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HIGH COURT OF DELHI

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Date of decision: August 29, 2008

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WP(C)No. 1064/2007

Anjuman Cooperative Group Housing Society
Ltd. (Regd.)

..Petitioner

through
Mr. Ravinder Sethi, Sr. Advocate with
Mr.Sumit Bansal, Advocate

Versus

Registrar of Cooperative Societies & Ors. ..Respondent

through
Ms. Sujata Kashyap, Advocate for
respondent No.1-RCS
Mr. Rajiv Bansal, Advocate for respondent
No.2-DDA
Mr. Harish Gulati with Mr. Anidya Malhotra,
Advocates for CBI
Mr. R.K. Gupta with Mr.Vimal Wadhawan,
Mr. M. Goel and Mr. V.K. Mehra, Advocates
for Objectors
Mr. V.K. Tandon with Mr. Prem Mishra for
Objector
Mr. S.M. Chopra, Amicus Curiae

Coram :

Hon'ble Mr.Justice Manmohan Sarin
Hon'ble Mr.Justice Sudershan Kumar Misra

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| (1) Whether reporters of local paper may be allowed to see the judgment? | Yes |
| (2) To be referred to the reporter or not? | Yes |
| (3) Whether the judgment should be reported in the Digest ? | Yes |

Manmohan Sarin, J.

1. Petitioner Society through its Secretary Mr. V.Subramaniam, has filed the present writ petition seeking a direction to the Delhi Development Authority, respondent No.2 herein, to issue the

Completion Certificate and grant Provisional Occupancy Certificate to the Society. A writ of mandamus is also sought directing the respondent No.1 Registrar, Cooperative Societies and respondent No.2, DDA to hold a draw of lots for allotment of flats to the members of the petitioner Society.

1. Background facts:

- (i) It is averred in the petition that originally, employees of Bharat Electronics Limited, Ghaziabad, had founded the Society in the year 1983 with 90 members having a freeze strength of 120 members. The Society had on 14.8.1990, resolved that members should contribute towards future cost of land @ Rs.2,000/- per quarter from October, 1990. The amount of contribution was reduced to Rs.1,000/- per quarter. Finally, on 16.10.1991, it was capped at 5 instalments of Rs.1,000/- each, totaling to Rs.5,000/-. The Society resolved to expel 29 members for default in payment towards the future cost of land. These members, it is claimed, had failed to make the payment despite repeated notices. On 8.11.1992, their share money was forfeited. On 23.4.1993, a list of 111 members was forwarded to the Registrar's office in which 9 persons, whose membership had been withdrawn, were to be excluded. This list was not approved on 16.12.1993. On 25.9.1994, the Society decided to refund the deposit towards cost of land as DDA had increased the land prices and members were keen for allotment of land in trans Yamuna area, near to their place of work. It

is at this juncture that Mr. Ashok Goswami and Mr.S.P.Saxena, against whom the CBI after investigations, has registered cases, got involved in the affairs of the Society.

- (ii) On 5.4.1998, S.P. Saxena, Ashok Goswami and Pramod Kumar became President, Secretary and Treasurer of the Society and the registered office of the Society was shifted to C-34, Madhu Vihar, Delhi. On 23.3.1999, Ashok Goswami applied for allotment of land. S.P. Saxena wrote a letter informing that Registrar, Cooperative Societies had approved list of 120 members to DDA. On 12.11.1999, an offer of allotment of land was made to the Society and finally on 3.5.2000, 7,000 sq. mtrs. of land at Plot No.20, Sector12, Dwarka was allotted to the Society @ Rs.4,063/- per sq. mtr., which was reduced in a Lok Adalat to Rs.3,533/- per sq. mtr. on an application made by S.P. Saxena. The payment in respect of the land was made to the DDA and possession received by Society. It is claimed that the Society applied for the sanction of the lay out and building plans and after its sanction, construction was raised on the plots.
- (iii) It is averred that in August, 2005, the scam relating to allotment of land to cooperative societies surfaced. It was learnt that an FIR had been lodged and the CBI-respondent No.3 was investigating the numerous illegal acts, omissions and offences of the office bearers of the Societies as also the officers of the Registrar of

