

Neutral Citation No. - 2024:AHC-LKO:24778

AFR

Reserved

Court No. - 8

Case :- WRIT - C No. - 1001289 of 2014

Petitioner :- Pradeep Kumar

Respondent :- The Co Operative Tribunal U.P. Thru Presiding Officer And Ors

Counsel for Petitioner :- Anupras Singh,Akshay Agarwal,Anupras Singh

Counsel for Respondent :- C.S.C.,Ausaf Ahmad Khan,Aushaq Ahmad Khan,Ganga Singh,Pushkar Baghel,Raghvendra Singh,Somesh Tripathi

CONNECTED WITH

Case :- WRIT - C No. - 1001290 of 2014

Petitioner :- Ritesh Singhal

Respondent :- The Co Operative Tribunal U.P. Thru Presiding Officer And Ors

Counsel for Petitioner :- Anupras Singh,Akshay Agarwal

Counsel for Respondent :- C.S.C.,Anuj Dayal,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001368 of 2014

Petitioner :- Rajneesh Parashar

Respondent :- The Co Operative Tribunal U.P.Thro.Presiding Officer And Ors.

Counsel for Petitioner :- Anupras Singh

Counsel for Respondent :- C.S.C.,Amit Swami,Anurag Kumar Singh,Aushaq Ahmad Khan,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001425 of 2014

Petitioner :- Satendra Kumar

Respondent :- The Cooperative Tribunal U.P.Lucknow And Ors.

Counsel for Petitioner :- Hemant Kumar Mishra,Arti Ganguly,Hemant Kumar Mishra

Counsel for Respondent :- C.S.C.,Amit Swami,Anurag Kumar Singh,Aushaq Ahmad Khan,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001426 of 2014

Petitioner :- Deepak Rana

Respondent :- The Cooperative Tribunal U.P.Lucknow And Ors.

Counsel for Petitioner :- Hemant Kumar Mishra

Counsel for Respondent :- C.S.C.,Amit Swami,Anurag Kumar Singh,Aushaq Ahmad Khan,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001455 of 2014

Petitioner :- Narendra Kumar Pathak

Respondent :- Chairman Cooperative Tribunal U.P.India Bhawan Lko. And Ors.

Counsel for Petitioner :- Nirankar Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal,Anurag Kumar Singh,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001518 of 2014

Petitioner :- Dhananjay Bhardwaj

Respondent :- Smt. Asha Malik And Others

Counsel for Petitioner :- Rakesh Srivastava

Counsel for Respondent :- C.S.C.,Anuj Dayal,Anurag Kumar Singh,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001520 of 2014

Petitioner :- Rajesh Vyas

Respondent :- Smt. Veena Gupta And Others

Counsel for Petitioner :- Rakesh Srivastava

Counsel for Respondent :- C.S.C.,Anuj Dayal,Anurag Kumar Singh,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001529 of 2014

Petitioner :- Prem Kumar Sharma

Respondent :- Chairman Cooperative Tribunal U.P.Indira Bhawan Lko.And Ors.

Counsel for Petitioner :- Nirankar Singh,Dev Prakash Mishra,Nishant Shukla

Counsel for Respondent :- C.S.C.,Amit Swami,Anurag Kumar Singh,Aushaq Ahmad Khan,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001541 of 2014

Petitioner :- Sandeep Kumar

Respondent :- Cooperative Tribunal U.P.Lucknow Thr.Presiding Officer And Ors

Counsel for Petitioner :- Sanjay Kumar Srivastava

Counsel for Respondent :- C.S.C.,Anuj Dayal,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001549 of 2014

Petitioner :- Bhagwan Singh Rana

Respondent :- Sri. Mukesh Kumar Gupta And 2 Others

Counsel for Petitioner :- Rakesh Srivastava

Counsel for Respondent :- C.S.C.,Amit Swami,Anurag Kumar Singh,Aushaq Ahmad Khan,Chetan Kumar Tiwari,Ganga Singh,Pushkar Baghel,Satish Chandra Shukla,Somesh Tripathi

CONNECTED WITH

Case :- WRIT - C No. - 1001551 of 2014

Petitioner :- Dinesh Kumar Mathur

Respondent :- Smt. Meena Verma And 2 Others

Counsel for Petitioner :- Rakesh Srivastava,Anurag Kumar Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal,Ganga Singh,Pushkar Baghel

CONNECTED WITH

Case :- WRIT - C No. - 1001911 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Avas Samiti Ltd. Thru Secy.

Respondent :- Smt. Meena Verma And Others

Counsel for Petitioner :- Pushkar Baghel,Anurag Kumar Singh,Ganga Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal,Rakesh Srivastava

CONNECTED WITH

Case :- WRIT - C No. - 1001924 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Avas Samiti Ltd. Thru Secy.

Respondent :- Smt. Veena Gupta And Others

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal,Rakesh Srivastava

CONNECTED WITH

Case :- WRIT - C No. - 1001926 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Avas Samiti Ltd. Thru Secy.

Respondent :- Sri Mahesh Kumar Gupta And Others

Counsel for Petitioner :- Pushkar Baghel,Anurag Kumar Singh,Ganga Singh

Counsel for Respondent :- C.S.C.,Abhishek Dwivedi,Chetan Kumar Tiwari,Divyadeep Chaturvedi,Rakesh Srivastava,Satish Chandra Shukla

CONNECTED WITH

Case :- WRIT - C No. - 1001927 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Avas Samiti Ltd. Thru Secy.

Respondent :- Smt. Asha Malik And Others

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal,Rakesh Srivastava

CONNECTED WITH

Case :- WRIT - C No. - 1002600 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Awas Samiti Ltd. Thru.Secy.

Respondent :- Prashant Kumar Verma And 2 Others

Counsel for Petitioner :- Pushker Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal

CONNECTED WITH

Case :- WRIT - C No. - 1002601 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Awas Samiti Ltd. Thru.Secy.

Respondent :- Bharat Bhushan Mittal And 2 Others

Counsel for Petitioner :- Pushker Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Abhishek Dwivedi,Arti Ganguly,Ashutosh Chaurasia,Chetan Kumar Tiwari,Divyadeep Rastogi,Hemant Kumar Mishra,Satish Chandra Shukla

CONNECTED WITH

Case :- WRIT - C No. - 1003093 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Awas Samiti Ltd. Thru Secy.

Respondent :- Shri V.P. Kardam And Others

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.

CONNECTED WITH

Case :- WRIT - C No. - 1003094 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Awas Samiti Ltd. Thru Secy.

Respondent :- Krishna Kumar Rastogi And Others

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh,Somesh Tripathi

Counsel for Respondent :- C.S.C.,Abhishek Dwivedi,Ashutosh Chaurasia,Chetan Kumar Tiwari,Divyadeep Chaturvedi,Satish Chandra Shukla.

CONNECTED WITH

Case :- WRIT - C No. - 1003095 of 2014

Petitioner :- Jivan Bima Rashtriya Sahkari Awas Samiti Ltd. Thru Secy.

Respondent :- Sri Daya Nand And Others

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Abhishek Dwivedi,Ashutosh Chaurasia,Chetan Kumar Tiwari,Divyadeep Chaturvedi,Satish Chandra Shukla

CONNECTED WITH

Case :- WRIT - C No. - 1003972 of 2014

Petitioner :- Jivan Bima Rashtriya Sahakari Avas Samiti Ltd. Thru Secy.

Respondent :- Rajesh Kumar Saxena And Others

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Abhishek Dwivedi,Ashutosh Chaurasia,Chetan Kumar Tiwari,Divyadeep Chaturvedi,Satish Chandra Shukla

CONNECTED WITH

Case :- WRIT - C No. - 1003973 of 2014

Petitioner :- Jivan Bima Rashtriya Sahakari Avas Samiti Ltd. Thru Secy.

Respondent :- Shri Rakesh Sharma

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal

CONNECTED WITH

Case :- WRIT - C No. - 1003974 of 2014

Petitioner :- Jivan Bima Rashtriya Sahakari Avas Samiti Ltd. Thru Secy.

Respondent :- Bhoopal Singh

Counsel for Petitioner :- Pushkar Baghel,Ganga Singh

Counsel for Respondent :- C.S.C.,Anuj Dayal

Hon'ble Jaspreet Singh, J.

1. This is a batch of 24 petitions preferred under Article 226 of the

Constitution of India assailing the order dated 27.01.2014 passed by the Co-operative Tribunal, Uttar Pradesh whereby the award passed by the Arbitrator in proceedings under Section 70 of the U.P. Co-operative Societies Act, 1965 (hereinafter referred to as the Act of 1965) has been affirmed.

2. The issue involved in the aforesaid 24 petitions is common and is based, by and large, on almost similar facts and the issue of law involved in all petitions is same, hence, all petitions were connected and were heard together and are being decided by this common judgment.

3. To put the controversy in a perspective, the Court shall be considering the facts from the leading petition bearing No.1001289 (M/S) of 2014 alongwith W.P. bearing No. 1003095 (MS) of 2014. However, the submissions of the respective counsel for the parties which are almost the same in all petitions have been noticed and wherever necessary facts of the other petitions is required it will also be noticed at the appropriate place.

4. Primarily, the basic facts which are common in all the petitions are that the private respondent were the initial allottees of the flats in Jivan Bima Rashtriya Sahkari Avas Samiti Ltd, GH-7 Sector-6 Vasundhara Ghaziabad. Since they were defaulters and did not make the necessary payment, hence the Committee of Management of the Society took a decision to cancel the allotment of the original allottees and thereafter the flats were allotted to the present petitioners who are the subsequent allottees and are in possession. They have also got their names duly mutated in the relevant municipal records and have been paying the municipal taxes and utility bills.

5. The private respondents being aggrieved against the allotment made in favour of the petitioners, at different stages filed petitions under Section 70 of the Act, 1965. However in some cases, the private respondents had first instituted civil suits which later came to be dismissed as withdrawn and

thereafter they too, filed petitions under Section 70 of the Act, 1965. In most of the cases, the subsequent allottees, initially, were not made as a party before the Arbitrator and award was passed. The impact of which was that the allotment of flats made in favour of the subsequent allottees was cancelled.

6. The subsequent allottees then assailed the said awards before the Co-operative Tribunal and who dismissed the appeals which prompted the subsequent allottees to approach this Court by means of the instant writ petitions.

7. A Co-ordinate Bench of this Court by means of order dated 03.03.2014 while issuing notice to the respondents had granted an interim order in pursuance whereof the possession of the petitioners of the writ petitions has been protected and the same is reproduced as under:-

"1. Sri J.N. Mathur, learned Senior Advocate, Assisted by Sri Anupras Singh, Advocate, appearing for the petitioner, contends that respondent no.5 did not pay the dues towards Society for constructions of the flat despite repeated reminders sent to the said respondent. Details of default and reminders given by the Society to respondent no.5 have been mentioned in para nos.16 to 18 of the writ petition.

