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

Date of Decision: 10th August, 2026
Uploaded on: 13th August, 2026

\# **CNR No. DLHC011763132016**

\+ **W.P.(C) 6435/2016**

DR SP PARASHAR .....Petitioner

Through: Mr. Rajiv Nanda, Sr. Adv. with Mr. Manish Kumar, Mr. Vikkey and Mr. Loveleen Kaithwas, Advs.

versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS .....Respondents

Through: Ms. Rachita Garg. Adv. for R-1.
Ms. Manika Tripathy SC for DDA, Mr. Aman Kumar, Adv. for DDA.
Mr. S. K. .Sharma, Adv for R-2 Society.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGMENT

<u>Prathiba M. Singh, J.</u>

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by Dr. S.P. Parashar, wife of Dr. C. D. Parashar, seeking the following reliefs:-

> *"a) Issue appropriate writ and directions quashing setting aside the impugned order dated 18.11.2010,*

passed by Ld Financial commissioner Delhi, in Case No 322/2001-CA.
b) Issue appropriate writ and directions to hold, that cancellation of membership of Respondent no. 3 by order dated 19-11-2001, was illegal and bad.
c) Pass any other order or orders or writs or directions which are necessary in the facts of the case and
d) Allow the present Petition with costs."

Factual Background

3. The background of this case is that sometime in 1995 the Respondent No. 3 - Dr Jitender Rai had applied for the membership of Suraksha Sadhan CGHS Limited, also known as Krishna Apartments, (hereinafter "*the Society*"). At the initial stage, Dr. Jitender Rai was given a share certificate dated 10th November 1995, bearing serial number SS/024, and thereafter Flat No. 210 in the Society was allotted to him on 3rd April 1999.

4. After the allotment, Dr. Jitender Rai was issued a Show Cause Notice by the Registrar of Cooperative Societies (hereinafter "*RCS*") on 19th November 1999. The allegation in the said notice was that the allotment to Dr. Jitender Rai was liable to be cancelled under Rule 25 of the Delhi Co-operative Rules, 1973 (hereinafter "*DCS Rules, 1973*"), on the ground that the spouse of Dr Jitender Rai already owned a property in Delhi bearing A-1/35, Panchshilla Enclave, New Delhi.

5. The said show cause notice was replied to by Dr. Jitender Rai and the stand taken by him was that he had not incurred any disqualification as his wife had obtained the said property in Panchshilla Enclave, in her own right and with her own funds, as she was working as a nursing officer with the Director General Health Services, Govt. of India. On the other hand, Dr.

Jitender Rai himself had enrolled as a member of the Society in his own right and had paid all the dues to the Society from his own funds. Thus, the stand of Dr. Jitender Rai was that the property of his wife at Panchshilla was not a *benami* property and was a property purchased by his wife from her own earnings. In support thereof, certain documents were also submitted by Dr. Jitender Rai.

6. The RCS, however, *vide* order dated 19th November, 2001, cancelled the membership of Dr. Jitender Rai on various grounds. The said order of the RCS was challenged before the Financial Commissioner. Initially, the Financial Commissioner had stayed the impugned order of the RCS on 22nd January, 2002. However, the Society appears to have written a letter dated 21st January, 2002 to the DDA informing the DDA of the order of RCS dated 19th November, 2001 cancelling the membership of Dr. Jitender Rai. Pursuant thereto, the DDA had cancelled the allotment of flat to Dr. Jitender Rai on 11th April, 2002. This cancellation was, however, not in the knowledge of the Petitioner or Dr. Jitender Rai at the relevant point in time.

7. During the pendency of the appeal before the Financial Commissioner, Dr. Jitender Rai sold the subject flat in the Society to Dr. C.D. Parashar who in turn sold it to his wife - Dr. S.P. Parashar *i.e.,* the Petitioner herein. The documents which were executed in favour of the Petitioner were General Power of Attorney, Special Power of Attorney, Will, and an Agreement to Sell. It is stated that the Petitioner was not aware of the letter issued by the Society to the DDA, at the time when the flat was purchased.

8. The appeal was finally decided by the Financial Commissioner almost 8 years later and *vide* order dated 18th November, 2010, the Financial Commissioner upheld the order passed by the RCS cancelling the

membership of Dr. Jitender Rai.