Cooperative Societies on the direction of the Court. The affairs of the Society were also being investigated. Accordingly, a meeting was called on 21.8.2005. An Ad hoc Managing Committee was elected. The Ad hoc Committee was asked to continue pursuant to an extraordinary general body meeting held on 22.10.2005. The Registrar of Cooperative Societies was asked to appoint a Returning Officer for holding of the elections of the Society. In another extraordinary general body meeting held on 6.11.2005, members were informed of the progress in relation to the construction and development work. The Society took several steps towards completion of construction by getting the sewerage scheme sanctioned on payment of Rs.11.28 lacs. Further deposit of Rs.14.82 lacs was made with the Delhi Jal Board in September, 2005 towards Infrastructure Funds. 'No Objection' for the installation of lifts was also obtained. The Society accordingly notified respondent No.1 regarding completion of construction and also applied for issuance of Provisional Occupancy Certificate.

- (iv) The society on its own submitted the requisite documents to respondent No.1 for allotment and draw of lots. Public notice was also published in newspapers regarding the proposal for clearance of names of 120 members for allotment of flats and inviting objections. The publication was stated to have been in the "Statesman" on 19.12.2005 in English and in "Veer Arjun" on 16.12.2005

in Hindi. Petitioners also claim that it was their understanding that their name had been removed from the list of 133 Societies against whom investigations were in progress. Petitioner Society is also stated to have deposited penalty to the extent of Rs.12,93,000/- (Rupees Twelve Lakh Ninety Three Thousand only) for grant of extension of time. In short, the petitioners claim to have complied with all the requirements for issuance of the Provisional Occupancy Certificate. It is claimed that although all formalities have been complied by the petitioner Society, the grant of the Provisional Occupancy Certificate as also the case for extension of time was being delayed. The Society had also applied to the BSES for construction of Electric Sub-Station. It is averred that in fact, there is no impediment as the petitioner Society has completed all the requirements and formalities required for grant of Provisional Occupancy Certificate.

- (v) Members of the Society claim to be belonging to lower and middle class strata of the society. It is averred that the individual members have raised loans from financial and other institutions and contributed about Rs.17,00,000/- each towards cost of the flats. Despite the flats being ready, the members are living in rented accommodation and are paying rent for the accommodation as well as instalments to the financial institutions for the loans taken. It is claimed that members of the Society are not party to any illegal

actions or fraud practised by the members of the erstwhile Managing Committee, who are sought to be prosecuted.

2. Cooperative Scam

- (i) The position of the petitioner Society vis-à-vis the Cooperative Societies' scam is best reflected in the counter affidavit filed by the Registrar of Cooperative Societies. The present Society was amongst one of the 101 Societies being investigated by the CBI under orders of the Court passed in *WP(C)No.10066/2004* titled "*Yogi Raj Krishna Cooperative Group Housing Society Ltd. Vs. DDA & Ors.*" The affidavit highlights the attempts of the Land and Building Mafia to take over the societies. The modus operandi of the Land and Building Mafia to take over the cooperative societies and subvert the cooperative movement was sought to be achieved by purchasing defunct societies, obtaining resignations of members and enrolling new members of their choice by charging premium, after having obtained the benefit of allotment of land at concessional/subsidized rates by the DDA to the Society. It was averred that the group housing societies had been revived by promoters and builders having vested interest after forging the signatures of the original members and thereafter, submitting forged affidavits. Fake resignation letters of the original members had been submitted. Manipulation of record had taken place and there appeared to be a

strong nexus between the Builders' Lobby, officials of the Registrar, Cooperative Societies and DDA in the whole process of revival of the defunct societies. It was also averred that advantage was taken of the unamended Rule 24(2) of the Delhi Cooperative Societies Rules, which required notifying of the vacancies for membership in newspapers only where lay out and building plan had been approved and not in other cases. The affidavit also sets out the steps being taken by the Registrar, Cooperative Societies to ensure transparency in the process of enrolment of members.

