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

Date of Decision:-06.04.2021

+ **FAO(OS) 13/2021, CM APPL. 12816/2021 (for condonation of delay of 111 days in filing) & CM APPL. 12817/2021 (for stay)**
REGISTRAR COOPERATIVE SOCIETIES Appellant
Through **Mr. Rakesh Munjal, Sr. Adv. with Ms. Mrinalini Sen Gupta, Adv.**

versus

DEEPAK TYAGI AND ORS Respondents
Through **Mr. Sandeep Bajaj, Ms. Aakanksha Nehra & Mr. Asav Rajan, Advs for R-1 to 6.**
Mr. Sameer Abhiyankar, Adv. for R-7

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL JUDGMENT)

CM APPL. 12818/2021 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

FAO(OS) 13/2021 & CM APPL. 12816/2021 (for condonation of delay of 111 days in filing)

3. By the aforesaid application (CM APPL. 12816/2021), the appellant/Registrar Cooperative Society (RCS) seeks condonation of 111 days' delay in filing the present appeal. We have heard Mr. Munjal, learned senior counsel appearing for the appellant on merits and do not find any merit in the present appeal. Consequently, we do not consider it necessary to

go into the justification provided by the RCS for the delay in filing the appeal.

4. The present appeal is directed against the order dated 03.11.2020 passed by the learned Single Judge in CS (OS) 308/2018 titled *Deepak Tyagi and Ors. Vs. Pragya Cooperative Group Housing Limited & Anr* and the IA 7176/2020 filed therein. The background in which the impugned order came to be passed is that the plaintiffs, arrayed as respondent nos.1 to 6 in the present appeal, filed the aforesaid suit to seek refund of Rs. 1,60,12,306/- alongwith interest from the defendant no.1 –Pragya Cooperative Group Housing Society Limited, which is arrayed as respondent no.7 in the present appeal.

5. The plaintiffs in the suit had deposited varying amounts with the respondent/society towards allotment of flats constructed by the society. The particulars of the amounts deposited by each of them have been set out in the impugned order itself. It appears that, thereafter, the RCS raised objections to grant of membership to the plaintiffs in the society and eventually held that they were not entitled to be enrolled as members of the said cooperative society. This issue was finally decided against the plaintiffs by the Supreme Court. Consequently, each of the respondents/plaintiffs became entitled to receive refund of the amounts deposited by them with the respondent/society. Since the amounts were not refunded, they preferred the aforesaid suit collectively to seek refund of amounts deposited by them, alongwith interest applicable thereon.

6. Before the learned Single Judge, the respondent/society really had no defence. They only expressed their inability to refund the amount since they did not have sufficient funds to satisfy the claims of the plaintiffs. It was then

that the respondent/society suggested that the 6 vacant flats lying unallotted could be publicly auctioned and the amounts realised from the said auction could be utilised to meet their liabilities towards the plaintiffs. The 6 flats which the respondent/Society offered for public auction were the following:

<i>S. No.</i>	<i>Flat No.</i>	<i>Floor</i>	<i>Category</i>
<i>1.</i>	<i>A-1001</i>	<i>10</i>	<i>C</i>
<i>2.</i>	<i>A-1002</i>	<i>10</i>	<i>C</i>
<i>3.</i>	<i>A-1003</i>	<i>10</i>	<i>C</i>
<i>4.</i>	<i>C-1002</i>	<i>10</i>	<i>C</i>
<i>5.</i>	<i>C-1003</i>	<i>10</i>	<i>C</i>
<i>6.</i>	<i>E-1002</i>	<i>10</i>	<i>C</i>

7. Pursuant to the said offer made by the respondent/society, various steps were taken from time to time, in pursuance of the orders passed by the Court. In the impugned order itself, the learned Single Judge has taken note of the earlier orders passed in the suit proceedings. The order dated 19.12.2018 reproduced in the impugned order reads as follows:

“1. This is a suit for recovery filed by six plaintiffs who are seeking refund of Rs.1,60,12,306/- along with interest thereon from defendant No. 1 Pragma Cooperative Group Housing Society Limited.