9. Thereafter, certain execution proceedings were filed by the Society seeking to give effect to the cancellation of membership. In the said execution proceedings, summons were issued to the Petitioner who then acquired knowledge of the DDA cancelling the membership of Dr. Jitender Rai. The Petitioner filed objections before the RCS opposing the execution which was also rejected on 26th October, 2012.

10. Further to the above, a review application was filed by the Petitioner against the order of the RCS dismissing the Petitioner's objections, which was also allowed *vide* order dated 3rd February 2014. In the said review order, the RCS came to the conclusion that there was no proof on record to show that Dr. Jitender Rai was owning the flat in Panchshilla Enclave as *benami* in the name of his wife. In the review order dated 3rd February 2014, the RCS observed as under:-

> *"23. I have carefully read the aforesaid judgments and the order dt. 19.11.2001 passed by the Registrar. All the aforesaid judgment clearly lay down that the disqualification under Rule 25 of DCS Rules, 1973 shall be applicable only in those cases where the member has some immovable property out of his/her funds only. It is clear from the reading of those judgments of the high Court that the same were squarely applicable in the case of Dr. Jitender Rai* ***as there was no allegation or proof on record to show that Dr. Jitender Rai was owning that flat in Panchshila Enclave benami in the name of his wife or had contributed to the purchase of the said flat. In fact the wife of Dr. Jitender Rai was admittedly working and had her own source of Income/funds through which she had purchased the said Flat in her name, thus, there was no valid reason or material on record against the member/Dr. Jitender Rai to indicate***

<u>that they had incurred any disqualification us/ 25 of DCS rules, 1973.</u>

24. That the objector has argued that since the orders dt. 19.11.2001 and 18.10.2010 passed by the Registrar as well as financial Commissioner ceasing the membership of the Original member Dr. Jitender Rai were contrary to the settled law laid down in the above mentioned judgments of the Hon'ble High Court (one of the judgment of Alimuddin was also upheld by Hon'ble Supreme Court by dismissing SLP filed against that judgment) the same are per incuriam and as such not valid and binding and are liable to be ignored. The objector has filed the judgment of SC to show that if an order is passed in ignorance of some law or settled precedents of superior court the same is called per incuriam and is not of binding effect.

*25. A**<u>fter considering all the submissions and documents on records that I am of the considered view that the orders dt. 19.11.2001 and dt. 18.102.10 (sic) passed by the Registrar as well as Financial Commissioner ceasing the membership of the original member Dr. Jitender Rai cannot be legally executed as the same said orders are contrary to the law laid down by the Hon'ble High Court and thus per Incuriam to the said binding judgments.</u> <u>Such Court cannot be executed against the objector who is a bonafide purchaser against consideration without any knowledge of any previous proceedings</u>**.*

26. The present application for execution of the said per incuriam orders is misconceived and is liable to be rejected. I accordingly dismiss the application for application for execution filed by DH/Society."

11. Thus, the execution proceedings filed by the Society were dismissed. The Society assailed the said order by filing a writ petition before this Court

being ***Writ Petition (Civil) 3087/2014***. In the said writ petition, the RCS had filed an affidavit dated 23rd February 2015.

12. The said writ petition filed by the Society was finally decided on 21st September, 2016 in which the Court observed that the Petitioner could not challenge the Financial Commissioner's order in the execution proceedings. The observations of the Court are set out below:-

> *"10. The judgment in the case of Dhurandhar Prasad Singh (supra) does not support the submissions made by the learned counsel for Dr. (Mrs.) S.P. Parashar. Rather, it would show that the Supreme Court had observed that an executing court can allow objections under Section 47 of the Code as to executability of the decree if the decree is found to be void ab initio or a nullity. A decree can become inexecutable for the reason that the decree was passed in ignorance of such a provision of a law or the law was subsequently promulgated making a decree inexecutable after its passing. The aforesaid observations do not lay down a ratio that a decision passed on merits would be held to be inexecutable because as per the executing court the decision was incorrect and contrary to law. The word "inexecutable" referred to in paragraph 23 in the case of Dhurandhar Prasad Singh (supra) would mean and refer to a decree passed by a court which is non est or a nullity on account of the fact that such a decree could not have been passed for want of subject matter jurisdiction. This can happen when the decision is in ignorance of a provision of law by a forum or a court lacking jurisdiction. Subsequent legislation may also render a decree inexecutable. The Financial Commissioner admittedly had jurisdiction to decide the appeal filed by Dr. Jitender Rai under Section 76 of the Act. The jurisdiction was invoked by Dr. Jitender Rai, himself. A wrong or erroneous decision is not non est or a decision without jurisdiction. The plea of Dr. (Mrs.)*