- (ii) As regards the present Society, it was averred that the FIR had been registered and as per the FIR filed by CBI, one Mr.Uttam Kumar Sharma had contacted Mr. R.K. Bansal, the then Treasurer of the Society, proposing transfer of the control of the Society to others. Thereafter, Mr.Ashok Goswami was introduced to Mr. R.K. Bansal and Mr. Rakesh Kumar Sharma, the then Secretary. Mr.Ashok Goswami offered to pay a sum of Rs.5,100/- in lieu of each resignation letter arranged by the Managing Committee. Undated resignation letters were obtained from some members for which, they were paid Rs.5,100/-. The scrutiny of the records revealed that the resignation letters and receipt of refund of 29 expelled members, who were expelled in 1992, were available in the file even though the resignation letter was shown to have been submitted in the year 2000.

- (iii) During the investigation, 10 out of the 29 members stated that they had never resigned from the Society and the resignation letters did not bear their signatures. The DDA in its affidavit has averred that Plot No.20 in Sector 12 was allotted in the year 2000. It averred that till the inquiry and investigation was completed, it was not possible to issue Completion Certificate and Provisional Occupancy Certificate. Further, that the draw of lots for allotment of flats can be done when approved list of members of the Society for allotment of flats is received from respondent No.1.

3. Proceedings and Investigation

- (i) During the proceedings of the writ petition, the Court was informed that the CBI has been carrying on investigations and was in the process of preparing final complaint and in some cases was awaiting sanction. The CBI filed its action plan as also status report with regard to the societies under investigation. Several documents had been sent to the Examiner of questioned documents and their reports were awaited. On 5.7.2007, the Bench had taken up the present case separately from the other societies, when the Court was informed that the construction was complete and the flats were suffering attrition due to disuse. CBI investigation had revealed that out of 120 original members, resignations had been furnished by nearly 91 members over a period of 10

months. 29 members were expelled resulting in 125 new members being enrolled. It was claimed that the resignations of original members were not genuine and had been fraudulently obtained or were forged and dishonestly induced.

- (ii) Mr. Harish Gulati, counsel for CBI, informed that Charge Sheet had been filed against Mr. S.P. Saxena and Mr. Ashok Goswami, former office bearers of the Society. There was also the question of premium being paid by the newly enrolled members. Investigations had further revealed that M/s. N.G. Constructions had advanced a sum of Rs.25 lacs for payment of land cost to DDA in lieu of the understanding that the contract for construction would be awarded to them.
- (iii) Vide orders passed on 5.7.2007, it was directed that the exercise of ascertaining and verifying the original members and their current addresses should be undergone and they be given an opportunity of putting their case with regard to the resignation/expulsion and cessation of their membership. The modalities of reconciling the interests of members, who had been enrolled, were also to be considered. Further, directions were given vide our order of 11.7.2007 to the CBI to verify the factum of resignations. CBI was also directed to indicate whether the investigations had revealed any relationship, business or otherwise or close proximity of

the new members, who had been inducted, with any of the accused persons.

- (iv) The Court appointed Mr.S.M. Chopra, retired Additional Sessions Judge, to act as a Local Commissioner and Amicus Curiae with the task of considering the objections as may be received in respect of the resignations/expulsion of the original members. During the course of proceedings, the Local Commissioner and Amicus Curiae had filed the interim report as also the final report to which, we shall advert later on.
- (v) Pursuant to the directions given, public notices inviting objections against cessation of membership following the resignations/expulsion, were published in the newspaper. A copy of the notice inviting objections was also despatched by the Amicus Curiae directly to the original members, who had resigned or had been expelled.