2. Sri Mathur further submits that that by virtue of order/refund, Annexure-13, vide which share money of the respondent no.5 was returned, even membership of the respondent was cancelled. Membership of the respondent has not been restored either in arbitral award or by the tribunal, although decision has been rendered against the petitioner. Without reviving membership of respondent no.5, no benefit can flow to respondent no.5.

3. Learned counsel has further impressed on the Court that the petitioner has deposited the entire amount for the flat. The petitioner was made a member of the Society and was given possession of the flat. The petitioner continues to live in the flat. The findings returned by the arbitrator and the Tribunal to the effect that the respondent no.5 was not given sufficient opportunity, is perverse.

4. Sri Amit Swami, Advocate, appears for respondent no.5 and has filed his power-of-attorney, which is taken on record.

5. Issue notice to respondent nos.3 and 4 by speed post only.

6. Let respondent nos.3 and 4 file their counter affidavits within two weeks. Rejoinder affidavit within one week thereof.

7. Considering the nature of lis, the respondent-Society is also directed to address the court as to whether more land/plots are available to be allotted to the private respondent no.5/petitioner.

8. List on 28.3.2014.

9. In the meantime, operation of impugned orders (Annexure nos.1 and 2) shall remain stayed. "

8. During pendency of these petitions, in some case, some petitioners had

expired and upon application moved for substitution, their legal heirs have been brought on record. However, for the sake of convenience, this Court shall refer to the parties as they were originally impleaded in the writ petitions.

9. The impugned orders passed by the Arbitrator and affirmed by the Cooperative Tribunal, Uttar Pradesh have been challenged by the subsequent allottees and also by the Jiwan Beema Sahkari Awas Samiti Ltd. The writ petition has been filed by the subsequent allottee Sri Pradeep Kumar (bearing W.P. No. 1001289 (MS) of 2014) and relating to the order against Pradeep Kumar, the writ petition filed by the Society is bearing W.P. No. 1003095 of 2014; similarly, writ petition filed by the subsequent allottee Sri Rajneesh Parashar is bearing W.P. No. 1001368 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1003093 of 2014; writ petition filed by the subsequent allottee Sri Bhagwan Singh Rana is bearing W.P. No. 1001549 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1001926 of 2014; writ petition filed by the subsequent allottee Sri Dhananjay Bhardwaj is bearing W.P. No. 1001518 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1001927 of 2014; writ petition filed by the subsequent allottee Sri Rajesh Vyas is bearing W.P. No. 1001520 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1001924 of 2014; writ petition filed by the subsequent allottee Sri Deepak Rana is bearing W.P. No. 1001426 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1003094 of 2014; writ petition filed by the subsequent allottee Sri Satendra Kumar is bearing W.P. No. 1001425 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1002601 of 2014; writ petition filed by the subsequent allottee Sri Dinesh Kumar Mathur is bearing W.P. No. 1001551 (MS) of 2014 and in the said case,

the writ petition filed by the Society is bearing W.P. No. 1001911 of 2014; writ petition filed by the subsequent allottee Sri Narendra Kumar Pathak is bearing W.P. No. 1001455 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1002600 of 2014; writ petition filed by the subsequent allottee Sri Ritesh Singhal is bearing W.P. No. 1001290 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1003973 of 2014; writ petition filed by the subsequent allottee Sri Prem Kumar Sharma is bearing W.P. No. 1001529 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1003972 of 2014 and lastly writ petition filed by the subsequent allottee Sri Sandeep Kumar is bearing W.P. No. 1001541 (MS) of 2014 and in the said case, the writ petition filed by the Society is bearing W.P. No. 1003974 of 2014.

10. In the petitions filed by the subsequent allottees i.e. writ petitions No. 1001289, 1001290 and 1001368 of 2014, the arguments were opened by Shri Anupras Singh, learned counsel. This was taken forward by Sri Rakesh Srivastava, learned counsel appearing for subsequent allottees in W.P. No. Civil Misc. Writ Petitions No.1001455 (MS) of 2014, 1001518 (MS) of 2014, 1001520 (MS) of 2014, 1001549 (MS) of 2014 and 1001551 (MS) of 2014, Shri Hemant Kumar Mishra learned counsel for petitioners in Civil Misc. Writ Petitions No.1001425 (MS) of 2014 and 1001426 (MS) of 2014, Shri Nirankar Singh in Civil Misc. Writ Petition No.1001455 (MS) of 2014 and Shri Sanjay Kumar Srivastava in Civil Misc. Writ Petition No.1001541 (MS) of 2014.

11. The writ petition filed by the Society as detailed above were all argued by Sri Ganga Singh, learned counsel and Sri Divyadeep Chaturvedi,

learned counsel has made his submission through video conferencing on behalf of the private respondents (the original allottees) in most of the Civil Misc. Writ Petitions bearing W.P. No.1001289, 1001368, 1003093, 1003095, 1001425, 1002601, 1001426, 1003094, 1001549, 1001926, 1001529, 1003972, 1001518, 1001927, 1001455, 1002600, 1001552 and 1001911 of 2014 and Sri Anuj Dayal, learned counsel has assisted Sri Divyadeep Chaturvedi, learned counsel in Civil Misc. Writ Petition No. 1001290, 1001455, 1001518, 1001520, 1001541 and 1001551 of 2014 appearing for the original allottees.

12. In order to appreciate the contention raised by the respective parties, it will be worthwhile to take a glance at the facts giving rise to the instant petitions.

13. Jivan Bima Rashtriya Sahakari Avas Samiti Ltd., Sector 6, Vasundhara Ghaziabad is a Co-operative Society and is governed by its by-law. It is also governed by the provisions of the Act of 1965. The Society was allotted land at GH-7, Sector-6, Vasundhara Ghaziabad by the Uttar Pradesh Avas Evam Vikas Parishad for building cheap and affordable flats for its members. The members of the Society were required to contribute towards the cost of the flats and to facilitate the same a scheme of payment was formulated by the Society.

14. While the Society had started raising the construction of the flats but since there were erratic payments from some of the members

of the Society and there was change in the carpet area of the respective flats, hence there was an issue regarding the final pricing as escalated costs and increase in the area of flats was to be factored to arrive at an appropriate fixed price of the respective type of flats.

15. In all there were 120 units with the following break up:- **(a)** 48 units of Type-A MIG flats measuring 880 square feet and the initial price notified was Rs.6.5 lakh. Later, the area of the flats was increased to 1127 square feet, thus, the cost of Type-A flats was enhanced to Rs.8.55 lakh; **(b)** 44 units of Type-B HIG flats with the original area of 1150 square feet and was priced at Rs.8.5 lakh. Later, the area of these Type-B flats was enhanced to 1545.7 square feet and the price was enhanced to Rs.11.42 lakh; **(c)** 28 units of Type-C flats which were super HIG having an initial area of 1680 square feet and was priced at Rs.11.50 lakh, but later, the area was enhanced to 2006.21 square feet and the price was also enhanced to Rs.14.58 lakh.

16. Since there was escalation of cost on account of enhancement in the area and even otherwise there was fractured payments made by the members which also led to increased cost of the flats as the timelines were being overshoot. In order to arrive at an appropriate revised costs and in absence of a consensus, the intervention of the Housing Commissioner was sought and the matter was referred to a Committee of three members (hereinafter referred to as the Dahiya Committee) who examined the matter and then furnished its report prescribing the enhanced and revised prices for different category of

the flats as mentioned hereinabove.

17. The members of the Society were thereafter informed by the Society regarding the enhanced prices and the increase in the area of the flats and the members were requested to deposit the short fall so that the flats could be completed within further time so as to avoid any further costs over runs. Society sent repeated demands to the members, however, some of them did not adhere to the timelines as a result the Society sent final calls letters requiring the members to deposit the outstanding sum, failing which, appropriate action for cancellation of the allotment would be initiated.

18. Despite the information having been conveyed to the members yet many of them did not adhere to the fiscal discipline as a result the Society took a decision of cancelling the allotment of such defaulting members. In most of the cases, none of the said defaulting members took any immediate action nor they responded at the time when the said cancellation notice and refund of money was made rather they kept silent at the said time

19. It is in the aforesaid backdrop that the Society then made fresh allotment in favour of the subsequent allottees who deposited the entire consideration towards the cost of the respective category of flats as allotted to them by the Society and they were issued the membership certificate, allotment certificate and agreement was also entered between the Society and the fresh/subsequent allottees. In furtherance of the aforesaid documentation, subsequent/fresh allottees

were given possession.

20. Subsequent allottees have since then been in possession exercising their proprietary rights over the said flats as allotted to them and have got their names duly mutated in the municipal records and have been paying the municipal taxes, electricity bill and other public utility bills.

21. After about two years from cancellation, few of the defaulting members whose membership had been cancelled and their membership money was refunded including the refund of the loan amount, they raised dispute regarding the cancellation of their allotment by filing civil suits, later the suits were withdrawn and the original allottees thereafter filed petitions under Section 70 of the Act 1965. As already noticed above, the awards were passed in favour of the original allottees which was assailed by the subsequent allottees in appeal before the Co-operative Tribunal and with the dismissal of the appeal, the petitioners who are the subsequent allottees preferred the instant writ petitions.

22. In light of the aforesaid factual matrix, learned counsel for the petitioners have structured their arguments as under:-

(i) it is urged that in most of the cases filed before the Arbitrator, there is a challenge to the cancellation of the allotment by the original allottees. However, they did not challenge the cancellation of their membership nor the membership of the petitioners. It is submitted that in order to

have a valid allotment it is *sine qua non* to have a valid membership. Once the allotment is cancelled but the membership subsists then the person concerned can be granted a fresh allotment but if the membership has been cancelled then allotment cannot be made nor it cannot be restored unless the membership is restored. In most of the cases, it has been submitted, that there is no challenge to the cancellation of membership rather it is only a challenge to the cancellation of allotment and thus the Arbitrator and the Tribunal were not justified in restoring the allotment.

(ii) It is further submitted that each case had to be dealt with by the Tribunal separately as they were different facts but the Tribunal without looking into the aforesaid aspect and treating all matters at par has passed the impugned order which is challenged in the various writ petitions, clubbed together, indicates that there has been lack of judicial application of mind and incorrect findings have been recorded.