2. The President and Secretary of defendant No. 1, Pragma Cooperative Group Housing Society Limited are present in Court and submit, without prejudice to their rights and contentions, that they have no objection to the refund of the money if the Society is permitted to sell these six flats which were to be allotted to the plaintiff but their membership was cancelled, and, therefore, the flats are lying vacant.

3. *The President and Secretary of defendant No. 1, Pragya Cooperative Group Housing Society Limited submit that the market value of one flat of the Society is more than Rs.2 crores and upon sale of the six flats, the society would be in a position to refund the amount to the plaintiffs along with the reasonable interest.*

4. *This Court is of the view that defendant No. 1, Pragya Cooperative Group Housing Society Limited can be permitted to sell the six flats by public auction subject to the condition that the purchaser should be eligible for membership of the society in accordance with Rules. Upon sale of the flats by public auction, defendant No. 1, Pragya Cooperative Group Housing Society Limited would be in a position to refund the amount to the plaintiffs along with the reasonable interest and the balance amount can be used for the benefit of the society.*

5. *Mr. Sanjoy Ghose, Learned Additional Standing Counsel, GNCTD shall take up the matter with the Registrar Cooperative Societies and submit the response to this Court on the next date of hearing.*

6. *List on 16th January, 2019.*

7. *Copy of this order be given dasti to counsel for the parties as well as*

Additional Standing Counsel for GNCTD under the signature of the Court Master.” (emphasis supplied)

8. Consequent to the passing of the said order, the Delhi Development Authority (DDA) was added as defendant no.3 in the suit. On 16.07.2019 the learned Single Judge considered it appropriate to direct auction of the 6 flats of the defendant/society and, for that purpose, appointed Court Auctioneers to conduct the auction. The relevant portion of the order dated 16.07.2019 reads as follows:

"1. The plaintiffs are collectively seeking recovery of Rs.1,60,12,306/- along with interest thereon from defendant No.1.

2. Defendant No.1 has no funds to make the refund to the

plaintiffs- However, defendant No. 1 has ten flats. Without prejudice to its defence and in the interest of settlement of the disputes, defendant No. 1 has no objection to the sale of six flats to arrange the funds for making the payment to the plaintiffs.

3. Learned counsels for the plaintiffs as well as defendant No. 1 submit that a Court Auctioneer be appointed for conducting the auction of the six flats of defendant No.1.

4. In the peculiar facts and circumstances of this case and in the interest of justice, this Court is satisfied that it would be appropriate to appoint Court Auctioneer to auction six flats of Defendant No.1.

5. Mr.B.B. Gupta, Senior Advocate, Mobile No.9811348989 and Ms.Seema Seth, Advocate, Mobile No.9810602729 are appointed as Court Auctioneers to auction the following six flats of Defendant No.1:-

S. No.	Flat No.	Floor	Category
1.	A-1001	10	C
2.	A-1002	10	C
3.	A-1003	10	C
4.	C-1002	10	C
5.	C-1003	10	C
6.	E-1002	10	C

6. The Court Auctioneers shall take all necessary steps for auctioning aforesaid six flats, including, but not limited to, fixing reserve price of each flat and issuing advertisements for the auction in the press and online. The Court Auctioneers shall consider advertising in Government eAuctioning System websites, namely <https://eauction.gov.in> or <https://www.bankeauctions.com>.

7. Each participant in the auction will be required to deposit a

bank draft/banker's cheque for Rs. 5 lakh in favour of the "Registrar General, Delhi High Court" at the time of the auction.

8. The persons eligible for membership under the Delhi Cooperative Societies Act and the Rules thereunder can participate in the auction. Each participant in the auction shall make a declaration of fulfilling eligibility conditions. The format for declaration shall be prepared by the Court Auctioneers for this purpose. In case of false declaration, the amount of Rs.5 lakhs shall be forfeited.

