Society*').

3. The case of the Petitioners is that the Flat No. A-407 was initially allotted to one Mr. Balvinder Mohan Khullar, who had membership No. 349 of the Society.

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4. The said member had mortgaged the flat in favour of State Bank of Indore in respect of a loan which was advanced by the bank to an entity which was being run by Mr. Balvinder Mohan Khullar.

5. Due to non-payment of the loan, SARFAESI proceedings were initiated and the State Bank of Indore had published a sale notice. Pursuant to the sale which was made by the said Bank, the Petitioners had purchased the said property, in the sale process.

6. The Petitioners had then filed before the Delhi Development Authority (hereinafter '*DDA*') an application bearing No.133009, File No.F.9(3984)10/GH/DDA for conversion of the flat from leasehold to freehold. ***W.P. No. 5842/2015*** is stated to be pending before this Court in respect thereof.

7. The Petitioners sought transfer of the membership of the Society, in their favour.

8. The Membership was transferred but thereafter it was cancelled on 28th May 2024.

9. The same was challenged by the Petitioners by way of a civil suit which was disposed of holding that the civil court lacked jurisdiction.

10. Representations were thereafter given by the Petitioners to the Registrar of Cooperative Societies (hereinafter '*RCS*') to look into the cancellation of the membership of the Petitioners under Section 86 of the Delhi Co-operative Societies Act, 2003 (hereinafter '*the Act'*).

11. The said representations dated 28th April 2025 and the follow up thereof is placed on record.

12. The prayer in this petition is as under:-

"A) Issue a writ of mandamus or any other appropriate

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writ, order or direction in the nature of mandamus, directing the Respondent No.1 to decide the representation dated 28.04.2025 submitted by the Petitioners, challenging the cancellation of their membership vide notice dated 28.05.2024 issued by Respondent No.2/Society, in accordance with the provisions of the Delhi Co-operative Societies act, 2003; Or

B) Quash the Cancellation Notice dated May 28, 2024 issued on behalf of the Respondent No.2/Society against the Petitioners as being arbitrary, illegal and contrary to the provisions of law and principles of natural justice."

13. Mr. Sandeep Bhuraria, ld. Counsel for the Petitioner submits that though the representations have been given way back in April 2025, the RCS has not taken any action in this regard.

14. Ld. Counsel for the RCS is present and Mr. Shashi Pratap Singh, ld. Counsel accepts notice for the RCS.

15. Heard. Expulsion or termination of membership is provided for in Section 86 of the Act and Rule 99 of the Delhi Co-Operative Societies Rules, 2007. The said provisions read as under:

"Expulsion of a member.

86. (1) Notwithstanding anything contained in this Act and the rules framed thereunder, the committee of a co-operative housing society may, by a resolution, expel a member on any one or more of the following grounds, namely –

(a) if he has been a persistent defaulter in respect of any dues of the co-operative housing society; or

(b) if he has willfully deceived the co-operative housing society by making any false statement or submitting any

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false document to obtain the membership of such co-operative society; or

(c) if he has brought disrepute to the co-operative society or has done any other act detrimental to the interest and proper working of the co-operative society:

Provided that no such resolution shall be passed unless the member concerned has been given an opportunity of being heard after service of three registered notices confronting the member with the grounds for his proposed expulsion:

Provided further that no member shall be expelled unless a resolution to that effect is passed by not less than three-fourths of the members of the committee present and entitled to vote at the meeting and no resolution for expulsion shall be valid unless approved by the Registrar.

(2) After the resolution for expulsion is passed as above by the committee, the resolution shall be referred to the Registrar for approval within a period of thirty days.

(3) On the receipt of the resolution for expulsion, the Registrar shall take cognizance of such resolution within thirty days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of one hundred and eighty days and if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved :

Provided that the Registrar, before approving the resolution, shall hear the parties concerned in the manner prescribed and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and compel them to

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give evidence on oath, affirmation or affidavit and to compel production of documents by the same means and as far as possible in the same manner as provided in the case of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) and the order under this section so passed by the Registrar, shall be final with a right for appeal before the Tribunal.

(4) Any party aggrieved by the order of the Registrar or deemed approval of expulsion, as the case may be, under sub-section (3) may, within sixty days from the date of such order, appeal to the Tribunal."

"99. Expulsion of a member

(1) The cooperative housing society may in accordance with the provisions of sub-section (1) of Section 86, expel a member. However, before passing a resolution for expulsion of the member, the committee shall have to deliberate the case of expulsion in the committee's meeting and shall have to approve the proposal for issue of notice for the expulsion of a member setting out therein full details of the grounds with supporting documents In all at least three registered notices shall be served on the concerned member with an opportunity to defend his case in writing and also in person to the committee. Each notice should be served on the concerned member with an interval of thirty days. After the expiry of thirty days period of the final notice, the committee shall consider the reply, if any, received from the concerned member in its meeting and three-fourths of the members of the committee present and entitled to vote at the meeting, shall approve the proposal for expulsion and pass a resolution.