(iii) It is further urged that primarily the ground upon which the Arbitrator has passed the award and which has been affirmed by the Co-operative Tribunal is based on the premise that sufficient opportunity was not given to the original allottees. Moreover, when the subsequent allotments were made, there was no regular Committee of Management incharge of the affairs of the Society rather at the relevant time the Society was under the

control of the Administrator who did not have the jurisdiction to enroll new members and thus the allotment made in favour of the subsequent allottees including enrolling them as new members is wholly without jurisdiction. It is submitted by the learned counsel for the petitioners that this view is incorrect for the reason that the embargo upon the Administrator to enroll new members is in context with the election of the members of the Society. It cannot be stretched to day today affairs; inasmuch as even the Administrator appointed is required to take the decision for the Society acting as its Committee of Management.

It is also urged that in the instant cases after the Administrator had enrolled the new members and made the allotment, this enrollment of membership and allotment of flats was ratified by the duly constituted elected Committee of Management of the Society. Thus any defect, if any, in enrollment of members or allotment of flats, the same stood cured upon ratification by the duly elected Committee of Management, hence it cannot be said that the membership of the subsequent allottees was bad.

(iv) It has also been pointed out by the learned counsel for the petitioners that in some cases despite the fact that the original allottees had defaulted and fresh allotment was made even then the fresh allottees had also defaulted as a result the allotment of

the subsequent allottees was also cancelled and only thereafter further fresh allotment was made.

In few cases, the original allottees were allotted flats of different category and upon the request made by few of such allottees, they migrated to a different category of flat where again the said allottees defaulted and thus with their consent further fresh allotment was made. In the aforesaid circumstances where the original allottees were primarily not interested or were not alive to their rights and later when the fresh allotments were made, possession certificate were granted to the fresh allottees who started residing, then at a later stage the original allottees woke up from their slumber and raised the dispute and in such circumstances the equity does not lie in favour of the private respondents who are the defaulting original allottees and this aspect has not been considered by the Arbitrator or by the Co-operative Tribunal, hence the judgment of the Co-operative Tribunal is bad in the eyes of law.

(v) It is also urged that the Arbitrator and the Co-operative Tribunal in many of the cases noticed that the original allottees were not adequately informed of the demand as well as the cancellation, which is incorrect. It is urged that the Society had informed the said members by series of correspondence and money was refunded which was duly acknowledged by the original allottees. Without examining this aspect as to whether

they were actually served or not, the Arbitrator as well as the Tribunal has held that the order cancelling the allotment has been passed behind the back of the original allottees and has been taken as one of the grounds for allowing the claim of the original allottees and dismissing the appeal of the petitioners and this is against the material on record.

(vi) It is also submitted that the Tribunal has erred in not examining the facts of the case appropriately and a stereo type order has been passed without examining the respective contentions and the material on record which has rendered the impugned judgment of the Tribunal and the award of the Arbitrator liable to be set aside.

23. Learned counsel for the petitioners have relied upon the decision of the Apex Court in *Maharashtra State Mining Corporation Vs. Sunil* (2006) 5 SCC page 96, *A Jithendernath Vs. Jubilee Hills Coop. House Building Society and another* (2006) 10 SCC page 96, *Myurdhwaj Cooperative Group Housing Society Ltd. Vs. Presiding Officer, Delhi Cooperative Tribunal and others* (1998) 6 SCC page 39, *Sri Parmeshwari Prasad Gupta Vs. The Union of India* (1973) 2 SCC 543, *High Court of Judicature for Rajasthan Vs. P. P. Singh and another* (2003) 4 SCC 239, *National Institute of Technology and another Vs. Panna Lal Choudhury and another* (2015) 11 SCC 669, *New Okhla Industrial Development Authority and another Vs. Arvind Sonkar* (2008) 11 SCC page 313, *Hansa V*

Gandhi Vs. Deep Shankar Roy and others (2013) 12 SCC page 776
and ***Geeta & others Vs. Financial Commissioner Govt. of NCT***
Delhi & others; 2023 INSC 316.

24. Shri Ganga Singh, learned counsel for the Society has primarily submitted that the Society was well within its rights as per its by-laws to make demand of the costs of the flats which was required to be deposited by the members in a time frame. The by-laws of the Society empowers the Society to take action against such defaulting members and it is in furtherance thereof that the Society had sent several reminders to the defaulting members who did not respond and thus looking at the larger good for the majority of the members it cancelled the allotments including the membership of the defaulting members and the amount towards the costs of the flats as well as the membership amount was refunded to the said defaulting members which is an action taken by the Society in accordance with its by-laws and cannot be termed as arbitrary.

25. Once the allotment and the membership was cancelled it was no more open for the original members to have challenged the allotment without challenging the termination of their membership or challenging the membership of the subsequent fresh members/allottees. The Society had sent demand letter to the members at their given address which was duly served, hence it cannot be said that the process adopted for cancellation was in violation of any principles of natural justice since repeated reminder were sent and

even though they were acknowledged by the defaulting members yet they did not make good the demand, hence at this stage where fresh allotment have been made and the fresh allottees have been given the possession, accordingly the claim of the original allottees has incorrectly been allowed by the Arbitrator and the appeal has been wrongly dismissed. In light of the aforesaid, the learned counsel for the Society submits that the private respondents being defaulters they have no right to be given any allotment.

26. Shri Divyadeep Chaturvedi alongwith Shri Abhishekh Dwivedi and Shri Anuj Dayal learned counsel appearing for the private respondents have primarily urged that first and foremost the fresh allotments were bad in the eyes of law for the reason that they were made by the Administrator who did not have the right, authority or jurisdiction to enroll new members. It is urged that any act which is without jurisdiction then all subsequent acts are also rendered void, accordingly once the action of enrolling new members at the behest of the Administrator is found to be without jurisdiction, all subsequent acts including making fresh allotments and issuing possession certificates are rendered void and no rights can accrue in favour of the fresh subsequent allottees.

27. It is further urged by the learned counsel for the private respondents that the original allottees had already deposited the original sum of money as cost of the flat and if the said members could deposit the said amount, they could have easily deposited the

enhanced sum also but no adequate opportunity was given rather a surreptitious method was adopted by the Society in connivance with the fresh allottees as a result the original allottees have been outstayed without due process and as such the award passed by the Arbitrator is absolutely just and so is the order passed by the Tribunal dismissing the appeals of the subsequent allottees.

28. It is further submitted that where majority of the amount had already been paid by the original allottees and the dispute was only in respect of the enhanced sum, accordingly the action of cancelling membership and the allotment was not commensurate with the default. The action of the Society in this regard was arbitrary and any action which is arbitrary cannot be sustained and this has been noticed by the Arbitrator as well as the Co-operative Tribunal and in the aforesaid facts and circumstances, the aforesaid orders do not require any interference and the writ petitions deserve to be dismissed.

29. It is further submitted that the Tribunal has meticulously considered the submissions and has also passed a balanced order so that the Society may not suffer any financial loss as directions have been issued by the Tribunal permitting the Society to recover the outstanding sum alongwith interest at the rate of 15% per annum from the original allottees and in the aforesaid circumstances the private respondents are ready to comply with the aforesaid direction, hence the writ petitions deserve to be dismissed.

30. Lastly, it has been pointed out that the recommendation of the

Dahiya Committee was not binding on the members and the cancellation of the membership was a unilateral act of the Society and many of the original allottees did not take back their money voluntarily and moreover the subsequent allottees have no right as no transfer deed has been executed in their favour and they are merely licensee. Thus for all the aforesaid reasons the writ petitions deserve to be dismissed.

31. Learned counsel for the respondents has relied upon the decisions of the Apex Court in the case of ***Joint Registrar of Cooperative Societies Kerala Vs. T. A. Kuttappan and others (2000) 6 SCC page 127, K Shantharaj and another Vs. M. L. Nagaraj and others (1997) 6 SCC page 37, Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others (2016) 7 SCC page 353***, the decision of ***Neelam Jain Vs. Cooperative Tribunal, U.P. & others*** of this Court passed in Civil Misc. Writ Petition No.18732 of 2009 decided on 22.04.2011 and ***Navita Jain Vs. Cooperative Tribunal and others*** passed in Writ-C No.54588 of 2008 decided on 14.05.2010.

32. Having heard learned counsel for the respective parties at length, the issues that crop up for consideration before this Court are :-

(A) Whether the action of the Society in terminating the Membership as well as allotment of the original allottees is bad and arbitrary for want of proper and adequate opportunity of

hearing and service of notice;

(B) Whether the report of Dahiya Committee was binding on the Members;

(C) Whether the administrator could not enroll new Members for the purposes of allotment of flats and what would be the effect of the subsequent ratification by the elected Committee of Management in respect of the decisions taken by the administrator; and

(D) Whether the impugned orders are bad for violation of natural justice and whether the orders have been passed without considering the facts and material on record and thus is perverse.

33. The Court shall deal with each issues separately in seriatim.

(A) and (B)

34. Learned counsel for the private-respondents had argued that the order passed by the Society in terminating the Membership as well as cancelling the allotment is bad as no adequate opportunity of hearing was granted to them. It was also urged that the cancellation of the allotment and termination of the Membership was a unilateral act of the Society which is arbitrary.

35. On the other hand, learned counsel for the Society has

categorically taken a stand that several notices were issued to the private-respondents/the original allottees and they were called upon to make the payment of the outstanding sum in respect of the flats allotted to them, but the same was not done, as a result, the Society was justified in cancelling the allotment as well as the Membership.

36. In this regard, it was the specific case of the Society that in the Annual General Meeting of the Society held on 04.08.2002, Resolution No.5 was passed and it was resolved by the Members present that the costs of the flats were to be revised. Since, there were various views including opposition from certain quarters of the Members, hence, the grievance was placed before the Assistant Housing Commissioner on 06.02.2004, who appointed a Committee which has been mentioned in the instant order as B.S. Dahiya Committee. The report of the Dahiya Committee was placed before the Administrative Committee in the meeting on 03.04.2004 wherein it was decided that demand letter be sent to all the Members for depositing the costs of the flats as determined by the Dahiya Committee.
37. It is in furtherance thereof that the Society issued letters dated 05.04.2004 to all the Members intimating them that the Dahiya Committee report was available in the office of the Society

where it could be read and perused by the Members. Demand notices were also issued requiring the Members to deposit the shortfall as per the schedule mentioned in the said notice. The said demand notices were sent at repeated intervals to the original allottees who did not choose to respond as they remained inert inasmuch as neither any reply was given nor the outstanding amount was paid.

38. It is in the aforesaid context a fresh demand notice was issued on 24.06.2004 directing the private-respondents to deposit the balance sum and it was also made clear in the said notice that in case of non-payment, the allotment would be cancelled, but there was no response to this notice as well. Despite the same, a fresh notice was again issued on 19.07.2004 by the Society which was followed by reminder dated 06.08.2004 and once the notices were served on the defaulting Members without any response and compliance from their end, the said situation was brought and placed before the Administrative Committee of the Society, who reviewed all the cases of default. Yet taking a lenient view, it was decided by the Committee that a last opportunity be given to the defaulting Members to pay the outstanding sum by 30.08.2004, however, even this letter was not responded nor the amount was paid, hence, left with no option, the Society then took a decision to cancel the allotment. By the Resolution dated 01.09.2004, the cancellation of the

allotment was done by the Committee. This Resolution of the Society, which was at the relevant time under an Administrator was placed before the Assistant Housing Commissioner, who approved the same on 14.09.2004.