4. Evaluation of Objections

- (i) The Local Commissioner and Amicus Curiae in his report, has noted the saga of resignations/inductions for various periods and the numberings being given. It is not feasible for us in these proceedings to deal with each of those resignations and re-inductions, which have finally culminated in the list of 120 members as forwarded by the Society in March, 2005. The Local Commissioner noted that the Registrar of Cooperative Societies proceeded on the basis of resignation letters and not

approved the resolution of the Society for expulsion of members due to non-observance of complete statutory formalities. The Local Commissioner, therefore, had rather than giving the evaluation in respect of the members, who had been expelled, recommended that their objections could be offloaded to the Registrar of Cooperative Societies and the contesting parties could be left to avail of their statutory remedies. We are, however, of the view, considering the construction, which is complete, and objections having been invited, that any case, which has complex facts and which requires further probe, can be decided on the lines of the decision taken on the basic issues raised in the objections and decided in the writ petition.

- (ii) We are first dealing with the issues emanating from the objections filed by members whose resignations are stated to have been forged or wrongfully obtained or those, who have challenged their expulsion as being contrary to the provisions of the Delhi Cooperative House Building Society and its Rules and thereafter, specifically with the case of 9 objectors.
- (iv) We may, at this stage, notice that 44 objections were received in response to the public notices issued inviting objections. In 30 out of these 44 cases, the factum of submission of resignation is admitted before CBI and otherwise. In 11 cases, the resignations are stated to be forged. Learned Amicus Curiae in his report dated

17.3.2008, submitted that out of 11 cases, 9 objectors namely, Chand Singh, R.D. Trivedi, Vijay Shankar, P.C. George, Sajjan Prasad, Shashikant, C.V. Verghese, P.Shankar Nair and R.P. Saini, the resignation letters have been found to be forged by the General Examiner of Questioned Documents (GEQD). The opinion in respect of Jitendra Nath and Ms. Maninder Kaur was awaited. As regards the resignation of 30 objectors wherein the resignations are admitted. It is sought to be urged that the same have been accepted in contravention of the Rules, norms and directions laid down by the RCS in dealing with the objections. Ms. Shashi Verma would also fall in the category of these 30 persons whose resignations are sought to have been accepted contrary to the prescribed norms or Rules of the Delhi Cooperative Societies Rules.

4(A). Submissions of the Objectors:

- (i) It would be appropriate at this stage to take note of the written submissions filed by Shri R.K. Gupta and Mr.Vimal Wadhawan, Advocates, who represent most of the objectors and whose submissions have also been adopted by the other objectors.

- (a) The first submission of Mr.R.K. Gupta is that the office of the Registrar of Cooperative Societies has issued directives from time to time dealing with the cases of involvement and acceptance of resignations and the Rules relating to enrolment,

resignations, cessation of membership and expulsion have to be strictly adhered to and in the absence of strict compliance with the same, the acceptance of resignation, cessation of membership or expulsion would not be valid. Reference was invited to Rule 30 of the DCS Rules regarding filling up of vacancies required, advertisement in the newspapers in terms of Rule 30 and its consideration thereof by the Managing Committee under Sub-Rule (4). It is submitted that the petitioner Society has failed to place on record the resolution passed by the Managing Committee enrolling the new members or record of the meetings where the procedure as required under Rule 30 had been followed.

- (b) Similarly, the resignation under Rule 40 postulates that on a resignation of a member being accepted, there has to be a transfer of whole or of his share or interest in the Society to another member on his death, removal or expulsion. In the instant case, it is urged that petitioner Society had failed to prove on record that alleged resignation letters were tendered by some of the objectors were theirs and these have been placed before the Managing

Committee and so accepted. These could not, therefore, be treated as valid resignations.

(ii) It is urged that objections cannot be decided against the objectors who, the Society is claiming, had resigned, since the controversies and disputed facts require evidence. Regarding expulsion, it was submitted that a member could be expelled either on account of persistent default in payment or such member having committed an act which is detrimental to the interest and proper working of the Society. Prior to expulsion, the requirement was service of a registered notice and provision of an opportunity to represent his case. Reliance was placed on the directives issued under Rule 77 of the Cooperative Society Rules 1973 as also on the judgment of the High Court of Delhi in "*R.K. Aggarwal Vs. Registrar, Cooperative Societies, Delhi and Ors.*" reported at **45 (1991) DLT 105** in support of the strict compliance with Rule 36 and in the absence of proof of registered notices having been sent, the action of expulsion would be non est.