S.P. Parashar is completely fallacious and contrary to law and, therefore, has to be rejected. ***To this extent, the observations and findings made in the order dated 3rd February, 2014 are set aside and deleted. The Assistant Registrar (South) as an executing court will proceed in accordance with law.***

11. Dr. (Mrs.) S.P. Parashar has filed objections to the execution of the decree. She has right to press her objections as per the provisions of the law and the applicable Act/Rules. Dr. (Mrs.) S.P. Parashar can claim her rights in an individual capacity, predicated as purchaser under the purported Agreement to sell dated 15th June, 2006 and also on the basis that she is in occupation of the flat in question. Questions of bona fides etc. may arise and if required, would be decided. We would not like to go into and examine the said aspects. The objections, if any, by Dr. (Mrs.) S.P. Parashar will be confined to the aforesaid and cannot pertain to the merits or correctness of the orders of the Registrar, Cooperative Societies and the Financial Commissioner. ***The order dated 18th November, 2010 passed by the Financial Commissioner cannot be challenged or questioned by Dr. (Mrs.) S.P. Parashar in the executing proceedings.***

12. The writ petition is allowed in the aforesaid terms. ***We clarify that the observations made above, would not in any manner affect the challenge made to the order dated 18th November, 2010 by Dr. (Mrs.) S.P. Parashar in W.P.(C) No.6435/2016. We observe that the ambit and scope of W.P. (C) 6435/2016 is different.****"*

13. As is evident from the above, the ld. Division Bench of this Court clarified that the challenge to the order dated 18th November, 2010 of the Financial Commissioner in the present petition would not be affected by the

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findings in the above order passed in ***W.P.(C) 3087/2014.***

14. Coming back to the present petition *vide* order dated 21st September, 2016 i.e., on the same day when the ***W.P.(C) 3087/2014*** was disposed of, the Division Bench had also directed that no coercive steps shall be taken for recovery of physical possession subject to an undertaking in the following terms:

> ***"W.P.(C) 6435/2016***
> *Issue notice returnable on 30th November, 2016.*
> *Counter affidavit will be filed by the Registrar, Cooperative Societies within four weeks. Rejoinder, if any, will be filed within four weeks thereafter.*
> ***C.M.No.26381/2016***
> *Having heard learned counsel for the petitioner, i**t is directed that no coercive steps for recovery of physical possession of the property in question would be taken till the next date of hearing**.*
> *Dr. S.P. Parashar, however, will file an affidavit giving undertaking to the Court that she will not alienate, transfer or enter into any agreement to sell with third parties in respect of the property in question till the disposal of the present application. If the property is already given on rent, name of the tenant and the rent being received will be indicated and stated. The said affidavit/undertaking will be filed within two weeks from today. In case. Dr. S.P. Parashar wants to enter into a fresh tenancy agreement, the same will be done after taking permission of the Court. We clarify that no third party rights would be created or accepted during the pendency of the present writ*
> *petition.*
> *File of W.P.(C) No. 3087/2014 will tagged with the present writ petition.*
> *Relist the application on 30th November, 2016."*

15. Presently, in this writ petition, the following aspects deserve to be

considered:-

i) Whether the Petitioner is disqualified from allotment of the flat due to the cancellation of the membership of Dr. Jitender Rai?

ii) Whether the Petitioner is entitled to an NOC from the Society for allotment of the flat in her favour?

Submissions of the parties

16. Mr. Nanda, ld. Sr. Counsel and Mr. Sharma, ld. Counsel have made their submissions for the Petitioner and the Society, respectively.

17. The submission of Mr. Nanda, ld. Sr. Counsel is that the initial disqualification against Dr. Jitender Rai is itself not attracted inasmuch as the wife of Dr. Rai had her own source of income and had purchased the Panchshilla Enclave property in her own right. He has taken the Court through certain documents which form part of proceedings before the Financial Commissioner wherein Mrs. Raj Kumari Sood, wife of Dr. Jitender Rai, had sought permission from the Income Tax Department to purchase the property in Panchshilla Enclave. Secondly, the documents would also show that a Re-conveyance deed was executed in favour of Mrs. Raj Kumar Sood in respect of land at A-1/35 Panchshila and according to him, these documents would show clearly that she had entered into the transaction in her own right having her own independent income.