39. Once again the Society informed the private-respondents regarding cancellation of allotment and it was further informed that the private-respondents may submit their no objection certificate from the respective banks, from where the said Members had taken the housing loans. However, no such response was given and accordingly considering the circumstances the Society issued cheques to the defaulting Members refunding their Membership fee and the sum which was paid by such defaulting members towards the part cost of the flat was returned to the banks from whom the said Members had taken their respective loans. Most of the said Members had encashed the said cheques. This fact of sending repeated reminders and the demand notices to the defaulting Members could not be adequately disputed by the private-respondents. No cogent reason was also given as to why the private-respondents did not make good the outstanding payment regarding the escalation of the costs of the flats.
40. A feeble submission has been made by the learned counsel for the private-respondents to indicate that the report of Dahiya

Committee was not binding on the Members. It was also urged that since the private-respondents were disputing the action of the Society in enhancing the cost of flats, hence, the private-respondents did not accede to pay the aforesaid sum.

41. It has further been pointed out that even the report of the Dahiya Committee did not have the unanimous approval of the three Members constituting the said Committee rather one of the Members of the said Committee namely Mr. Ramesh Gupta did not sign the same, hence, the same could not have been made binding.
42. From the pleadings and the material on record a fact that emerges and the same is undisputed is the fact that out of 120 Members of the Society, 100 Members had acceded to the enhancement of costs of the flats and they had even deposited the enhanced amount. Merely because one of the Member of Dahiya Committee did not sign the report in itself does not lead to any inference that the said report could not be made binding rather the record would indicate that the said decision of the Dahiya Committee was accepted by the Committee of Administrator which was further placed before the Assistant Housing Commissioner, who also approved the same and it was placed before the Members, who approved it and that is the reason why out of 120 Members, 100 Members paid the

escalated amount.

43. Be that as it may, the fact that there was a dissent amongst the Members regarding the escalation in the costs of the flats and this issue was placed before the Committee of Administrators who in turn placed the matter before the Assistant Housing Commissioner who constituted a three Members Committee which submitted its report and the said report was approved by the Assistant Housing Commissioner. Another significant factor which is evident from the record is the fact that the carpet area of the various types of flat i.e. A, B, C, D had enhanced from the original carpet area and thus there was bound to be escalation in the price of the flats. With passage of the time there was cost over runs, hence, the experts had given their recommendations for enhancement which had been accepted and approved by the Assistant Housing Commissioner. The Society had informed all the Members regarding the aforesaid enhancement and there is no dispute to the fact that out of 120, 100 members agreed and did pay the enhanced sum. Thus, it cannot be said that the said report was not binding on the Members. The Society functions on the democratic principles and where the overwhelming majority of the Members accepted the decision and acted upon it by making the payments of the enhanced sum, in such circumstances, it cannot be said that the report of the Dahiya Committee could not be made binding on

all the Members.

44. In the aforesaid backdrop if the material on record is perused, it would further indicate that the Society from time to time had issued repeated reminders and demand letters calling upon the Members to pay the outstanding sum as per the escalated costs and the overwhelming majority of the Members did pay and adhere to the schedule and rather it was a group of minority Members, who did not pay and once their allotments were cancelled, they promptly did not take any action rather as a knee-jerk reaction, some of the them filed writ petition, some filed civil suits which latter were not taken to its logical conclusion and were withdrawn/dismissed and later the original allottees filed petitions under Section 70 of the U.P. Cooperative Societies Act, 1965.
45. The material on record suggests that ample opportunities in shape of notices were issued by the Society to the defaulting Members and the said notices were sent to the Members at their known addresses as recorded in the records of the Society. By and large, the said defaulting Members, who had filed their petitions under Section 70 of the U.P. Cooperative Societies Act, 1965 did not primarily dispute that various notices and demand letters were issued by the Society was not received by them. It is only at a later stage that the said defaulting Members

developed this plea, however, in light of the averments made in the counter affidavit as well as the rejoinder affidavit filed by the petitioners, the said plea could not be successfully proved. Another fact which is apparent is that the Members while filing their petitions under Section 70 of the Act of 1965 had not raised this issue of non service of the notice, rather it is only a feeble plea raised before this Court. In light of the material placed on record of these petitions including the copy of the arbitration petition and the counter affidavit of private-respondents, this plea does not find favour with this Court.

46. This Court is fortified in its view drawing strength from the dictum of the Apex Court in **Mayurdhwaj Cooperative Group Housing Society Limited** (supra) and the relevant paragraphs read as under:-

"5. In the case of S.C. Verma [CWP No. 1484 of 1991] it was a case of the Lawyers' Cooperative Group Housing Society Limited. In this case also, the dispute pertained to the allotment of flats in Category 'C'. Here again was the same problem, the number of applicants was larger than the number of flats to be allotted. In this case also, cut-off date to make payment was fixed as 15-5-1987. All members who paid the entire due as on this date, were to be included in the list. The amount required to be paid by this date was Rs 1,11,000. 26 members paid this amount by this date. Here also the number of flats were 30 for its 65 members. It was held:

"... The Society had to lay down a reasonable criteria for finalising the list of members. The criteria which the Society adopted was that all payments having been made in accordance with the demand which has been raised and by keeping the options and the seniority into consideration, the list was prepared as on the cut-off date of 15th May, 1987. We cannot find any infirmity in the principle so adopted. It is essential for the Cooperative Society to decide as to what is the principle which it should follow in determining or finalising the list of the members to whom flats are to be allotted. Unless and until the

principles laid down by the Society are found to be arbitrary or irrational or unfair, the Court will not interfere with the same. We do not find any such infirmity in the procedure which has been adopted or established, viz., to prepare a list of members as on 15th May, 1987 who had not committed any default....”

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9. *Returning to Rule 36, submission for the respondent is, when a statute provides a thing to be done in a manner it has to be done in that manner alone and not in any other manner. Other modes are excluded. The counsel for the respondent referred the cases in A.K. Roy v. State of Punjab [(1986) 4 SCC 326 : 1986 SCC (Cri) 443] paras 10-11 and State of Mizoram v. Biakchhawna [(1995) 1 SCC 156] paras 7, 8 and 9. This proposition has not been disputed by learned counsel for the appellant. The question is, when a member is in default then is it that power of a society is concretised within this Rule to expel such defaulting member or can it within its peripheral jurisdiction resolve to take recourse to any other policy decision, to enable such defaulting member to deposit the balance amount either by extending time or giving any such incentive as it deems fit and proper or to take recourse to such consequential measures as it deems fit and proper. The present case is similar to the cases which arose in the Delhi High Court. The question is, in the matter of allotment of flats, can a society not lay down its own policy as to how instalments are to be paid, within what time and in doing so can it not place certain conditions under it. In other words, can or can it not resolve that members must pay the stipulated amount by fixing any cut-off date. If, in spite of that, any member defaults, can it not cancel the allotment. Similarly, can it not decide instead of cancelling the allotment to give him an offer to get the flat in the next phased construction clearing ways for non-defaulters. The question is, can it be said that the society has no option except to allot strictly by seniority rule in spite of such members defaulting in making the payment. If power could be said to be limited then it means, let seniors default, let juniors wait as long as seniors do not pay but in no case cancel or even modify preferences in their allotment. In our considered opinion, such an interpretation would be squeezing the power of the general body of a society within the limits of Rule 36 belying all the objectives of the cooperative spirit of the Act. Thus by this, if this be so, either bear with the defaults of such members at the cost of non-defaulting members or expel them from membership. Such an interpretation would be too harsh even on senior members if the only recourse could be the latter. Even a senior member may have financial stresses resulting into default of not being able to pay for a flat even the minimum fixed amount within the stipulated time, then will it be fair to expel him? The option has to be left with the society to deal with different situations as may arise from time to time. Taking away this discretion and binding it to exercise powers under Rule 36 would be interpreting against the very objective of the Act, leaving no option with the cooperative society. The cooperative society is formed with laudable objective to inculcate spirit to work in a group freely for rendering benefit to its members through the cooperative contributions. This is only*

possible by conferring wide range of discretion on a society, not restricting its discretions by interpreting a law otherwise. This has to be for furthering the cause of cooperative movement. That is why various rigours of laws including taxes and fees are diluted for enhancing the spirit of the cooperative movement. We have no hesitation to hold that the power of society cannot be circumvented within Rule 36 in a case of default by its member of any of his dues. Such an interpretation would be contradictory to the very cooperative spirit or objectives of the creation of cooperative societies. Rule 36 is quoted hereunder:

“36. Procedure for expulsion of members.—(1) Notwithstanding anything contained in the bye-laws, any member who has been persistently defaulting in payment of his dues or the payment of claims made by a housing society for raising funds to fulfil its objects, has been failing to comply with the provisions of the bye-laws regarding sales of his produce through the society or other matter in connection with his dealings with the society or who, in the opinion of the committee, has brought disrepute to the society or he has done other acts detrimental to the interest or proper working of the society, the society may, by a resolution passed by a majority of not less than three-fourths of the members entitled to vote who are present at a general meeting, held for the purpose, expel a member from the society:

Provided that no resolution shall be valid, unless the member concerned has been given an opportunity of representing his case to the general body and no resolution shall be effective, unless it is approved by the Registrar.

(2) Where any member of a cooperative society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the President of the society. On receipt of such notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting, to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body shall proceed to consider the resolution.

(3) When a resolution passed in accordance with sub-rule (1) or (2) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under sub-rule (1) or (2) give his approval and communicate the same to the society and the member concerned within a period of 6 months. The resolution shall be effective from the date of approval.

(4) Expulsion from membership may involve forfeiture of shares held by the member. The share shall be forfeited with the prior permission of the Registrar. In that event, the value of the share forfeited shall be credited to the reserve fund of the society.

(5) No member of a cooperative society who has been expelled under the foregoing sub-rules shall be eligible for readmission

as a member of that society or for admission as a member of any other society of the same class for a period of three years from the date of such expulsion:

Provided that the Registrar may, on an application either by the society or the member expelled and in special circumstances, sanction the readmission or admission, within the said period, of any such member as a member of the said society or of any other society of the same class, as the case may be. Before giving such sanction for readmission or admission by the Registrar, an opportunity of hearing may be given to both the society and member concerned."