(iii) We have considered the reports and response as filed by the CBI as also of the Registrar of Cooperative Societies, the reports of the Amicus Curiae and the objections filed by the Objectors. The following position emerges:

30 objectors which appear at Sl. Nos. 3, 5, 6, 8, 11, 12, 13, 15, 16, 17, 18, 19, 21, 25, 27, 29, 30 to 39, 41, 42 and 44 in the affidavit by the Registrar,

Cooperative Societies are persons, who have confirmed their respective signatures on the resignation letters before the CBI. These objections are without merit and not sustainable. Eleven objectors have denied their signatures on the resignations which have been found to be forged by the GEQD. These are objectors at Sl. Nos. 2, 7, 9, 10, 14, 20, 22, 23, 24, 26 and 43. The objectors at Sl. No.40 did not cooperate or give information to the CBI as required. Hence, verification and input from CBI could not be received and objection remained unsubstantiated. The objector at Sl. No.4 has not yet been recognized as a member by RCS and his objection, therefore, is misplaced and does not deserve any consideration. Another objector referred to at Sl. No.1 expired in 1995 and it is his LR who is agitating the claim and is being separately considered.

- (iv) We are of the view that members of the Society, who had tendered their resignations in this case to the Society and received refund of membership fee and the amount paid by them, cannot be permitted belatedly after a gap of a number of years to wake up like 'rip van winkle' and then seek to claim membership from which they had tendered resignation. This is especially so when it is obvious that the realization and urge to stake a claim for membership

and consequently a flat, has been ignited by the spiraling prices in the value of real estate. These objectors cannot be permitted to displace others who have been enrolled in their place especially when the latter have during this interregnum of a number of years, made payments towards the price of flat.

- (v) Learned Senior Counsel Mr.Sethi is right in his submission that the petitioner Society after allotment of the land got the building and other plans approved and with the contribution from the newly enrolled members, constructions have been raised and flats are now ready for occupation. The objectors, who had chosen to resign from the Society cannot now be permitted to take advantage of any non-compliance or non-observance of all the Rules concerning acceptance of resignation to urge that their resignations be now ignored and they continued to be members, entitled to allotment of flats for which they had not paid any consideration but are now willing to do so in view of the spiraling and manifold rise in the cost of the real estate. The objectors after resigning and having received their refund of membership fee and other dues, merrily stayed back, while the others toiled and made the payment for construction of the flats. The flats being ready for occupation, they cannot now be permitted to urge that their resignations were not valid and hence, they are members and they should be allotted flats. It is rightly

said that "*Vigilantibus, et non dormientibus, jura subveniunt* – The vigilant, and not the sleepy, are assisted by the laws.

- (vi) Similar will be the position of the members, who claimed that their resignations had not been furnished by them voluntarily and had been obtained under coercion. As regards members, who had been expelled, petitioner Society contends that they had, despite notices, failed to tender the amounts due. Various opportunities were given to them to make the payment of the costs of the land in instalments but they failed to do so and consequently, as a result of resolution passed in the meetings duly held, were expelled. It is also significant that none of these objectors after their expulsion when the flats were to be constructed and instalments were being paid by others enrolled in lieu of them, took any steps to assert their rights. Without even going into the question of their forged resignations and treating the same as non est, the situation would not change because of their persistent default in making payment of the amount demanded followed by expulsion and their failure to challenge or dispute the same. We may note here that none of the objectors had on their own, initiated any proceeding or action to assert their rights. It is only when after the public notice had been taken out and a communication had been sent by the Local Commissioner that the claim is sought to be asserted.

(vii) We have also perused the reports of the CBI to ascertain whether any of the members enrolled in lieu of the earlier ones were involved in the commission of any of the offences or were in *peri delicto* with the office bearers against whom the charge sheets have been filed. The charge sheet and the investigation reports do not reveal any involvement of the person enrolled in lieu of the renewed or expelled members except the office bearers and one or two of their immediate relations to whom we shall revert later. Rather, at present, persons who were taken as members in lieu of the resigning or expelled members, may have had to pay a higher premium to those, who were in charge of the affairs and have been charge sheeted. Hence subjected to increased costs by way of some premium. Denial of membership at this stage to them without their being in any way involved or having been in *pari delicto* with the charge sheeted persons, would amount to increasing their suffering.