9. The auction shall be conducted in the society premises. The auction shall be conducted flat wise as mentioned in para 5 above. The reserve price of each flat shall not be less than Rs.1 Crore.

10. The Court Auctioneers shall determine the highest bidder (H-1) as well as the second highest bidder (H-2) in respect of each flat.

11. The names of H-1 and H-2 bidders for each flat shall be declared by the Court Auctioneers. After the conclusion of the auction, the Court Auctioneers shall retain the demand draft/banker's cheque/or Rs.5 lakh furnished by H-1 and H-2 bidders. The demand draft/banker's cheque submitted by unsuccessful bidders shall be returned by the Court Auctioneers.

12. Upon the highest bid being finalized, the highest bidder (H-1) shall deposit with the Court Auctioneers 25% of the reserve price of the flat by a draft/banker's cheque in the name of "Registrar General, Delhi High Court" and the Court Auctioneers shall seek the approval of the highest bid by this Court.

13. After approval of the bid, the successful bidder shall complete the formalities for membership of defendant No.1 within 15 days whereupon defendant No.1 shall send the same to Registrar, Cooperative Societies as well as Delhi Development Authority for approval. The Registrar, Cooperative Societies as well as Delhi Development Authority shall accord the necessary approval within 30 days subject to the highest bidder satisfying all the necessary formalities and

eligibility criteria.

14. *The highest bidder (H-1) shall deposit the balance bid amount with the Registrar General of this Court within 30 days of the approval of Registrar, Cooperative Societies and Delhi Development Authority failing which Rs. 5 lakh shall be forfeited and the flat shall be then offered to H-2 bidder at the H-2 bid price.*

15. *The society shall issue the share certificate, allotment letter and shall handover the possession of the flat to the successful bidder within 10 days of deposit of the total bid amount by the auction purchaser.*

16. *The Delhi Development Authority shall execute the conveyance deed in favour of the auction purchaser within eight weeks thereafter upon the auction purchaser completing all necessary formalities of DDA.*

17. *The fee of the Court Auctioneers for auctioning the six flats is tentatively fixed at Rs.1 lakh for each flat. 50% of the fees shall be borne by the plaintiffs and balance 50% by defendant No.1. The Court Auctioneers shall share the aforesaid fees in equal proportion. Apart from the fees of the Court Auctioneers, the parties shall bear out of pocket expenses incurred by the Court Auctioneers for auctioning the properties in equal proportion. The plaintiffs as well as defendant No. 1 shall be entitled to reimbursement of the aforesaid fees and expenses out of the sale proceeds and the necessary order in this regard shall be passed after the completion of the auction process.*

18. *The appropriate order with respect to disbursement of the auction proceeds to the plaintiffs shall be passed after the completion of the auction process.”(emphasis supplied)*

9. Consequently, the auction of the aforesaid 6 flats was duly publicised in Hindi and English newspapers, whereafter the Court Auctioneers conducted the auction, wherein 34 persons participated. It is not in dispute that persons who were declared as the successful bidders in respect of these 6 flats were also required to meet the eligibility criteria for becoming members of a group housing cooperative society, as prescribed in the Delhi

Cooperative Societies Act, 2003 (DCS Act) and Rules framed thereunder. Pertinently, it is not the appellant's case that any of the auction purchasers are disqualified for any reason whatsoever from becoming members of the respondent/cooperative society.