10. *This Rule deals with the procedure for the expulsion of members. In case a society decides to expel its member who is persistently defaulting in making the payment of his dues, the procedure to be followed could only be what is provided under this Rule and no other. The principle referred earlier that if a thing is required to be done in a manner as provided under the law has to be done in that manner alone and no other manner will apply with equal force under Rule 36, when a society decides to expel its member. In case of expulsion, the procedure provided under it and the expulsion has to be only under the mode provided therein and no other which is mandatory in nature. But this is only after decision is made to expel its member. This Rule does not take away the discretion of the society to expel a member or not which is preceding the exercise of power under Rule 36. For this, there is nothing under this Rule which either circumscribes or webs this discretion. Since this Rule is for the expulsion of its members, it is stringent in its application. Even after giving opportunity and even after the general body passes such a resolution, it requires approval of the Registrar. Outside this, there is nothing which restricts a society to act freely and to lay down its own policies. It is always open to it to decide on a fact to expel him or not. Its discretion to act is curtailed only by a statutory provision or any order having force of law. A policy may depend on various factors, its planning, projects, undertakings including its financial capacity etc. One society may be in a sound position and the other in a limping position thus may give to its member larger or lesser benefits as the case may be. Thus it is always open to a society to lay down its own principle for making such allotments. So consideration of prompt payment in shaping its policy which helps it to complete its project to confer on its member its fruits at the earliest may be justified exercise of its discretion. To what extent a default is going to affect a society will depend on the facts and circumstances of each case which has to be left at the discretion of each society. It is not proper even for the courts to interfere with such a discretion, except when it is arbitrary, irrational, mala fide, against any statutory provisions or against orders having the force of law. This will not be possible if a strict principle of seniority is followed. However it is open for a society to give weightage to seniority depending on the facts of each case. Within permissible limits, it is always open to lay down a principle which is just, fair and proper. When a society could decide the manner of allotment by instalments or other modes, there is no inhibition to it to modify it in case conditions*

are not complied by its members. Thus it is not possible to uphold that the society has no option but to proceed under Rule 36 to expel its member. Hence once a society has a discretion, it cannot be said its power is restricted to allot only under the strict rule of seniority.

11. We find that Section 28 of the Act vests final authority in the general body of a cooperative society. It has wide powers including residuary power except those not delegated to any other authority under the Act, the rules and its bye-laws. In other words, its power, if any, is only restricted by the Act, the rules, the bye-laws and any order having force of law. This exercise of power by the general body which is in issue cannot be said to be excluded by Rule 36."

47. Another decision of the Apex Court in **Geeta** (supra) also lends support to the view taken by this Court. The relevant paras read as under:-

"5. From the material on record, it is evident that society had issued notice to the late husband of appellant no.1 on 4.11.1991 for expulsion of his membership on account of default in payment of dues of the society. A notice for holding Annual General Meeting on 22.03.1992 of the society was issued on 4.3.1992 specifically for considering expulsion of members of the society who were persistent defaulters. The name of late husband of appellant no.1 was one of them. A sum of ₹1,33,920/- was shown to be due against him. On 22.3.1992, a resolution was passed in the aforesaid meeting expelling the membership of number of persons, including the late husband of the appellant, on account of default in payment. The matter was referred to Registrar, Cooperative Societies, Delhi for necessary action. Joint Registrar (II), Cooperative Societies, Delhi, vide his order dated 23.3.1993 granted time to the expelled members to deposit dues by 30.04.1993 and in default the resolution of the society was approved.

* * * * *

8. The argument now raised, which had not been raised before any of the authorities including the High Court, is that there is violation of Rule 36(2) of the Delhi Cooperative Society Rules, 1973 and the prescribed procedure for expulsion of a society member has not been followed. We are not impressed with the argument. Procedural law is subservient to justice.

9. In the case in hand the only issue is regarding default of payment of dues of the society for construction of flats, which the late husband of appellant no.1 was not ready and willing to pay at any stage, despite opportunities given. Firstly by the Society, secondly by the Joint Registrar (II), Cooperative Societies, Delhi

and thereafter by the Financial Commissioner, Delhi. Even before the High Court, at the time of issuance of notice, the statement of late husband of appellant no.1 was that he is ready and willing to deposit the amount due with interest but still nothing was paid."

48. For the foregoing reasons, this Court is of the clear view that the order regarding cancellation of Membership for default cannot be said to be arbitrary or bad in the eyes of law. The Society had taken reasonable steps of calling upon the defaulting Members to deposit the outstanding sum which they failed, hence, at this stage, the private-respondents cannot be permitted to state that the order of cancellation was behind their back or no proper opportunity was given or that they were not aware of it especially when the said notices were sent at the addresses by the private respondents as recorded and known to the Society and it is not disputed that the said respondents were not living at the said addresses and/or they had informed the Society of the change in their addresses, rather before the Arbitrator the issuance of notice and its receipt was accepted.
49. Insofar as the submission of the learned counsel for the private-respondents that the order of cancellation of the allotment was not commensurate with the outstanding sum comparatively since the large amount has already been paid or to say that the original amount had been paid and once it was done there was no occasion for the private-respondents not to pay the remaining enhanced sum which was much lesser amount and

the same could have been recovered by the Society by instituting proceedings along with interest but taking recourse to cancellation of the allotment was an extreme step. This plea also does not find favour with this Court for the reason that the Cooperative Society is a collective body of Members to further the common goal and the Society works through its Committee of Management which is elected from amongst the members themselves. In the instant case once the majority of Members had approved the enhanced sum and the Society had taken adequate steps for informing the Members of the escalated amount and also made several demands letters including cautioning the defaulting members that in case if they do not comply or make the payment their allotment is liable to be cancelled yet the private-respondents did not pay any heed to the same. Under such circumstances, the decision taken by the Society cannot be said to be arbitrary so as to invite the indulgence of this Court. Thus, this Court finds that the cancellation of the allotment is not arbitrary and this Court further finds that the report of the Dahiya Committee which had been approved by the Assistant Housing Commissioner and ratified by the Committee of Management and duly acted upon by overwhelming majority of the Members. Moreover, the cancellation of allotment is also not bad for want of notice or opportunity of hearing, hence, for all the said reasons the

contention in this regard made by the learned counsel for the private-respondents is turned down.

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50. The learned counsel for the private respondent has laid much emphasis that the Administrator could not enroll new members, hence, the entire exercise of the Administrator and of the Committee of Management which came in-charge of the affairs of the society was without jurisdiction, hence, neither the subsequent allottees could have been enrolled nor any allotment could have been made in their favour, thus, the order passed by the Arbitrator as well as the Appellate Tribunal does not require any interference.
51. On the other hand, the learned counsel for the petitioners/subsequent allottees is that the Administrator appointed under the provisions of the U.P. Cooperative Societies Act, 1965 is entitled to take administrative decisions and it also has the power which is generally exercised by the Committee of Management regarding the affairs and functioning of the society. Thus, if any issue relating to administration comes up before the Administrator, he is duly entitled to take a decision and it cannot be said that the said decision is bad.
52. In this regard, it will first be relevant to notice the statutory

provisions relating to appointment of an Administrator and what is the general powers exercised by such Administrator.

53. It will be relevant to notice certain provisions contained in Chapter IV of the U.P. Cooperative Societies Act, 1965 which relates to management of the societies. Section 28, 29 and 35 are relevant and are reproduced hereinafter for ready reference:-

“Section 28. Final authority in co-operative society:- Subject to the provisions of this Act and the rules the final authority of co-operative society shall vest in the general body of its members in general meeting ;

Provided that, in such circumstances as may be prescribed, the final authority shall vest in the delegates of such members elected in the manner prescribed and assembled in general meeting and in such case all references in this Act, the rules or the bye-laws to the general body and general meeting shall be deemed to be reference to the body consisting of such delegates of members and to the general meeting of such delegates.

Section 29:-Committee of Management:- The management of every co-operative society shall vest in a committee of management constituted in accordance with this Act, the rules and the bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed by this Act, the rules and the bye-laws.

[(2) (a) The term of every Committee of Management shall be five years and the term of elected members of the Committee of Management shall be co-terminus with the term of such Committee.

(b) The provisions of clause (a) shall apply also to a Committee of Management in existence on the date of the commencement of the Uttar Pradesh Co-operative Societies (Amendment) Act, 2002 and to the elected members of such committee.

(b) The term of a Committee of Management which has completed on or before the date of commencement of the Act referred to in Clause (b), the period of three years from the date of its constitution and the term of its elected members shall expire on such commencement.]

(3) Election to reconstitute the Committee of Management of every Co-operative Society shall be completed in the prescribed manner under the superintendence, control and direction of the election Commission at least fifteen days before the expiry of the term of the Committee of Management and the members so elected shall replace the Committee of Management whose term expires under sub-section (2):

Provided that notwithstanding anything in this Act, the administrator or the Committee of Administrator appointed under

this Section as it stood before the commencement of Uttar Pradesh Cooperative Societies (Second Amendment) Act, 1994 shall continue to exercise the powers and perform the duties of the Committee of Management till the Committee of Management is reconstituted under this Act or till (December 31, 2000 whichever is earlier.

1. Subs. by U.P. Act 19 of 1998, dated 9-7-1998.

:Subs. by U.P. Act 17 of 1994 (w.e.f. 15-7-1994), the position of sub-section (2) of Section 29 as under:

(2) The term of every Committee of Management, including a Committee of Management constituted before the commencement of the U.P. Co-operative Societies (Second Amendment) Act, 1994 whose term has not expired on the date of such commencement, shall be five years and the term of the elected members of the Committee of Management shall be co-terminus with the term of such Committee.

Explanation. For the purposes of this sub-section, the expression "term" in respect of a Committee of Management constituted before the commencement of the Uttar Pradesh Co- operative Societies (Second Amendment) Act, 1994, means a period of three years.

2. Subs for the word "three" by U.P. Act 12 of 2002 (w.e.f. 4-7-2002).

3. Subs. by U.P. Act 12 of 2002 (w.e.f. 4-7-2002).

4. Sub-sections (3) and (4) substituted by U.P. Act 17 of 1994 (w.e.f. 15-7-1994).

5. Subs. by U.P. Act I of 1997 (w.e.f. 16-4-1997).

6. Subs. by U.P. Act 30 of 2000 (w.e.f. 22-7-2000) for the word and figures "June 30, 2000" as substituted by U.P Act 14 of 2000.

[Provided further that where the State Government is satisfied that circum- stances exist which render it difficult to hold the election on the date fixed by the Registrar, it may direct the Registrar to postpone the election, and thereupon the Registrar shall postpone the election, and all proceedings with reference to the election shall be commenced afresh in all respects.]