18. The second submission is that when the matter was pending before the Financial Commissioner, the Financial Commissioner had granted a stay against the RCS order on 22nd January, 2022. However, strangely, one day before the stay order is granted, the Society claims to have written to the DDA for cancellation of membership of Dr. Jitender Rai - pursuant to which the DDA had cancelled the membership.

19. It is submitted that the transaction entered into between the Petitioner and Dr. Jitender Rai was fully protected, as a stay order was operating against the RCS order and while the said stay order was operating, the membership could not have been cancelled. Further, it is submitted that the documents executed in favour of the Petitioner are valid and legal documents inasmuch as the requirement of a registered agreement to sell or registered sale deed as per the judgment of the Supreme Court in ***Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2009) 7 SCC 363,*** would apply only prospectively and could not apply to a transaction which had taken place prior to rendering of the said judgment.

20. The transaction between the Petitioner's husband and Dr. Jitender Rai, thus, could not be declared as a bad transaction. Further, reliance is placed upon the decision in ***Alimuddin vs. Registrar Co-operative Societies and Ors., 63 (1996) Delhi Law Times 655 (DB)*** to argue that the Division Bench of this Court had made it extremely clear that the disqualification is not attracted if the property is held bonafidely in the name of the spouse.

21. Finally, relying on ***Bardrinath vs. State of Tamil Nadu***, ***AIR 2000 SC 3243*** it is argued that since the cancellation of allotment to Dr. Jitender Rai by the DDA was due to the letter written by the Society to the DDA, relying upon the order passed by the RCS, which order is still under challenge in this case, the consequential act of cancellation by the DDA also deserves to be set aside.

22. Mr. Nanda, ld. Sr. Counsel also relies upon two documents, one is a letter issued by the Administrator of the Society - Shri. I.C. Gulati, on 30th November, 2010, wherein it had been clearly stated that the dues raised against the Petitioner were duly cleared by her. The second document relied

upon by the Petitioner is a certificate issued by the Society dated 8th December, 2006 wherein the Society had communicated the no objection for conversion from lease hold to free hold of the said property.

23. Mr. Sharma, ld. Counsel, on the other hand, appearing for the Society submits that the document issued by the Administrator dated 30th November, 2010 is accepted by the Society though the same does not constitute a No Objection Certificate. Insofar as the certificate dated 8th December, 2026 is concerned, Mr. Sharma, ld. Counsel challenges the genuineness and validity of the said document, as according to him, the signatories on behalf of the Society in the said document/certificate were not the office bearers at the relevant point in time *i.e.,* on 8th December, 2006. It is submitted that at the relevant time the actual office bearers of the Society were: (i) Dr. D. K. Bhola (President), (ii) Mr. Dinesh Kumar (Hony. Secretary), and (iii) Late Mr. K.R. Joshi (Treasurer). This is evident from the fact that the said office bearers were the ones who had signed the balance sheet of the Society for the year 2006-07.

24. Thus, it is his submission that the second document does not confer any rights upon the Petitioner. Mr. Sharma, ld. Counsel also submits that insofar as the decision of this Court in ***Alimuddin (supra)*** is concerned, the said judgment would not apply as it did not deal with properties which are transferred through a General Power of Attorney/ Special Power of Attorney. Finally, it is urged that the Petitioner who is depending upon a forged document ought not to be granted any relief.

25. Ms. Tripathi, ld. Standing Counsel appearing for the DDA submits that the DDA's action of cancelling the allotment of subject flat to Dr. Jitender Rai was only on the basis of the letter written by the Society on 21st January, 2002

which was seeking to give effect to the RCS order dated 19th November, 2001. It is submitted by her that the subsequent order of stay granted by the Financial Commissioner was not in the knowledge of the DDA at the relevant time when the allotment was cancelled.

Analysis and Findings

26. Heard. The Court has considered the matter. The main issue in this case, which has led to so much complication for the last almost 30 years, is whether the membership of Respondent No. 3 - Dr. Jitender Rai is valid or not and whether he has suffered any disqualification under Rule 25(1)(c)(i) of the DCS Rules, 1973 owing to his wife owning a property in Delhi.