10. In the impugned order, the learned Single Judge has made reference to the exhaustive report submitted by the Court Auctioneers, which report sets out the value of the highest bids placed, as well as the names of the bidders in respect to the 6 auctioned flats. These details were presented in the following manner:

“15. In these facts, circumstances and backgrounds, this Hon'ble Court may consider approving the following highest bid(s) in the aforementioned auction:-

<i>S. N o.</i>	<i>Flat Details</i>	<i>Highest Bidder</i>	<i>Bid Amount (In Rupees)</i>
1.	A-1001	Mr. Yogesh Trikha & Ms. Rashmi Trikha	1,30,35,000/-
2.	A-1002	Mr. Manoj Kumar Jha	1,42, 70,000/-
3.	A-1003	Mr. Radhey Shyam Jangid	1,36,50,000/-
4.	C-1002	Ms. Aastha Arora	1,37,50,000/-
5.	C-1003	Mr. Sachin Bhatia	1,45,51,000/-
6.	E-1002	Ms. Ruclzi Aggarwal & Mr. Prashant Gupta	1,50,40,000/-

All flats on tenth floor of Category 'C' in the defendant No. 1 - Society.”

11. After the conduct of the auction, the learned Single Judge directed the RCS and the DDA to comply with its direction contained in the order dated

16.07.2019, particularly paragraph 13 thereof, which required the successful bidders to complete all membership formalities of the defendant No.1/society within 15 days of having their bids approved. Thereafter, the defendant No.1/society was required to send their names to the appellant/RCS as well as Delhi Development Authority for approval, which was to be accorded within 30 days subject to the highest bidders satisfying all the necessary formalities and eligibility criteria. Thus, it appears that the Court was cautious and mindful of the requirement of the successful bidders being eligible for membership of a group housing cooperative society, so that no person who does not meet the substantive requirements of the law is inducted as a member of such a society, or allotted a flat therein.

12. Admittedly, neither the RCS, nor the DDA could point out any infirmity in the eligibility of any of the highest bidders in respect of the 6 flats in question.

13. The impugned order also takes note of the objections raised by the appellant/RCS in paragraph 10 thereof which reads as follows:

“10. The Registrar of Cooperative Societies are not complying with the order 16th July, 2019 and 19th February, 2020 on the ground that the vacancies in respect of six flats should have been filled up by inviting applications from the public to apply for membership and draw of lots should have been conducted to select the six persons and the flats should have been provided to them at the cost of construction plus equalization charges which would come to approximately Rs.60 lakhs in respect of each flat.”

14. The stand taken by the DDA was that it could comply with the orders of this Court only after the compliance by the RCS, and that the DDA would

be entitled to unearned increase of 50% of the auction proceeds.

15. The learned Single Judge considered the entire matter and proceeded to address the objections of the appellant as well as the DDA while passing the impugned order, and directed that the successful auction purchasers be declared as members of the respondent/society and be allotted the flats in respect of which they were the highest bidders. In terms of the report of the Court Auctioneer, the auction purchasers were directed to deposit the balance bid amount with the Registrar General of this Court within 20 days. Once the deposit was made, the respondent/society was directed to issue the share certificate and allotment letter, and also deliver possession of the respective flats to the successful bidders within 10 days of deposit of the balance bid amount. The DDA was directed to execute the conveyance deed in favour of the auction purchasers within four weeks thereafter. There were other directions which were also issued, which we are presently not concerned with.

16. The submission of Mr. Munjal, learned senior counsel appearing for the appellant is that the Court could neither have directed the public auction of the 6 flats, nor directed their allotment to the successful bidders in such an auction, nor directed the grant of membership of a cooperative housing society to the said successful bidders. Mr. Munjal further submits that while passing the impugned order, the learned Single Judge has not dealt with the objections raised by the RCS in its short affidavit dated 03.10.2020 – specifically the objections raised by the RCS in paragraphs (i), (j) & (k) thereof, which read as under:

“i. That it is respectfully submitted that the Answering Respondent during the proceedings before this Hon 'ble Court,

had previously submitted that the membership of a cooperative society has to be open to all without any restrictions for an applicant seeking membership particularly of being successful bidder in an auction etc. and in case the Society is permitted to grant membership to auction purchasers of the flats the same will be in violation of the statutory provisions of DCS Act, 2003 and Rules, 2007. It is further humbly submitted that accordingly the office or the Answering Respondent cannot approve grant of membership to an auction purchaser. Furthermore, it has also been the stand of the Answering Respondent that if the Society wants to pay the dues of the Plaintiff, the same can be done by way of filling of the vacancies in accordance with the provisions of DCS Act and Rules made thereunder and also by placing the matter before the General Body Meeting (GBM) and approving the raising of demands upon the members to pay the money of the Plaintiffs.