(viii) With a view to satisfy our judicial conscience that no injustice is done to the objectors, we have also examined cases of forged resignations. One Mr. Ashish Gaur, who is the objector at Sl. No.1, claims that the resignation letter of his father late R.P. Sharma, was a forged one since he had expired on 2.4.1995, while the resignation letter that had been submitted by S.P. Saxena, President of the Society, was of the year 2000. The fact remains that the entire amount and deposit was duly refunded by the

Society vide cheque No.752852 dated 8.3.1995. It was sought to be urged by Mr.V.K. Tandon for Objector that the said amount has not been credited to the account of the deceased. The cheque had been duly received by deceased's brother-in-law Narender Kumar Gupta, under a receipt and the factum of receipt of cheque was not even denied during the investigation by CBI. Mr. Narender Kumar Gupta had also resigned from the membership of the Society and received the refund on behalf of his brother-in-law also. The CBI on investigation, has confirmed that the amount has been debited to the account of the Society. The objection now sought to be filed more than 13 years later from the date of receipt of refund of deposits and membership fee is not a bona fide one and is devoid of merit.

- (ix) The objector at Sl. No.2 was one Chand Singh having membership No.114. He claimed that he had never resigned. The said Chand Singh happened to be one of the 29 members, who were expelled on account of the failure to pay the 5 quarterly instalment of Rs.1,000/- each towards the land cost. This was done taking note of three notices dated 7.12.1991, 26.12.1991 and 17.1.1992 having already been served on them and their failure to make the payment, the resolution was passed on 3.5.1992 expelling them.
- (x) Similar is the position in respect of R.D. Trivedi at Sl. No.7, who has been expelled from the membership of the

Society for default in payment of the land cost as above, being one of the total of 35 members, who were so expelled. His resignation dated 23.8.2001 even if treated as non est, was a redundant one and of no consequences. The said Mr.R.D. Trivedi did not protest or file any complaint with the Society.

- (xi) The case of Jitender Nath (membership registration No.80), who claims that he had never resigned, is also one where he is stated to have been expelled by the previous management in 1993 for non-payment. He did not file complaint to the Society nor lodged any criminal complaint with regard to the alleged forged resignation.
- (xii) Cases of Jitender Nath, Vijay Shankar Singh and P.C. George are on same lines, where expulsion was done by the previous management in 1993. No complaint was lodged with the Society or Registrar, Cooperative Societies.
- (xiii) The Objector Sajan Prasad never claims to have resigned. He denies his signatures on the resignation letter submitted in the year 2000. The Society claims to have expelled him in the year 1992 due to non-payment. Case is now belatedly sought to be raised.
- (xiv) Cases of Shashikant, C.V. Verghese, P. Shankar Nair and R.P. Saini are also those where members were expelled due to non-payment by previous management. No action was taken by them. Factum of resignation has also been

denied. In case of Ms.Maninder Kaur and Shashi Verma, the amounts have been received back.

(xv) We have dealt with cases of these members, who had claimed that their resignations were forged and we find that these are cases where they have been expelled due to non-payment by previous management in 1993 and are now claiming their membership. As per the CBI report, most of them admit in their statements that they live in their own houses and accordingly, may not be eligible for allotment of a flat on that account. However, it is not necessary for us to go into that except to notice the same as one of the equitable considerations.

(xvi) We may also notice that objections have also been filed by Ramesh Kumar Bansal, Jagdish Kumar Sharma and Rakesh Kumar Sharma. These happen to be the ex-Treasurer, President and Secretary of the Society, who were responsible for the induction of Ashok Goswami and others, who obtained resignations from original members. It is indeed ironical that these members who were responsible for the management of the Society passing into the hands of the charge sheeted officers are now themselves claiming that they were forced to resign. Their objections are indeed meritless and do not deserve consideration.