27. Rule 25 of the DCS Rules, 1973 which is at the core of the issue in this matter is extracted below:

> ***"25. Disqualification of Membership***
> *1. No person shall be eligible for admission as a member of a co-operative society if he…*
>
> *(a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or*
>
> *(b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence:*
>
> *(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 un-approved 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 leasehold or freehold basis 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 (80 sq. yards) 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 co-operative society, if a member becomes, or has already become, subject to any disqualification 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 memberships 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 or 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 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."

28. The above Rule 25(1)(c) has been interpreted by the ld. Division Bench of this Court in ***Alimuddin (supra)*** wherein the Court, after considering the earlier decisions, has clearly held as under:-

> *"**5.** The learned Counsel for the petitioner has rightly pointed out that the views of the Registrar and the Lt. Governor cannot be sustained in the light of at least three decisions of this Court interpreting the provisions of Rule, 25(1)(c) and 25(3). These decisions are: O.P. Sethi v. Lt. Governor, 45 (1991) DLT 426, Navjeevan Cooperative House Building Society Ltd. v. Delhi Co-operative Tribunal, CWP 3150/85 decided on 10.7.87 and Shri Sita Ram Jain v. Registrar of Co-operative Societies, CWP 3203/92 decided on 15.11.1995. The decision in Navjeevan Co-operative House Building Society Ltd. is the first in point of time and has been followed in the later two decisions. In that case, a learned Judge of this Court has held:*
>
> > *"The provisions of Rule 25 in so far as they disqualify persons from being members of the Co-operative society need to be strictly construed and unless any person is clearly covered by the terminologies which are used to disqualify, no disqualification should attach to such a person."*
> >
> > *"**The clear intend of this rule is, therefore, that those who hold properties "Benami" either in their wife's name or in the name of their dependent***

<u>children, were not intended to be permitted to become a member of the Cooperative House Building Society.</u>"

__6.__ In O.P. Sethi's case (supra), the Division Bench has held:

"Rule 25(1)(c) is attracted in those cases where the properties are held Benami…. the said rule cannot apply in the cases where properties are acquired by transmission/devolution."

__7.__ 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. ***<u>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</u>***.

__8.__ It was submitted by the learned Counsel for the Society that interpretation placed by this Court is too narrow an interpretation and is not in consonance with continuance of the underlying objective of the provision. It is difficult to appreciate his contention. The interpretation placed by this Court was so placed in the year 1987 and has held the field till now. If the rule framing authority be of the opinion that the language of the rule as interpreted by this Court was not serving the object sought to be achieved, then it was for the authority to have amended the rule so as to bring it in conformity with the object sought to be achieved. We see no reason to take a view different from what has been taken on three occasions by this Court."

29. As can be seen from the above, the rationale of Rule 25(1)(c) of the DCS Rules, 1973 is to prevent a member of a Co-operative Society to own

another property *Benami* in their own name, or their spouse, or their dependent children. The provision does not debar genuine ownership of a property by a spouse in his/her own right through their own funds.

30. It is noted that this decision in ***Alimuddin (supra)*** has been upheld by the Supreme Court *vide* order dated 3rd April 1998 passed in ***SLP (Civil) No. 2886/1997*** titled ***Registrar Co-operative Societies & Anr. v. Alimuddin & Anr.***.

31. Further, two co-ordinate benches of this Court have also reiterated the legal position in ***Alimuddin (supra)***. In ***Jagdish Chander v. Lt. Governor & Ors., 2009 (112) DRJ 229*** the Court has observed as under:-

> *"7. In the background of aforesaid facts, we are required to consider as to whether the petitioner incurred the disqualification set out in Rule 25(1)(c)(i) of aforesaid Rules. Before us it was argued that the disqualification relates to the member owning a residential house or plot of land in Delhi "in his own name" or "in the name of his spouse or any of his dependent children". It was contended that the ownership of property by the spouse did not mean that the member would incur a disqualification. Fortunately, for us, this provision has already been interpreted by prior Division Benches of this Court. We need to only refer to the decision of a Division Bench of this Court in Alimuddin v. The Registrar Co-operative Societies, 63 (1996) DLT 655 (DB). In that decision, the Division Bench had also considered earlier decisions of this Court including the Division Bench decision in O.P. Sethi v. Lt. Governor, 45 (1991) DLT 426. After considering the said decision, the Division Bench observed that 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 Court further observed that 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. The Division Bench in Alimuddin's case observed as under:-

> *"We see no reason to take a view different from what has been taken on three occasions by this Court."*