j. It is relevant to note that in furtherance of the cooperative principle of voluntary and open membership, Rule 19(2) of DCS Rules, 2007 of DCS Rules, 2007 lays down the procedure for filling up the vacancies of the society as follow:-

Rule 19(2), DCS Rules, 2007:

"In case of vacancy in a co-operative housing society the Registrar shall be intimated within a period of fifteen days of the vacancy and the same shall be filled by the committee by notifying it in leading national dailies! newspapers of Delhi in Hindi and English. An advance copy of the advertisement shall be sent to Registrar for displaying the same on the website. In case tire number of applications are more than the notified vacancies the membership shall be finalized through draw of lot in the presence of authorized representative of the Registrar. Further if vacancy has arisen due to resignation of a member, then the resignation shall be made public by publishing in leading newspapers and the Registrar shall be informed of the same before publishing it alongwith the copy of the same and proof of payment of the share money and contribution etc. which shall

be made through cheque."

k. That it has also been the stand of the Answering Respondent that in case the flats are auctioned prior to draw of lots, the same is clear violation of DCS Act and Rules and the auction purchaser cannot be granted membership in any manner being in violation of Section 77 of DCS Act, 2003 as the draw of the flat is to be conducted in terms of the recommendations of committee constituted under Rule 90 of DCS Rules 2007."

17. Mr. Munjal submits that the order of the Court, in fact, contravenes statutory provisions contained in the DCS Act and Rules framed thereunder and the same is not permissible in the light of the decisions of the Supreme Court in ***Maharishi Dayanand University Vs. Surjeet Kaur*** (Civil Appeal No. 6807/2008) and ***Chief Information Officer & Anr Vs. State of Manipur & Anr.*** (Civil Appeal 10787/2011). These decisions have been relied upon to say that when the procedure is prescribed by the Rules to do a particular thing, the thing should be done in accordance with the Rules, and not otherwise.

18. We have perused the impugned order and considered the submissions advanced by Mr. Munjal in the light of the statutory position set out by him, as also the aforesaid decisions of the Supreme Court. Mr. Munjal has submitted that Section 77(1) of the DCS Act prescribes the procedure for allotment of plots/flats/houses through draw of lots. The said provision, insofar as it is relevant, reads as follows:

"Allotment of plots, flats or houses through draw of lots.

77. (1) Allotment of plots of land, flats, houses or other dwelling units shall be made by the committee of a co-operative housing society to the members strictly on the basis of draw of lots only in respect of such members whose enrolment as a member of a cooperative housing society is found proper in accordance with the provisions of this Act,

rules framed thereunder and the bye-laws of the co-operative housing society by the Registrar with the prior approval of a committee as prescribed and such a draw of lot shall be conducted by the lessor of the land in accordance with the terms and conditions of lease."

19. He further submits that the membership of a cooperative housing society has to necessarily be open to all, without any restriction and, in the present case, this principle has been breached inasmuch as, only the highest bidders have been permitted to be enrolled as member.

20. He also submits that Rule 19(2) of the DCS Rules, 2007 prescribes the procedure for filling up vacancies in a Cooperative Housing Society and the said provision has also not been complied with. Rule 19(2) of the DCS Rules, on which Mr. Munjal relies, reads as follows:

Rule 19(2), DCS Rules, 2007:

"In case of vacancy in a co-operative housing society the Registrar shall be intimated within a period of fifteen days of the vacancy and the same shall be filled by the committee by notifying it in leading national dailies! newspapers of Delhi in Hindi and English. An advance copy of the advertisement shall be sent to Registrar for displaying the same on the website. In case the number of applications are more than the notified vacancies the membership shall be finalized through draw of lot in the presence of authorized representative of the Registrar. Further if vacancy has arisen due to resignation of a member, then the resignation shall be made public by publishing in leading newspapers and the Registrar shall be informed of the same before publishing it alongwith the copy of the same and proof of payment of the share money and contribution etc. which shall be made through cheque."