The decision on the objections is for the purpose of eligibility as a member and entitlement to a flat, it shall have no bearing with the pending prosecutions by the CBI

and/or the right of any individual member, who may wish to institute criminal action against those, who he claims have cheated or defrauded him.

(xvii) We may also notice the decision of a Division Bench of this Court in "*Modern Cooperative Group Housing Society Vs. Registrar of Cooperative Societies*" reported at **101 (2002) Delhi Law Times 341** wherein the Court observed:

"Defaulting members cannot be allowed to enjoy fruits and claim the allotment of those flats which have been constructed with the finance of members enrolled in their slots. No Society can be faulted or put in the dock for the delinquent act or remissness of the authority which in this case is the Registrar. It is the defaulting members, who have to bear the brunt and not those who have been rule abiding and regular in making payments and who have accelerated the process of construction of the flats which is the ultimate goal of a housing society. Any laxity or sympathy towards the defaulting member is misplaced."

(xviii) We are in full agreement with the views expressed above.

Members, who had, either of their own volition, chosen to resign or those who had been induced to resign and did not participate in the activities of the cooperative society, cannot be permitted now after a decade and a half to turn around and seek allotment of flat. These members chose to receive the refund of the membership fee and/or their contribution and took no steps to assert their legal rights or participate in the activities of the Society. This would also apply to members, who were either expelled and are now seeking to stake their claims questioning the

validity and legality of the expulsion after flats have been constructed with the funds and money provided by the members enrolled in lieu of them.

- (xix) We have also noted that the CBI has not found any nexus or connection of the newly enrolled members with those who were perpetrators of fraud or takeover of the Society. Rather, the newly enrolled members have been burdened with increased costs and had bonafide contributed to the funds of the Society without being in *peri delicto* with those responsible for the cooperative scam. In case these members are sought to be deprived of the fruits of their investments, it would be highly inequitable to them.

5. Directions:

- (i) We have heard learned counsel for the petitioners, objectors, intervenors and the counsel for Registrar of Cooperative Societies on the modalities to be followed for determining the list of eligible members to be forwarded to the DDA for allotment of flats. Learned counsel for the petitioners Mr. Ravinder Sethi, Sr. Advocate and Mr. Sumit Bansal, Advocate, initially submitted that since the public notice had been issued and objections invited and evaluated by the Court and even fresh notices sent to original members through the Local Commissioner by way of abundant caution, the petitioner should be exempted from following the procedure under Schedule

VII sub-rule (1) of Rule 90 of the Delhi Cooperative Societies Rules. Counsel for the Registrar of Cooperative Societies and the objectors submitted that several aspects and requirements would still be left out and the eligibility of the members enrolled in lieu of the original, resigned or expelled members, also need to be determined.

- (ii) The matter was listed for directions on 28th August, 2008 to decide the modalities in this regard. We heard Mr. Ravinder Sethi, Senior Advocate and Mr. Sumit Bansal, learned counsel for the petitioner, Ms. Sujata Kashyap, counsel for Registrar of Cooperative Societies, Mr. R.K. Gupta, counsel for the objectors and Mr. V.K. Tandon, appearing for an Objector Mr. Gaur. After hearing learned counsel and deliberations, a consensus was arrived that the Society should furnish information as per Schedule VII, sub-rule (1) of Rule 90 of the Delhi Cooperative Societies Rules subject to the exception that those objections which have already been considered and evaluated by this Court in these proceedings, would not be gone over again and the findings would be adhered to.
- (iii) Parties are also agreed that in these special and peculiar circumstances where the flats have been lying ready since 2005 and suffering attrition, it was of utmost importance that the eligibility of members and disputes, if any with regard thereto, are resolved at the earliest and

the flats are put to use. Towards this end, it was agreed that the findings and recommendations of the Registrar of Cooperative Societies and the Rule 90 Committee be approved by an independent Committee comprising a retired Judge of this Court with a member of the Committee from the Registrar's office, who would not be involved either in the exercise of making recommendations by the Registrar or in the Rule 90 Committee. The time frame for reference and furnishing of information by the Society and the time to be taken by the Registrar in making the recommendation and review by the Rule 90 Committee as also by the Judicial Committee to be nominated were discussed and agreed between the parties.