(4) It shall be the duty of the Secretary or, as the case may be, the Managing Director of the Co-operative Society to send to the Registrar, four months before the expiry of the term of Committee of Management, a requisition for conducting the election and to furnish all such information as may be required by him within such period as may be fixed by him.]

(5) (a) Where, for any reason whatsoever, the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, the Committee of Management shall, notwithstanding anything to the contrary in this Act or the rules, or the bye-laws of the society, cease to exist on the expiry of such term.

(b) On or as soon as may be after the expiry of such term, the Registrar shall appoint an Administrator or a Committee of Administrators (hereinafter, in this section, referred to as the Committee) for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society, and the Registrar shall have the power to change the

Administrator or, as the case may be, any member of the Committee or to appoint a Committee in place of an Administrator or vice versa from time to time.

(c) Where a committee is appointed under clause (b), it shall consist of a Chairman and such other members not exceeding eight as may be nominated by the Registrar, out of which at least two shall be Government servants.

(d) The procedure for summoning and holding of meetings of the Committee. the time and place of holding such meetings, the conduct of business at such meetings and the number of members necessary to form quorum thereof shall be such as may be prescribed.

(e) So long as no Administrator or, as the case may be, the Committee is appointed under clause (b), the Secretary or the Managing Director, as the case may be, of the society shall be in charge only of the current duties of the Committee of Management.

Explanation. Where results of the election of members of the Committee of Management have not been or could not be declared, for any reason whatsoever. before the expiry of the term of the elected members of the outgoing Committee of Management, it shall be deemed that the election of the elected members of the Committee of Management has not taken place within the meaning of this sub-section.

(6) The Administrator or the Committee appointed under sub-section (5) shall, subject to any directions which the Registrar may from time to time give. have the power to perform all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act, the rules and the bye-laws of the society to be the Committee of Management and the Chairman of such Committee shall exercise the powers and perform the functions of the Chairman of the Committee of Management.]

[(7) The Administrator or the Committee, as the case may be, appointed under sub-section (5), shall as soon as may be, but not later than the expiry of [two years and six months] from the date of appointment, arrange for the re- constitution of the Committee of Management in accordance with the provisions of this Act, the rules and the bye-laws of the society to take over the management of the society from the Administrator or the Committee, as the case may be.

Provided that where an Administrator is replaced by a Committee or a Committee by an Administrator as provided in clause (b) of sub-section (5), the period of two years and six months) shall count from the date the Administrator or the Committee, as the case may be, was originally appointed.

Explanation. Notwithstanding that the process of election may have commenced before the appointment of Administrator or the Committee under sub-section (5) a fresh process of election shall commence after such appointment.]

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35. Supersession or suspension of Committee of Management.

(1) *Where. in the opinion of the Registrar, the Committee of Management of any co-operative society persistently makes default or is negligent in the performance of the duties imposed*

on it by this Act or the rules or the bye-laws of the society or commits any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly, the Registrar after affording the Committee of Management a reasonable opportunity of being heard and obtaining the opinion of the general body of the society in a general meeting called for the purpose in the manner prescribed may, by order in writing, supersede the Committee of Management:

[Provided that where under the prescribed circumstances it is not feasible to convene a general meeting of the general body of the society, the Registrar may dispense with the requirement of obtaining the opinion of the general body of the society.]

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the Committee of Management during the period of proceeding is necessary in the interest of the society, he may suspend the Committee of Management which shall thereupon cease to function, and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided that if the Committee of Management so suspended is not superseded it shall be reinstated and the period during which it has remained suspended shall count towards its term..

[* *]*

(3) Where the Registrar has superseded the Committee of Management under sub-section (1), he may appoint in its place, [for a period not exceeding one year) to be specified in the order of supersession,-

(a) a new committee consisting of one or more members of the society, or

(b) an administrator or administrators who need not necessarily be members of the society:

[Provided that the Registrar may, with the previous approval of the State Government, extend from time to time the period of supersession, so however, that any single extension does not exceed six months and the total extension does not exceed one year:]

Provided further that the committee or an administrator or administrators appointed [before the commencement of Section 4 of the Uttar Pradesh Co-operative Societies (Amendment) Act, 1994] shall be deemed to have been duly appointed and no action taken or power exercised or functions performed by it or him, as the case may be, shall be deemed to be invalid or shall be called in question in any court on the ground of any defect in its or his appointment as such or on the ground that the Committee of Management was not reconstituted within time or the period of supersession or the term of its or his office was not duly extended.]

(4) The Registrar shall have the power to change the committee or any members thereof or the administrator or administrators appointed under clause (a) or (b) of sub-section (3) at his discretion during the period specified under that sub-section.

(5) The committee, administrator or administrators appointed under sub-sections (3) and (4) shall, subject to any directions

which the Registrar may from time to time give, have the power to exercise all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act, the rules and the bye-laws of the society to be the Committee of Management.

[(6) Before the expiry of the period specified under sub-section (3), the committee, administrator or administrators, appointed under sub-sections (3) and (4), shall arrange for the reconstitution of the Committee of Management in accordance with this Act, the rules and the bye-laws of the society to take over the management of the co-operative society on the expiry of the said period:

Provided that the committee or an administrator or administrators whose term has expired before the commencement of [the Uttar Pradesh Co-operative Societies (Amendment) Act, 1994 shall arrange for reconstitution of the Committee of Management by December 31, 1994).

*[(7) The provisions [***] of Section 29 shall apply in respect of re-constitution of the Committee of Management under this Section.]*

35-A. (1) *Without prejudice to other provisions of this Chapter, where*

for two successive co-operative years [including any period before the commencement of this section]-

(a) more than seventy per cent of the total dues of any primary society, which is a credit society against its members during any co-operative year, remain unpaid at the end of such year; or

(b) the number of defaulting members exceeds seventy per cent of the total number of indebted members of such society, at the end of any such year;

then, the Chairman and all members of the Committee of Management of any such society shall, upon an order coming into effect under sub-section (3), vacate their respective offices as such.

(2) The provisions of sub-section (1), as they apply to a primary credit society, shall mutatis mutandis apply to a financing bank with the substitution of references to 'seventy per cent' by references to 'sixty per cent'.

(3) In relation to any society or banks as referred to in sub-section (1) or sub-section (2), the Registrar may make such arrangements as he thinks proper for the management of the affairs of such society or bank, as he thinks fit and the provisions of sub-sections (3), (4), (5) and (6) of Section 35 shall mutatis mutandis apply.]

54. Section 28 clearly reflects the sentiments that the final authority of the cooperative society vests in the general body of its members in general meeting.
55. Section 29 provides that the management of every Co-operative

Society shall vests in a Committee of Management constituted in accordance with the Act, the rules and by-laws which shall exercise such powers and perform such duties as may be conferred or imposed by the Act, the rules and the bye-laws.

56. In this regard, the first proviso appended to Section 29 is relevant and it provides that notwithstanding anything contained in the Act, the Administrator or the Committee of Administrators appointed under this Section shall continue to exercise the powers and perform the duties of the Committee of Management till the Committee of Management is re-constituted under the Act. Section 29(6) also assumes significance as it is provided that the Administrator or the Committee appointed under Section 29(5) shall subject to the directions which the Registrar may give from time to time, the Administrator or the Committee shall have the powers to perform all or any of the functions of the Committee of Management or any officer of the society and shall be deemed for all purposes under the Act, the rules and the bye-laws to be the Committee of Management and the Chairman of such Committee shall exercise the powers and perform the functions of the Chairman of the Management.
57. Thus, from the conjoint reading of the aforesaid two provisions, it would be clear that the Administrator or the Committee of

Administrators so appointed exercises the powers of a duly constituted Committee of Management with whom the administration and functioning of the society vests as provided in Section 29(1) of the Act of 1965.

58. At this stage, it will also be relevant to notice the distinction between cancellation of an allotment of a flat and enrollment of a new member. Primarily, the cancellation of an allotment would be a purely administrative function and it cannot be said that any decision taken by the Administrator in this regard which is in the domain of the day to day functioning of the society cannot be exercised by the Administrator or the Committee of Administrators as the case may be.
59. The record would indicate that admittedly the society remained under the control of an Administrator w.e.f. to 22.10.2002 to 15.04.2005. By means of the letter of the Assistant Housing Commissioner dated 22.10.2002 an Administrator was appointed. Later, by means of order dated 05.06.2003, the earlier order dated 22.10.2002 was partly modified and instead of the earlier Administrator Sushil Kumar, he was replaced by Sri Narendra Kumar. A copy of the said letter is on records filed with the counter affidavit filed by the private-respondents No.5 dated 18.11.2015.
60. Later, once again, the order dated 05.06.2003 was partly

modified and a two members Committee comprising of Sri Lalta Prasad and Sri R.N. Tiwari was appointed. Once again, the constitution of the Committee of Administrators was modified and a five-member Administrative Committee was constituted and thereafter some members of the Committee were replaced and later on 18.11.2004 instead of five members, a four-member administrative committee was constituted which continued to control the affairs of the society till a duly elected committee of management was handed over the charge of the society.

61. At this stage, it will be apposite to take a glance at the order dated 20.10.2022 filed along with the counter affidavit filed by the private-respondent No.5 dated 18.11.2015 in WRIT-C No.1001289 of 2014.
62. This order passed by the Assistant Housing Commissioner/Assistant Registrar indicates that out of 9 members of the Committee of Management of the Society, 5 members had furnished their resignation and since the quorum for any meeting would not be complete, hence, no meeting could be called, hence, the Committee of Management was superseded/dissolved and till constitution of a complete Committee of Management the affairs of the Society was put under the control of the Administrator. It also reveals that the

Society was registered in the year 2000. Thus, at the relevant time, the term of the Society was 5 years i.e. till the year 2005.

63. It would also reflect that the Administrator was appointed taking into account the grounds mentioned in Section 35 of the Act of 1965 and not so for the ground mentioned in Section 29(5) of the Act of 1965 even though in the order, the Assistant Housing Commissioner has mentioned Section 29(5).
64. The circumstances under which the Administrator was appointed was clearly for lack of consensus between the members of the Committee of Management and 5 members had resigned amongst allegations of arbitrariness and corruption which were levelled against members of the Committee of Management. The Administrator so appointed was discharging his duties and functions on behalf of and as a Committee of Management. It took all reasonable measures to carry out his duties and for all major decisions, he sought to guidance of the Assistant Housing Commissioner. Cancellation of allotment for default was primarily an administrative decision. However, what is not disputed is the fact that the return of membership fee was done by the elected Committee of Management which took change in April, 2005 as the refund of membership fee was done on 25.11.2005.
65. This refund of membership fee was done by the duly

constituted Committee, hence, cannot be said that the Administrator had cancelled the membership. However, the elected Committee of Management had in its meeting held on 15.05.2005 ratified all actions of the Administrator.