21. He submits that the draw of flats under Section 77 of the DCS Act, 2003 has to be conducted in terms of the recommendations of a committee constituted under Rule 90 of the DCS Rules. The said committee is required

to verify all the documents submitted by the member, and to return a finding that the said member is eligible to be a member and for allotment of flat by the group housing cooperative society. He submits that this procedure has also been bypassed by the learned Single Judge while directing the conduct of public auction.

22. On the other hand, learned counsel for the respondent no.7/society, who appears on advance notice, supports the impugned order. He submits that there has been substantial compliance with all the provisions of the DCS Act and the Rules, and none of the auction purchaser are ineligible to become members of the respondent/society. He submits that, in fact, this is not even the case of the appellants. He submits that substantial compliance of the procedural rules is what is required, which has been done in the present case. In this regard, he has placed reliance on a decision of the Supreme Court in *State of Uttar Pradesh & Anr. Vs Haji Ismail Noor Mohammad & Co.* AIR 1988 SC 1409.

23. A provision of law— whether contained in a primary legislation, or a subordinate legislation is enacted/framed with an objective/purpose in mind. While examining whether the statutory provision has been complied with, or not, the question to be asked is whether the object/purpose of the law has been achieved/fulfilled, or not. The Courts are often called upon to decide whether the statutory provision is mandatory or directory. The Court then examines the requirements that the statutory provision lays down, in the light of what it seeks to achieve. Where the statutory provision is procedural, the issue arises whether its strict compliance is essential, or whether substantial compliance thereof would suffice.

24. We may notice the observations of the Supreme Court in

Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors. (2011) 1 SCC 236 in this regard:-

“Doctrine of substantial compliance and “intended use”

32. *The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.*

33. *A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that*

are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the “essence” of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.”

25. In this light, we may proceed to examine the submissions of Mr. Munjal with regard to the claimed non-compliance of the aforesaid provisions. The purpose of Section 77 of the DCS Act has to be firstly appreciated. What it seeks to ensure is that in the matter of allotment of the plots/flats/houses by a cooperative society to its eligible members, there is transparency so that there is no grievance raised by any member that any favouritism has been shown by the management of the society in the matter of such allotment since, invariably, some of the plots/flats/houses or other dwelling units constructed by the society – which are under allotment, may have preferred locations or other special features which may not be common to all. It is for this purpose that Section 77 provides that the Registrar, after obtaining the prior approval of the committee, shall hold a draw of lots to be conducted by the lessor of the land – which is the DDA in the present case – in accordance with the terms and conditions of the lease.

26. In the instant case, admittedly, there were 6 vacant flats with the

respondent/society. It is not the case of the appellant that there were existing or waitlisted members who had staked a claim in respect of the said 6 flats. None of the existing members of the respondent/society raised any dispute in this regard. The existing members of the respondent/cooperative group housing society, who were entitled to allotment of flats, already appear to have been allotted their respective flats, and there was no claim by any of those members in respect of the 6 flats which were auctioned under the orders of the Court. The public auction of the said 6 flats took place with complete transparency, and everyone participating in the auction – as also the respondent/society, knew as to which of these vacant flats would eventually go to which bidders, since it was only the highest bidders who were entitled to allotment of the said 6 vacant flats. The auction itself has been conducted through Court Auctioneers appointed by the Court, one of whom is a reputed Senior Advocate of this Court. They have submitted a detailed report to the Court in respect of the auction in question. Pertinently, no objection to this report has been raised by either any member of the respondent/cooperative housing society; the society itself or, any of the auction purchasers. Thus, in our view, there is substantial compliance of the provision of Section 77 of the DCS Act. The object and purpose of Section 77(1) of the DCS Act has been achieved in the present case by the procedure adopted for conduct of an open and widely publicised auction. Section 77 of the DCS Act prescribes only a procedure to ensure transparency in the matter of allotment of flats/plots/dwelling units by the cooperative society. It does not create any substantive rights which could be said to have been denied to any member, or any other person, with the adoption of the procedure followed by the learned Single Judge.