8. It is, therefore, clear that the present case is covered by the decision in Alimuddin's case. The property at Shastri Nagar, even if it is assumed that it is owned by the petitioner's wife, is owned by her in her own name. It is not as if the property at Shastri Nagar is actually owned by the petitioner, though it stands benami in the name of his wife Smt. Sunita Rani. We may also note that this is on the assumption that the property is owned by Smt. Sunita Rani when, in fact, there is no document of title to establish that the property is actually owned by her. What she has admitted is only possession of the property taken on lease. It is well settled that revenue records and municipal records with regard to mutation do not confer any title and are not documents of title. To this extent, the Financial Commissioner has completely gone wrong in considering that because the petitioner's wife Smt. Sunita Rani paid house tax and her name was shown in the municipal records, she was the owner of the property. There is no conveyance deed and document of title to establish that Smt. Sunit Rani was, in fact, the owner of the property.

9. Be that as it may, even if Smt. Sunita Rani was the owner of the property she would be regarded as being the owner in her own right and in her own name. Therefore, it is neither being contended nor it can be imagined that the property at Shastri Nagar was that of the petitioner though kept benami in the name of Smt. Sunita Rani. That being the position, the decision in Alimuddin's case clearly covers the present case also.

> *The petitioner did not incur any disqualification under Rule 25(1)(c)(i) of the said Rules as alleged. As a result of which, he continues to be a member of the society. He will retain his ranking as per the original seniority list. The allotment shall be made according to the said seniority. The writ petition stands allowed to the aforesaid extent. Parties are left to bear their own costs."*

32. Similarly, in ***W.P.(C) 6843/2024*** titled ***Panna Lal Kapoor Since Deceased through Legal Representative Parveen Kapoor versus Registrar for Public Societies and Ors.,*** the same issue was again considered, wherein the Court held that the disqualification in the said case would also not be attracted both on the ground that the wife of the member had held the property in her own name and that the share of the said land was also covered by the exception.

33. Coming to the present case, Dr. Jitender Rai's wife, Mrs. Raj Kumar Sood, was working as a nursing officer with the Director General Health Services, Govt. of India which is evident from various documents which have been placed on the record. Being a government servant herself and having also informed, at the relevant point of time, to the Income Tax Department in respect of a loan taken by her for acquiring the property, it cannot be said that Dr. Rai was owning this property in Panchshilla as *Benami* in the name of his wife. Dr. Rai's wife was duly entitled to purchase the property in her own name from her own sources and upon doing so, no disqualification can be attracted by Dr. Rai in terms of the interpretation given to Rule 25(1)(c)(i) in several decisions.

34. The Financial Commissioner's order dated 18th November, 2010 is, thus, not sustainable in as much as the Financial Commissioner rejected the

argument that Mrs. Raj Kumar Sood had bought the property at Panchshilla Enclave through her own funds and is not dependent on Dr. Rai, on the ground that the word 'dependent' only qualifies children and not the wife. However, the Financial Commissioner has completely ignored the settled legal position as discussed above. Thus, the Financial Commissioner's order upholding the RCS's order dated 19th November, 2001 deserves to be set aside.

35. Now coming to the issue whether the two documents, on which the Petitioner has relied in support of its case, have been issued by the Society or not. It is not disputed that for some period, the Society appears to have been under the supervision and management of an administrator - Shri I.C. Gulati. The said administrator had signed a certificate dated 30th November, 2010 wherein it is clearly certified as under:-

> *"This is to certify that based on the record in the office of the Society and after examining all the original relevant record/File of Sh. Jitendra Rai S/O Late Sh. Hakim Rai available in the office of the Society that Flat bearing No. 210 was allotted to the Sh. Jitendra Raj vide dated 3rd April 1999 who was holding 21 shares (484-504) as per his share certificate serial No. SS/024 dated 10.11.1995.*
>
> ***Later on Sh. Jitendra Rai transferred his Flat bearing No. 210 in the Society to Dr. C.D.Parasher S/O Late Sh. Puran Mal R/O, 6-104, Kaushlya Park, Hauz Khas New Delhi-110016 through a registered deed/GPA/SPA in the office of sub Registrar-V vide dated 25.11.2003 with registration No. 10339 in book No. 4, Vol. No. 2034.***
>
> *Dr. C.D. Parasher sold the flat under reference vide dated 15.6.2006 through "Agreement for sale and GPA to Dr. Surya Prabha Parasher R/O Y-64, Hauz Khas New Delhi-110016. Society was demanding from the GPA holder (see letter dated 18.12.2009 etc.) Rs.*