66. The facts on record shows prior to the appointment of the Administrator there was bickering amongst the members. While performing his functions, the Administrator attempted to resolve the deadlock regarding the issue of cost of the flats. The matter was referred to the Dhahiya Committee. The report of the Committee was accepted on 03.04.2004.
67. This is clarified from the fact that in the general meeting of the society held on 04.08.2002 by resolution no. 5, it was resolved by the members to revise the cost of the flats as there was an increase in the actual floor area of the flats than the one which was mentioned in the brochure including the cost enhancement was necessitated on account of changes in the quality of constructions and additional facilities to be provided.
68. Since no consensus could be arrived at, it is in this view that the Assistant Housing Commissioner by means of its letter dated 06.02.2004 appointed the Dahiya Committee who submitted its report on 02.04.2004 and this was placed before the Administrative Committee in its meeting held on 03.04.2004 in terms whereof the demand letters were sent to the members.

69. Another significant feature that needs to be seen is that letters for demand were sent to all members including the original allottees. Even though the demand letters were sent on 05.04.2004 yet many of the members did not deposit the amount yet they were permitted to participate in the draw of lots for the allotment of flats which was held in presence of all members and officials of the Housing Board on 20.06.2004.
70. It is in the aforesaid draw of lots that Sri Dayanand who is the private respondent no. 5 in writ petition no. 1289 (MS) of 2014 was allotted Flat No. 806-A. Despite the allotment as mentioned above, fresh demand notice was issued to respondent no. 5 Dayanand on 24.06.2004 and he was further informed that in case if he did not pay, the allotment shall be cancelled. The respondent no. 5 Sri Dayanand did not respond or pay the outstanding sum, as a result, a fresh notice was issued on 19.07.2004 requiring him to pay the amount along with interest, this was followed by another reminder dated 06.08.2004.
71. At this stage, the committee of Administrators again reviewed all cases of default and a conscious decision was taken that one more opportunity be given to the defaulting members, however, the said defaulting members did not pay, hence, in the meeting of the committee of Administrators held on 01.09.2004 by means of resolution No. 2, the provisional allotment of private

respondent was cancelled. This decision and the resolution passed by the Committee of Administrators was placed before the Assistant Housing Commissioner for approval which was granted approval on 14.09.2004.

72. It is thereafter that the cancellation of the allotment was intimated to the private respondent no. 5 Sri Dayanand and he was asked to submit the no objection certificate or the certificate of loan from the bank so that the loan amount be paid directly to the concerned bank. Sri Dayanand-respondent no. 5 failed to give any reply and it is thereafter the outstanding sum was paid to the bank concerned from where the respondent no. 5 Dayanand had taken a loan. The remaining sum was returned to the respondent no. 5-Dayanand through cheque which was encashed by him. Thus, it could be seen that the exercise which was taken by the Committee of Administrators had nothing to do with the election at that point of time rather it was performing the functions which otherwise would have been done by the elected committee of management.
73. In the petition filed by the private-respondents before the arbitrator, a copy of which has been annexed with the rejoinder affidavit filed by the petitioners, the private-respondents in para 15 and 16 admitted having received the demand letter and the letter of cancellation.

74. Once, this situation had arisen, in order to keep the pace of construction and to achieve completion target, the Committee of Administrators thereafter allotted the flats to the new/subsequent allottees as the allotment of the defaulting members had been cancelled. It is in the aforesaid backdrop that the share money of the erstwhile/the defaulting members was returned on 25.11.2005 i.e. after the newly elected Committee of Management had already come into power and was in-charge of the affairs of the society.
75. Another aspect that needs to be seen that the newly elected Committee of Management held its meeting on 15.05.2005 wherein the elected Committee of Management by means of Resolution No.5 resolved that while the affairs of the society was under the Administrator/committee of Administrators and certain members had defaulted and due to the said reasons, their allotments were cancelled and in order to cover the default, new members were enrolled who have been awarded the membership and flats were allotted in their favour, the same was ratified and the Committee of Management unanimously approving the said decision including the allotment made in favour of the subsequent allottees.
76. As already noticed above that the ultimate authority of the cooperative society vests in the general body comprising of its

members and it is from the general body of the members that a Committee of Management is elected who gets the charge of the affairs of the Society and it is the said Committee of Management of the society who had ratified the actions of the Administrator, hence, such action cannot be termed as invalid simplicitor. Even though, there may not be any specific provision in the Act of 1965 or the Rules framed thereunder but the collective wisdom of the Committee of Management who approved the decision taken by the Committee of Administrator cannot be said to be totally without jurisdiction in the peculiar facts and circumstances of this case.

77. It would have been a different situation altogether where the Committee of Administrators would have taken a decision which would be running contrary to the larger interest of the members of the Society and once a duly elected committee of management came into power, it could have taken a decision to undo or correct the alleged wrong which may have been committed by the Committee of Administration, however, it is not the case here.
78. The only proposition which has been argued by the learned counsel for the respondent is on the premise that the Administrator or the committee of Administrator could not enroll new members. It is in this context that the decision of the

Apex Court has been relied upon by the learned counsel for the respondents namely **K. Shantaraj** (supra) and **T.A. Kuttappan** (supra).

79. In both the cases, as noticed above, the Apex Court has held that the Administrator has no power to enroll new members and to conduct the elections by including them in the electoral college, but as discussed above, it is not the situation in the instant case. This Court is of the opinion that the proposition as laid down by the Apex Court in **K. Shantaraj** (supra) and **T.A. Kuttappan** (supra) cannot be disputed but the same may not be applicable in the instant case.
80. Both the decisions of **K. Shantaraj** (Supra) and **T.A. Kuttappan** (supra) are in context with enrollment of members viz-a-viz the elections to be held and it is in the aforesaid background that the Apex Court noticed that the power of Administrator does not include the power to enroll new members which would impact the electoral college and ultimately the outcome of the elections.
81. Needless to say that in the instant case, there is no election dispute nor there is any allegation that due to the enrollment of certain members, the electoral college had been disturbed or the elections have been marred. The record would even indicate that the respondent/the original allottees had not raised any

grievance regarding the enrollment of the new members or its impact on the elected Committee of Management.

82. Once, the newly elected Committee of Management had come into the charge of the affairs of the society, it was the said committee which had taken the decision to refund/return of the share money.
83. In most of the cases, the share money was encashed and this in itself amounts to tacit acceptance at the behest of the original allottees. Once, they had accepted the aforesaid amount without any reaction at the relevant time, it cannot be said that the decision was bad or arbitrary.
84. It could not be disputed by the learned counsel for the private respondent that the society through its Secretary had issued notices regarding demand. It is not as if only one solitary letter of demand was sent rather the record indicates that several letters were sent to the defaulting members including informing them that in case if they failed to deposit the enhancement sum, the allotment can be cancelled and yet they did not respond.
85. It is thereafter that the decision was taken and since the ultimate aim was to complete the construction within a reasonable time for which the entire exercise had been done and the same may not be adversely affected, the society took the decision to enroll new members who paid the entire amount including the

escalated amount and possession letters including a deed was executed in their favour.

86. The entire facts reveal that there is no election dispute. There is no challenge to the membership of subsequent allottees. There is no challenge to the refund/return of share money rather only the cancellation of allotment of the original allottees have been called in question. Though it is true that the Administrator cannot enroll new members but certainly cancellation of allotment for default could be considered by the Administrator. Since, the elected Committee of Management returned the share money, hence, it cannot be said that the Administrator has terminated the membership.
87. Significantly, the draw of lots was done in the year 2004 when the Administrator was on charge and in his tenure provisional allotment was done to the private-respondent which is not disputed then for the same reason in case of default he had the right to cancel the provisional allotment. Once, the cancellation is not held to be bad then allotment in favour of the petitioner/subsequent allottees cannot be held to be bad nor their membership.
88. It will also be relevant to notice that the act of the Committee of Administrators is nothing but a decision of the Committee of Management as at the relevant time, the society was under the

control of the Committee of Administrators who, as per Section 29 of the U.P. Cooperative Societies Act, 1965, also exercises the same functions as that of a duly constituted elected Committee.

89. Admittedly, the actions of the Administrator/the Committee of Administrators had no impact or connection with the elections or its outcome and the said decision of the Committee of Administrators was ratified by the newly elected Committee of Management which is also not assailed, thus, the irregularity, if any, stood corrected.
90. In this regard, the decision of the Apex Court in ***Maharashtra State Mining Corporation Vs. Sunil, S/o Pundikarao Pathak; (2006) 5 SCC 96*** in Para 7 and 8 which reads as under:-

*"7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently "rectified" by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, "a subsequent ratification of an act is equivalent to a prior authority to perform such act". Therefore ratification assumes an invalid act which is retrospectively validated. [See P. Ramanatha Aiyar's *Advanced Law Lexicon*, (2005) Vol. 4, p. 3939 et seq.]*

*8. In *Parmeshwari Prasad Gupta* [(1973) 2 SCC 543] the services of the General Manager of a company had been terminated by the Chairman of the Board of Directors pursuant to a resolution taken by the Board at a meeting. It was not disputed that that meeting had been improperly held and consequently the resolution passed terminating the services of the General Manager was invalid. However, a subsequent meeting had been held by the Board of Directors affirming the earlier resolution. The subsequent meeting had been properly convened. The Court held: (SCC pp. 546-47, para 14)*

"Even if it be assumed that the telegram and the letter

terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953.

The view expressed has been recently approved in High Court of Judicature for Rajasthan v. P.P. Singh [(2003) 4 SCC 239 : 2003 SCC (L&S) 424] , [See also Claude-Lila Parulekar v. Sakal Papers (P) Ltd., (2005) 11 SCC 73.] "

91. In **Panna Lal Chaudhary** (supra) noticing the earlier decision of **Parmeshwari Prasad Gupta** (supra) and **P.P. Singh** (supra), the Apex Court in Paragraphs 29 to 33 has held as under :-

"29. The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.

30. The expression "ratification" was succinctly defined by the English Court in one old case, Hartman v. Hornsby [Hartman v. Hornsby, 142 Mo 368 : 44 SW 242 at p. 244 (1897)] as under:

"'Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."

31. The law of ratification was applied by this Court in Parmeshwari Prasad Gupta v. Union of India [Parmeshwari Prasad Gupta v. Union of India, (1973) 2 SCC 543] . In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held: (SCC pp. 546-47, para 14)

"14. ... Even if it be assumed that the telegram and the letter

terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."

This view was approved by this Court in High Court of Judicature of Rajasthan v. P.P. Singh [High Court of Judicature of Rajasthan v. P.P. Singh, (2003) 4 SCC 239 : 2003 SCC (L&S) 424] .