27. We have already noticed that the Court, while passing the order dated 16.07.2019, was mindful of the fact that the auction purchasers/successful bidders should, in all respect, be entitled and eligible to become members of the group housing cooperative society. In fact, in paragraph 13 of the order dated 16.07.2019, the Court directed as follows:

“13. After approval of the bid, the successful bidder shall complete the formalities for membership of defendant No.1 within 15 days whereupon defendant No.1 shall send the same to Registrar, Cooperative Societies as well as Delhi Development Authority for approval. The Registrar, Cooperative Societies as well as Delhi Development Authority shall accord the necessary approval within 30 days subject to the highest bidder satisfying all the necessary formalities and eligibility criteria.”

28. Pertinently, it is not the case of either the appellant, or even the DDA, that any of the successful bidders are not eligible to become members of the respondent/cooperative housing society.

29. The submission of Mr. Munjal that membership should have been opened to all as per the DCS Act, but it was not – is also not correct. The report of the Court Auctioneers reproduced in the impugned order itself shows that the auction was highly publicised by them. The notice for the auction of the said 6 flats was published in leading English and Hindi dailies. In paragraph 5 of the report of the Court Auctioneers, reproduced in the impugned order itself, they had observed as follows:

“5. The Proclamation of Sale, a copy of which is annexed hereto as Annexure LC-I, was published in the following leading newspapers:-

- i) Sunday Times of India (English Edition) on 25.08.2019;*
- ii) Hindustan Times (English Edition) on 25.08.2019;*
- iii) Nav Bharat Times (Hindi Edition) on 25.08.2019; and*

iv) Dainik Jag ran (Hindi Edition) on 25.08.2019.

As desired by the Hon'ble Court, the said Proclamation of Sale was also advertised on www.bankeauction.com. The true copies of the said advertisements are annexed hereto as Annexure LC-3 (Collectively). ”

30. We may notice that even when auction sales are conducted in execution proceedings, the general tendency is to avoid publication in the most popular and highly circulated newspapers to save cost. However, in the present case, news of the auction was published in widely circulated and leading English and Hindi newspaper dailies. The proof of the pudding lies in its eating. In respect of the 6 flats that were put to auction, there were as many as 34 bidders – which is evident from the report of the Court Auctioneers. Thus, there was sufficient competition. Aforesaid being the position, it cannot be said that the membership to the respondent/society for allotment of 6 flats in question was in any way restricted, since it was open to one and all, who were otherwise eligible to become members of the group housing cooperative society, to participate in the auction and offer their highest bid and, if successful, become members of the respondent society. The submission that the flats could not have been put to auction by the Court at market price also has no merit. The six vacant flats were the asset of the respondent Society, which the Society was entitled to utilise to settle its outstanding dues. It may not have been permissible for the respondent Society to auction its membership at the stage of initial enrolment of members. That would have been against the Cooperative Principle, as that would have led to ousting the less affluent class of eligible persons from participating in the process of collectively raising construction of flats for themselves, at reasonable costs. However, that is not the case in hand. In

the present case, the flats in question had already been built by the contribution of the existing members. In these circumstances, it would not be fair to the respondent Society and its existing members, to insist that they must allot the flats only at the cost of construction with equalisation charges/interest. The Society was entitled to deal with its additional flats in the most beneficial and prudent manner which was also transparent and complied with the provisions of the DCS Act and Rules framed thereunder substantially. In the present case, the liability of the respondent Society may have been relatively less compare to the cumulative market value of the six flats in question. But what if that liability was nearly as much as, or higher than the market value of the flats? Would the flats not be sold in execution by the Court in a transparent manner to realise the market price from eligible bidders? They would. We, therefore, reject this submission of the appellant.