- (iv) Accordingly, with the consent of the parties and the objectors, we constitute a Committee comprising Justice S.K. Mahajan (retired) and Mr. S.K. Jha, Joint Registrar in the office of Registrar of Cooperative Societies as the Committee that would have the task of reviewing and approving the recommendations made by the Registrar of Cooperative Societies and the Rule 90 Committee. The fee of Justice S.K. Mahajan, in the first instance, is fixed at Rs.1.10 lacs. Mr. S.K. Jha shall also be paid an honorarium of Rs.30,000/-. The petitioner Society shall deposit a sum of Rs.1.40 lacs with the Registrar General of this Court within 10 days of the order to be remitted to

Justice S.K. Mahajan and Mr. S.K. Jha. The Judicial Committee may in its discretion approve, modify, alter, remit any recommendation or part thereof of the Rule 90 Committee's report and that of the Registrar of Cooperative Society. The Committee shall be entitled to call for any record or information and documents or hear any aggrieved party in its discretion as it considers necessary for the purpose of executing its mandate. The following time schedule is to be observed:

- (a) The Society shall furnish within one month the documents and information along with list of members in compliance with schedule VII under the Delhi Cooperative Societies Rules, 2007 and take out the public notices as required inviting objections on the proposal regarding clearance of membership. It shall also submit the revised proposal, if any, within 30 days of publication of the public notice. The Registrar shall dispose the objections after hearing the parties including the issuance of 'Deficiency Memo', if any, within a period of 15 days and verify the documents and complete the scrutiny within a further period of 15 days. A representative of the Society duly authorized, shall be present with the requisite documents in original as per Clause 23 of Schedule VII for verification. It would be open for the Society to submit certified copies of the originals in case the same are in the custody of the CBI. The petitioner may approach CBI directly or through the Registrar of Cooperative Societies for obtaining certified copy of the original record. The Registrar of Cooperative Societies would render all assistance to the Society, if required in

obtaining the certified copy of the originals, if seized by the CBI.

- (b) The Registrar shall refer the matter to Rule 90 Committee with its recommendation also taking into account inputs by CBI for approval. Rule 90 Committee shall examine and review the recommendations made by the Registrar of Cooperative Societies and take a decision within a month of receipt of the report from the Registrar.
- (c) Report of the Registrar of Cooperative Societies together with the Rule 90 Committee's report, shall be placed before Justice Mahajan's Committee for consideration, review and approval. Justice Mahajan's Committee shall consider the reports and recommendations made and in its discretion, may approve, modify, reject or remit the reports or any part thereof or any recommendation as made. It would also be open for the Justice Mahajan's Committee to hear in its discretion any of the objectors or aggrieved persons and seek any further information/document or clarification that it may require and have a decision thereon with regard to the position of such a person, his entitlement, eligibility or otherwise. Justice Mahajan's Committee shall submit its report within one month regarding the approval, rejection, modification, remission of the report of the

Registrar of Cooperative Societies and the report of the Rule 90 Committee. The Court upon receipt of the report of Justice Mahajan's Committee together with the recommendations from the Registrar of Cooperative Societies and the report of the Rule 90 Committee shall pass suitable orders and direct the Registrar of Cooperative Societies to forward the list as approved to DDA for draw of lots and allotment.

- (v) We direct that each member of the petitioner Society who is allotted a flat in the draw of lots, shall furnish an undertaking that he would not sell, transfer or alienate the flat in question without the leave of the Court for a period of five years or such further time as may be fixed by the Court.
- (vi) We also direct that the charge sheeted office bearers and/or members of the petitioner society including former members, shall not be eligible for consideration for allotment of a flat till they are found blemishless after the acquittal and exoneration in any inquiry by the Registrar of Cooperative Societies.

The writ petition stands disposed of with these directions.

Manmohan Sarin, J.

August 29, 2008
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Sudershan Kumar Misra, J.