32. The aforesaid principle of law of ratification was again applied by this Court in Maharashtra State Mining Corpn. v. Sunil [Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96 : 2006 SCC (L&S) 926] . In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs 4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs 1900 p.m. The respondent at the relevant time was drawing more than Rs 1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held [Sunil v. Maharashtra State Mining Corpn., 2005 SCC OnLine Bom 758 : (2006) 1 Mah LJ 495] the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Ruma Pal, J. speaking for the three-Judge Bench, while allowing the appeal and setting aside the order of the High Court held as under: (Sunil case [Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96 : 2006 SCC (L&S) 926] , SCC pp. 96g-h & 97a-b)

*"The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently 'rectified' by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore, ratification assumes an invalid*

act which is retrospectively validated.

In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it."

33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8-1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16-8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules."

92. At this juncture, it will also be relevant to notice the decision of the Apex Court in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others, (2003) 2 SCC 111**, wherein it has been held that it is the ratio of a judgment which is binding and any difference in the facts may make a great difference in the precedential value of such a decision. The relevant portion of the said report reads as under:-

"59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v. Union of India [AIR 2002 Del 458 (FB)], Delhi Admn. (NCT of Delhi) v. Manohar Lal [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088], Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496 : JT (2002) 1 SC 482] and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)].]"

93. Thus, for all the aforesaid reasons, this Court is unable to accept the contention of the learned counsel for the private-

respondents that the allotment in favour of the petitioner and their membership was void and thus it is turned down.

(D)

94. Lastly, coming to the issue regarding the impugned orders being bad for violation of principles of natural justice and that they have been passed without considering the facts and material on record is concerned, this Court finds that the said issue can be considered in two parts:- (i) regarding the order being against the principles of natural justice;(ii) whether the impugned orders are bad that is to say perverse as they are contrary to the material available on record.
95. In so far as the first part is concerned, this plea may not be available to either parties for the reason that though it is true that in the litigation initiated by the private respondents before the Arbitrator in terms of Section 70 of the Act of 1965, it was without impleading the subsequent allottees, however, the awards of the Arbitrator were challenged before the Cooperative Tribunal who had taken note of the aforesaid and after hearing the subsequent allottees, the decision was rendered by the Cooperative Tribunal, hence, now it is not open for either party to say that the impugned orders are bad for violation of principles of natural justice and to that extent this Court is unable to agree with the submissions advanced by the learned

counsel for the petitioners.

96. As far as the limb whether the judgment of the Tribunal is perverse, if examined, it would reveal that the Tribunal noticed that the original allottees did not get adequate notice or opportunity to pay the outstanding amount is apparently incorrect as the original allottees (private-respondents) before the Arbitrator did not say that they never received the notice or call letters from the Society. It was not disputed that the Society sent notices dated 05.04.2004, 26.06.2004, 01.05.2004, 16.04.2004, 19.07.2004, 23.08.2004 and 06.08.2004.
97. It could not be disputed that notices were sent at the addresses of the said respective member as recorded with the Society and they were correct addresses. Hence, the Tribunal erred in holding that the private-respondents did not get adequate notice and opportunity.
98. The Tribunal was also incorrect in stating that the recommendations of the Dahiya Committee was not binding as it was made available for the members and the decision of the Dahiya Committee was the basis for which the demand notices were sent to all members and out of 120, 100 members had deposited the escalated amount and it is only a small minority of members who did not comply, thus, to say that it was not binding on the members while the overwhelming 85% of the

majority members had accepted and acted upon the said report.

99. The Tribunal also erred in stating that the cancellation of the allotment was planned since the record would indicate that several demand notices were issued to the defaulting members. Despite, the members being in default as they had not paid the difference in the original price and the escalated price yet they participated and were allotted the flats. It is only thereafter that despite several reminders the money was not paid that the allotment came to be cancelled. It was not a simplicitor case of enhancing the cost of flats rather what has missed the attention of the Tribunal is the fact that there was increase in the floor area of the types of Flat i.e. Type-A, Type-B, Type-C and Type-D and this necessarily led to escalated prices, hence, it cannot be said that there was any planning or mischief to oust certain members.
100. The Tribunal also erred in holding that share money was returned/refunded without consent of the original allottee. What has not been seen is the facts that upon return of the loan money and followed by return of share money which was not assailed within 30 days as per Clause 15(2) Bye-laws as it had the effect of terminating the membership. Money of the original allottees had encashed the said cheques which in itself is tacit acceptance.

101. The Tribunal failed to consider that the resolution of cancellation and fresh allotment had the approval of the Assistant Housing Commissioner and only thereafter the process of cancellation and fresh allotment was initiated.
102. The Tribunal also erred in treating the subsequent allottees as merely licensee for the reason that merely because in the agreement made by the society in favour of the new allottees, it used the term licensee will not amount to conferring a license on the subsequent allottees, inasmuch as, the terms of agreement prima facie is in the nature of settlement of the flat for permitting use, occupation and possession with the allottee, getting the unit assessed in municipal taxes in their own name and unfettered possession without restrictions except certain conditions only to ensure good community living as it was a group housing and to avoid nuisance by one which may affect the right of peaceful living by the other flat-holders.
103. In many a cases of this bunch of petitions, it would be found that many original allottees did not challenge the cancellation/termination of their memberships and the only challenge was to the cancellation of the allotment. One aspect which has not been considered by the Arbitrator as well as the Appellate Tribunal is the fact that even though the allotment has been challenged without challenging the termination of the

membership of the original allottees. In none of the petitions, the membership of the subsequent allottees has been challenged. In this regard, the decision of the Apex Court in **Jubilee Hills** (supra) needs to be seen wherein in Paragraphs 32 and 33, it has been held as under:-

"32. The appellant became a member of the Cooperative Society in place of his mother. As a member of the Society, nobody had a right to be allotted a plot far less a particular plot. Plot No. 39 was indisputably allotted in favour of his mother. But before the provisional allotment could fructify by making a formal allotment and executing a deed of sale in her favour, she had expired. This fact was not communicated by the appellant to the first respondent Society for a long time. He in his letter dated 16-3-1985 accepted that he was out of Hyderabad for more than two-and-a-half years. He did not deny or dispute that in the meantime the Society issued several letters in the name of all allottees to deposit the development cost. A notice had also been issued to all the allottees asking them to deposit the development charges failing which the order of allotment would stand cancelled. It stands admitted that the development charges had not been deposited in respect of Plot No. 39. It may be that no formal letter of cancellation of the said plot was issued but in view of the admitted position that the requirements as contained in the letter dated 30-9-1982 of the first respondent having not been complied with, the allotment would in law, be deemed to be cancelled.

33. An inference as regards cancellation of the said allotment must be drawn in view of the fact that Plot No. 39 admittedly was allotted in favour of Mr Srinivas. Even if there had been no express cancellation of allotment of the said plot, by reason of a fresh allotment, the provisional allotment made in favour of the mother of the appellant must be held to have come to an end. The allotment of Plot No. 39 in favour of the mother of the appellant was a provisional one. By reason of such provisional allotment, the allottee did not derive any legal right far less an indefeasible right. Such provisional allotment would have acquired permanence provided the requirements therefor were complied with."

104. Thus, in the aforesaid circumstances where the termination of membership of original allottees is not in question nor any challenge to the membership of the new allottee has been questioned and the entire litigation is built on the cancellation

of allotment for the reason of default on the ground that the original allottees did not get adequate opportunity to contest the said notice of demand and cancellation of allotment which appears from the record to be incorrect in the sense that the defaulting members despite notice failed to deposit the outstanding sum and it is in view thereof that fresh allotments were made and fresh membership was granted and the said subsequently allotted members have been in possession of the respective flats since March 2005, hence, for all the aforesaid reasons, this Court is of the clear opinion that the order passed by the Tribunal as well as the Arbitrator are bad and deserves to be set aside.

105. In so far as the reliance placed on the decision of a coordinate Bench of this Court in **Neelam Jain** (supra) is concerned, the same may not have any impact in the instant case as in the case of **Neelam Jain** (Supra), the Court clearly noticed the issue involved was different, inasmuch as, **Neelam Jain** (supra) had assailed the orders of the Arbitrator and the Cooperative Tribunal on the ground that she was not granted adequate opportunity to contest and in the aforesaid backdrop, the coordinate Bench came to the conclusion that since Neelam Jain had sought her impleadment before the Appellate Tribunal and she was heard before the Appellate Tribunal and her rights depended on the stand of the society who had preferred a writ

petition but the same had been withdrawn and not pressed and there was nothing different from the stand of the society which Neelam Jain could have argued, accordingly, the ground that she was not heard did not find favour with the court and her petition was dismissed.

106. In case of **Navita Jain** (supra), the Coordinate Bench of this Court while deciding the said petition noticed that the petitioner of the said case had not approached the Court with clean hands and the petition was dismissed on the ground of material concealment.
107. Moreover, the decision of the Apex Court cited by the private-respondents in **Modern Dental College and Research Centre** (supra) has no applicability in the instant case.
108. Thus, the aforesaid decisions, do not come to the aid of the original allottees i.e. the private respondents.
109. Taking a holistic view and in light of the detailed discussions made in hereinabove, this court is of the clear view that the order dated 27.01.2014 passed by the Cooperative Tribunal, Uttar Pradesh in Appeal No. 230/2009, 219/2009, 229/2009, 228/2009 arising out of orders dated 14.10.2009 in Arbitration Case No. 21/2006-07, 23/2006-07, 22/2006-07, 20/2006-07, in Appeal No. 71/2009, 72/2009 arising out of orders dated 30.03.2009 in Arbitration Case No. 47/2007-08, 48/2007-08, in Appeal No. 134/2010 arising out of order dated 27.04.2010 in

Arbitration Case No. 82/2007-08, In Appeal No. 195/2010 arising out of order dated 9.07.2010 in Arbitration case No. 19/2006-07, in Appeal No. 160/2010 arising out of order dated 01.05.2010 in Arbitration case No. 109/2007-08, In Appeal No. 151/2010 arising out of order dated 11.06.2010 in Arbitration case No. 106/2007-08, In Appeal No. 73/2010 arising out of order dated 16.03.2010 in Arbitration case No. 79 /2007-08, In Appeal No. 133/2010 arising out of order dated 05.05.2010 in Arbitration case No. 81/2007-08 passed by the arbitrators concerned are liable to be set aside.

110. A writ in the nature of certiorari is issued quashing the order passed by the Co-operative Tribunal in appeals arising out of arbitration awards passed in Arbitration Cases under Section 78 of the Uttar Pradesh Cooperative Societies Act, 1965, as mentioned hereinabove.
111. Accordingly, all the petitions are **allowed** in the aforesaid terms. Costs are made easy.

Order Date : March 12, 2024
Ank/Rakesh/Asheesh

(Jaspreet Singh, J.)