(2) Subject to the provision 86 of the Act a co-operative housing society, which has been allotted land, before expelling a member shall give final opportunity by

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Signing Date:10.11.2026
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publishing the notice in the leading Hindi and English newspaper in the National Capital Territory of Delhi informing the affected member to be present in person or through the authorized representative before the Registrar on the date fixed for the final hearing.

(3) The Registrar shall decide the expulsion case within the period of one hundred eighty days from the date of the receipt of the resolution for expulsion of a member from the cooperative housing society and shall convey his decision in writing to such member. If the resolution of the co-operative housing society for expulsion of a member is not approved by the Registrar within the said period of one hundred eighty days, the resolution for expulsion of the member shall be deemed to have been approved and the committee shall convey this decision of expelled member and the Registrar within a period of thirty days after the expiry of one hundred eighty days time limit through the registered Post. If the approval of the deemed expulsion is not conveyed to the members and the Registrar within the above period of thirty days, thereafter, the resolution of expulsion shall be null and void.

(4) Aggrieved member shall have the right to file an appeal to the Tribunal within sixty days from the date of order of the Registrar or intimation of deemed expulsion."

16. In terms of Rule 99 of the DCS Rules, the Managing Committee of the Society ought to first deliberate and approve issuing notice stating full grounds with supporting documents, and then serve at least three registered notices on the member, each at thirty-day intervals, affording him an opportunity to defend himself in writing and in person. Only after the thirty-day period following the final notice has expired, and after considering the

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member's reply, if any, can the committee proceed to expel him.

17. In terms of Section 86 of the Act, any expulsion can be effected only after the concerned member has been given an opportunity of being heard. The resolution of expulsion passed by the Managing Committee of the party has to be referred to the Registrar and thereafter the Registrar can pass a final order either expelling or rejecting the proposal for expulsion.

18. The RCS has to also hear the party's concern before passing the said final order. Any order passed by the RCS is also appealable before the Delhi Co-operative Tribunal.

19. In ***Delhi EPDP Coop. Group Housing Society Ltd. v. Registrar Coop. Societies, 2015 SCC OnLine Del 10050***, while dealing with the interpretation of Section 86 of the Act, a Coordinate Bench of this Court had opined as under:

> ***"11.*** *To be a member of any Group Housing Society is a valuable right of such a member and this valuable right cannot be taken away without strict adherence to the procedure prescribed under the Act and Rules framed therein. Prior to the enactment of the Delhi Cooperative societies Act, 2003 the procedure for expulsion of a member was provided under Rule 36 of the Delhi Cooperative societies Rules, 1973. There was no deeming clause either in the statute or under the rules prior to the enactment of the Act. The present Act and Rules provide for "deemed expulsion" under Section 86(3) and Rule 99(3), respectively. Now dealing with Rule 36 of the Delhi Cooperative societies Rules, 1973, the Division Bench of this Court in the case of R.K. Aggarwal v. Registrar Cooperative societies, Delhi in LPA No. 97/1983 decided on 29-7-1991, took a view that Rule 36 has to be strictly complied with and adhered to by a cooperative society before it chooses to expel a member. It further held that Rule 36 is not*

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Directory and it is incumbent upon the society to follow the letter of law and to meticulously comply with the provisions of Rule 36 of the Delhi Cooperative societies Rules, 1973. The relevant paras of the said judgment are reproduced as under:

"By removing the name of a person from the membership, a valuable right is taken away from him. Moreover, the consequences of expelling a member are serious as is evident from perusal of sub-rule (5) of Rule 36, which provides that when a member is expelled, he cannot be re-admitted to the membership of that Society, at any point of time and nor can he become a member of any other society of the same class for a period of three years from the date of such expulsion. Grave consequences, therefore, ensue when a member is expelled.

Under these circumstances, Rule 36 has to be strictly complied with and adhered to by a cooperative society before it chooses to expel a member. We are not in agreement with the learned counsel for the respondents that Rule 36 is Directory. In our opinion, it is incumbent upon the Society to follow the letter of law and to comply meticulously with the provisions of rule 36. This admittedly has not been done in the present case. Even if it be assumed though it is denied by the appellant that show cause notices dated 10-8-1974 were served on the appellant, the infirmity is not cured. The notice was required to be of not less than 30 days before but not such notice was given. The learned Single Judge did not advert to this requirement of Rule 36 and has merely proceeded to decide the question as to whether the notice dated 10-8-1974 was served on the appellant or not. Having come to the conclusion that the notice dated 10-8-1974 was served on the appellant, the learned Single Judge should have then proceeded to decide whether such service fulfilled the requirement of Rule 36 or not. In our opinion, the laudatory requirement of 30 days as provided by Rule 36(2) was not fulfilled.

