

Hema Kalwani & Anr. vs Registrar Of Cooperative Societies & ... on 8 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:

+ W.P.(C) 4494/2025

HEMA KALWANI & ANR.

...

Through: Mr. S.P. Mukherjee & Mr.
Singh, Advocate.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ANR.

.....Respondents

Through: Mr. Manashwy Jha, Panel
R-1, (Mob-9013980961).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode. CM APPL. 20769/2025 (for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. W.P.(C) 4494/2025
3. The present petition has been filed by the Petitioners under Article 226 of the Constitution of India seeking to direct Respondent No.1 - Registrar of Cooperative Societies (hereinafter 'RCS') to restrain the Respondent No.2 - Rajat Jain Cooperative Group Housing Society (hereinafter 'Society') from destroying the balcony of the Petitioners.
4. The Petitioners are the residents of Vidyasagar Apartments, Flat No. 101 which is managed by the Rajat Jain CGHS Limited, Plot No. 34, Sector 6 Dwarka, Delhi 110077.
5. The case of the Petitioners is that the said flat has a balcony and the Society had proposed to undertake a Balcony Extension Project (hereinafter 'Project') which included their balcony as well. Though the Petitioners had earlier wanted to participate in the said project, they had a change of mind and had subsequently communicated their unwillingness to participate in the aforementioned project to the Society.

6. It is the case of the Petitioners that there is an apprehension, that the Society would force them to pay money for the Project and in the absence thereof, there may be some harassment. Ld. Counsel for the Petitioners submits that they cannot be forced to participate in the said project and no money can be collected from them. Reliance is placed on the Notification dated 28th February, 2012 bearing No. 14(1)/RN/2012/142/2089 issued by the Hon'ble Lieutenant Governor. The relevant portion of the said Notification reads as under:

"6. It has been decided in public interest that increased FAR should not be permitted In respect of already constructed and occupied CGHS and in case, extra FAR Is proposed to be availed, same should be allowed outside the structure. Further, unwilling existing members of the housing societies should not/can not be forced to avail extra FAR at an additional cost."

7. Ld. Counsel for the Petitioners has further relied upon the order dated 8th May, 2024 passed by the Co-ordinate Bench of this Court in similar a writ petition, being W.P.(C) 6551/2024, which is stated to have been preferred by other residents of the same apartment. The Co-ordinate Bench of this Court on 8th May, 2024 has observed as under:

"1. Learned counsel for the Petitioner states that he has instructions not to press the present writ petition provided the Petitioner is either left out of the Balcony Extension Project or if the project cannot be completed without removing the construction carried out by the Petitioner on its balcony, then the same may be removed in the first instance provided the same is restored to its original status at the cost of the Society.

2. Learned counsel for the Respondent-Society states that in the event the Petitioner does not wish to be a part of the Balcony Extension Project, the Respondent-Society has no objection to the same. He further states that the construction carried out by the Petitioner in its balcony is unauthorized, illegal and liable to be demolished by the Municipal Corporation of Delhi (MCD).

3. Since the Respondent Cooperative Society in accordance with the notification dated 28th February, 2012 issued by the Lieutenant Governor of Delhi does not insist on the Petitioner joining the Balcony Extension Project, the present writ petition is closed recording the said statement. The legality or the illegality of the construction carried out by the Petitioner in its balcony has to be decided by the MCD and not by this Court in the present proceedings. Accordingly, the said issue is left open.

4. In the event any damage is caused to the Petitioner's balcony during the execution of the Balcony Extension Project, the same shall be repaired/ restored by the Respondent Cooperative Society. Pending application is also disposed of."

8. In addition, reliance is also placed upon the judgment in Shiv Lal & Others vs. Surya CGSC Ltd. & Ors. (W.P.(C) No. 4639/2013 decided in 2nd November, 2015) wherein the Division Bench of this

Court had observed as under:

37. For all these reasons, we find no merit in this writ petition which is dismissed with costs which are quantified at Rs.5,000/-

per petitioner which shall be deposited in this court within a period of four weeks from today. The costs shall be apportioned in three equal shares to each of the respondent nos. 1, 2 and 3. The matter shall be listed before the Registrar General on 8th December, 2015 to monitor the deposit of the costs and its disbursement to the respondents.

38. Needless to say, the society shall ensure that the proposed extension shall not jeopardise the structural stability of the building. Also, any unwilling member shall not be compelled to make the payment for additional structure. At the same time, the society shall ensure that persons who have not made payment for the additional structure shall not be permitted enjoyment of the same."

9. Ld. Counsel appearing for the Respondent No. 1-RCS fairly agrees with the stand of the Petitioners that no one can be forced to participate in the Project.

10. The Court is conscious of the fact that an advance copy has been served to the Society but the Society has not appeared. A perusal of the previous order dated 8th May, 2024 extracted above would show that the stand of the Society is that it would not insist on any person to take part in the said project if the party does not want to do so.

11. In view of this fact, it is directed that the Petitioners shall not be forced to join the Balcony Extension Project. The ld. Counsel for the Petitioners upon a query from the Court has categorically stated that the balcony in the Petitioner's flat is not covered. In this view of the matter if any damage occurs to the Petitioners' balcony during the execution of the Project, the same shall also be repaired/restored. Further it is also made clear that the Project shall not jeopardise the structural stability of the building in any manner.

12. The petition is disposed of. Copy of this order be sent to the Society dasti by the counsel.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 8, 2025/da/Ar.