> *3,13,658/- which she did not pay due to mis-management/financial irregularitie (sic) etc. in the society. Now she has written to the undersigned vide dated 6.8.2010, expressing her willingness to clear the outstanding issues/dues if any.*
>
> *Sh. John Mackly examined once again all the relevant original record of Dr. C.D. Parasher and Dr. Surya Prabha Parasher and prepared a detailed statement of account regarding outstanding dues against Flat No. 210.*
>
> *Sh. John Mackly prepared the detailed statement of accounts amounting Rs. 2,94,837/- (Tow lacs ninety four thousands eight hundred and thirty seven only) and subsequently the GPA holder was communicated to clear all the dues by 10th Of Sept. 2010.* ***The GPA holder cleared all the dues as per receipt No. 9831 dated 5.9.2010 and receipt No. 9869 dated 9.9.2010 vide cheque No.750711 and 672820 amounting Rs. 84,837/- and 2,10,000/- respectively drawn an Punjab National Bank, Mehrauli road New Delhi-110016****."*

36. A perusal of the above certificate would show that the total amount of Rs. 2,94,837/- towards the outstanding dues were paid and cleared by the Petitioner, though she had initially objected to the same. Thus, insofar as clearing of dues is concerned, the Administrator has clearly certified the clearing of dues by the Petitioner.

37. Insofar as the document dated 8th December, 2006 is concerned, it is unclear as to what is the origin of this letter. The stand of the Petitioner is that the same was filed by the Petitioner in the ***W.P.(C) 3087/2014*** filed by the Society. It is also not clear as to the identity of the persons who have signed the said letter as there are no names mentioned except certain signatures. However, since the Society is disputing the said letter dated 8th December, 2006, this Court would not venture into deciding whether the said certificate

is valid or forged.

38. Going by the Administrator's letter/certificate itself it is clear that the dues which were outstanding at the relevant point in time have been cleared by the Petitioner. The Petitioner's possession of the subject flat has also been protected by this Court by an interim order passed way back in 2016 *i.e.,* on 21st September, 2016.

39. Since then the Petitioner has been in possession of the subject flat in the Society. Today, the President and the Secretary of the Society are present and there is no submission to the effect that there are any outstanding dues *qua* the Petitioner. The Petitioner is stated to be paying all the dues as on date.

40. Accordingly, in the overall fact and circumstances, once the disqualification is not attracted *qua* Dr. Jitender Rai who had initially owned the subject flat, and the outstanding dues have already been paid, there can be no good reason for the Society to hold back the no objection certificate for allotment to the Petitioner.

41. The cancellation of allotment of the subject flat to Dr. Jitender Rai by the DDA now remains the outstanding issue. Clearly, the DDA cancelled the membership at the time when the order of the RCS was stayed by the Financial Commissioner. Thus, when there was a stay operating in favour of the Petitioner, the DDA knowingly or unknowingly ought not to have cancelled the allotment. Moreover, considering that the very basis of the said decision of DDA *i.e.,* being the order of RCS is held now to be unsustainable by this Court, the consequential order of the DDA would also have no effect.

42. Under these circumstances, the cancellation of the allotment to Dr. Jintender Rai deserves to be set aside as there is no disqualification which has been attracted in this case as per the settled legal precedents. There are no

dues outstanding of the Petitioner to be paid to the Society.

43. Therefore, the impugned orders passed by the RCS dated 19th November, 2001 and by the Financial Commissioner dated 18th November, 2010, as also the order of DDA dated 11th April, 2002 are set aside.

44. The Society is now directed to issue a No Objection Certificate in favour of the Petitioner and forward the same to the RCS within a period of two weeks from today. The RCS, upon receiving the no objection certificate, shall recommend to the DDA for issuing the document of allotment in favour of the Petitioner within four weeks thereafter.

45. The DDA shall issue the letter of allotment within four weeks thereafter. The Petitioner is also free to apply for conversion from lease hold to free hold as and when the DDA's portal for conversion becomes active again, and upon payment of applicable charges, in terms of the conversion policy, the conversion shall be effected in favour of the Petitioner.

46. The present petition is allowed and disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

AUGUST 10, 2026/MR/msh