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Therefore, the action taken by the respondent society was non est."

12. *It cannot be disputed that in every society the defaulter member puts the society to ransom, because, it is due to the default of such members that the entire project is delayed at the cost of others who regularly pay their share as per the demand raised. However, it is equally true that neither the society, nor the Registrar Cooperative societies can arbitrarily expel any member of the society without strictly following and adhering to the procedure laid down under Section 86 of the said Act and Rule 99 of the said Rules.*

13. *In Jai Kishan Khanna since deceased through LR Rajeev Khanna v. Shantnu Appt. Coop Group Housing Society Registration No. 1111, W.P. (C) 2900/2014, decided on 22-5-2014, a Division Bench of this Court while dealing with these provisions, held that Sub-section (3) of Section 86 of the Act stipulates that on the receipt of the resolution for expulsion, the Registrar shall take cognizance of the said resolution within 30 days and pass a final order either approving or rejecting the proposal for expulsion within a period of 180 days. The Court also took the period of 180 from the date of issuance of the letter sent by the society seeking Explanation of a member and to count 180 days period from the said date. Relevant para of the said judgment is reproduced as under:*

"Sub-Section (3) of Section 86 stipulates that on the receipt of the resolution for expulsion, the Registrar shall take cognizance of the said resolution within 30 days and pass a final order either approving the expulsion or rejecting the proposal for expulsion within a period of 180 days. The said provision further stipulates that if the matter is not decided by the Registrar within the aforesaid period, the expulsion of such a member shall be deemed to have been approved. The period of 180 days from the issuance of the letter dated 19-8-2013 expired on 15-2-2014 and immediately

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> *thereafter, on 28-2-2014, the petitioner filed the appeal under Section 86(4) read with Section 112 of the said Act. Sub-Section (4) of Section 86 clearly entitles any party aggrieved by the order of the Registrar or "deemed approval" of expulsion, as the case may, to file an appeal within 60 days from the date of such order. The starting point of limitation of the deemed approval of expulsion would have to be reckoned from the date on which the period of 180 days expired. In the present case, the said period expired on 15-2-2014."*

20. It becomes clear from a reading of the above decision that the right to membership of a group housing society cannot be taken away without strict compliance with Section 86 of the Act and Rule 99 of the DCS Rules, 2007, the procedure being mandatory in nature. RCS is bound to consider the representation of the member of the society and decide the expulsion of the said member of the society.

21. In the present case, the Petitioners' membership has been cancelled by the Society *vide* the cancellation notice dated 28th May, 2024 on the ground that the documents by which the property has been purchased are not registered documents.

22. The case of the Petitioners is that there is a Sale Certificate issued by the Bank in favour of the Petitioners and thus, the same constitutes a proper title deed in favour of the Petitioners for the purposes of grant of membership to the Petitioners.

23. The cancellation notice is accordingly challenged by the Petitioners.

24. In the opinion of this Court, whenever properties of this nature are mortgaged and Banks have conducted the auction of the mortgaged properties under the SARFAESI laws, the said sales are within the four corners of law.

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In fact a Sale Certificate ought to be given credence just like other registered sale documents, as the same establishes sale conducted by a Bank or financial institution. This fact was to be borne in mind by the Managing Committee of the Society.

25. However, unfortunately, the cancellation notice dated 28th May, 2024 issued by the Society, merely states that the membership deserves to be cancelled because the documents filed by the Petitioners are not registered. Further the Petitioner was not afforded an opportunity defend himself in writing or in-person in terms of Rule 99 of the DCS Rules, 2007.

26. This matter deserves to be looked into by the Registrar.

27. The RCS ought to take into consideration the Sale Certificate dated 12th March 2010 issued by the State Bank of Indore in favour of the Petitioners.

28. Accordingly, the RCS is directed to consider the representation of the Petitioners and after hearing the Petitioners and the Society, RCS shall take a decision in this matter either confirming the expulsion or rejecting the expulsion in accordance with law.

29. The decision shall be taken by RCS by ***25th December, 2026.***

30. All rights and remedies of the Petitioners are left open.

31. Accordingly the petition is disposed of, alongwith all pending applications, if any.

PRATHIBA M. SINGH
JUDGE

DINESH BHATT
JUDGE

NOVEMBER 4, 2026/MR/as

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