31. Pertinently, Rule 19(2) relied upon by Mr. Munjal also requires the notification of the vacancies by the society to the RCS, which are then required to be notified in leading national dailies/newspapers in Delhi in Hindi and English. We find that in the present case, the issuance of notice to RCS and public auction notices substantially comply with this Rule.

32. The exercise, which the Committee constituted under Rule 90 of the DCS Rules undertakes, has not been curtailed in any manner by the impugned order. Our attention has been drawn to the communication dated 05.11.2019 sent by the respondent/society to the office of the RCS, which is a forwarding letter accompanying the application and other related documents of each of the successful bidders, alongwith extracts of the resolution of the Managing Committee, affidavits from the Honorary Secretary and Form E of Schedule VII of the DCS Rules, which were sent to

the appellant/RCS. Pertinently, in response to the said communication, the appellant neither claimed that the successful bidders were not eligible, nor that the documents submitted were deficient. Even today, the appellant is not in a position to claim as to which documents were not submitted by the respondent/society in respect of the said 6 successful bidders. For the aforesaid reasons, we find absolutely no merit in the present appeal and dismiss the same.

33. There can be no quarrel with the general proposition that the Court would not issue a direction contrary to a statutory Rule. In *Maharshi Dayanand University*(*supra*) there was a specific bar to a student simultaneously pursuing two regular courses at the university. The High Court had disregarded that prohibition. In that context the Supreme Court held that the Court or Tribunal could not issue a direction contrary to a statutory provision.

34. In *Chief Information Officer*(*supra*) the Supreme Court examined the procedures contemplated under Sections 18 and 19 of the Right to Information Act. The Court held that the nature of power under Section 18 is supervisory in character, whereas, the procedure under Section 19 is an appellate procedure, and person aggrieved by refusal to provide information—which he has sought, for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. The Supreme Court held that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to provide information. Such person has to get the information by following the aforesaid statutory provisions. The Supreme Court, while rejecting the contention of the appellant that information can be accessed through Section

18, observed that this submission is contrary to the express provision of Section 19 of the Act and went on to observe *“It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Judicial Committee of the Privy Council in Nazir Ahmad v. Emperor [AIR 1936 PC 253 (1)] and also by this Court in Deep Chand v. State of Rajasthan- [AIR 1961 SC 1527,(para 9)] and also in State of U.P v. Singhara Singh reported in AIR 1964 SC 358 (para 8). This case is of no avail to the appellant, for the reason that the appellant RCS has not been able to point out how the impugned order goes contrary to the essentials of the scheme formulated under the DCS Act and the Rules framed thereunder”*. Both these decisions do not advance the submission of Mr.Munjal in any way.

35. Before parting with this matter, we would like to observe from our experience that the provisions of the DCS Act and Rules framed thereunder are often exploited by the statutory authorities, the Managing Committees/Administrator of the concerned cooperative societies to create unnecessary obstructions, and to harass even eligible and bona fide members/prospective members. It is high time the appellant realised that the primary duty of the RCS – in respect of housing/ group housing societies atleast, is to ensure that these societies work on the cooperative principles, in

a transparent manner. The provisions engrafted in the DCS Act and the Rules framed thereunder are not so engrafted for the “benefit” of the statutory or other authorities. The said Act and the Rules framed thereunder are for the benefit of the people who are the member, or are entitled to become members of such cooperative societies. In the present appeal, the appellant/RCS appears to be really aggrieved by the fact that its authority, in respect of procedural matters, seems to have been somewhat diluted. The present appeal exemplifies an instance of the RCS taking a very narrow and pedantic approach of the DCS Act and the Rules framed thereunder and we disapprove of the same.

36. We, accordingly, dismiss the appeal leaving the parties to bear their respective costs.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 6, 2021

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