*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 519/2012

% **Date of Decision: 05th May, 2015**

MANOHAR LAL & ANR. ..... Petitioners
Through : Mr. Mukesh Kumar on behalf of Mr. Pratap Sahni, Adv.
Mr. B.S. Randhawa, proxy counsel.

versus

THE REGISTRAR, CO-OP. GROUP HOUSING SOCIETY AND ORS ... Respondents
Through : Mr. V.K. Tandon, Adv. for R-1/RCS.
Mr. Arun Birbal and Mr. Sanjay Singh, Advs. for DDA.
Mr. Sanjay Poddar, Sr. Adv. with Mr. Aman Nandrajog, Mr. Govind Kumar and Ms. Pauni Poddar, Advs. for R-4.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT (ORAL)

GITA MITTAL, J.

1. The writ petition challenges the notification dated 17th

October, 2011 issued by the Lieutenant Governor, National Capital Territory of Delhi in exercise of powers under Section 127 of the Delhi Cooperative Societies Act, 2003 giving a one time exemption with regard to the self draw conducted by the 26 societies including the Naval Technical Officers CGHS Ltd. (which appears at Sl. No.16 of the said notification); from applicability of Section 77 (1) of the Delhi Cooperative Societies Act, 2003.

2. This writ petition can be disposed of on the preliminary objection with regard to locus of petitioner to invoke the writ jurisdiction in the present case. This writ petition was filed on 23rd December, 2011 by the Naval Technical Officers, Cooperative Group Housing Society Ltd. as petitioner No.1. The society was arrayed as suing through 'President - Shri Manohar Lal'. Shri Surender Singh was arrayed as petitioner No.2.

3. It is noteworthy that when the writ petition was listed for the first time on 24th of January, 2012, the respondent no.1 had raised an objection to the locus of Shri Mahnohar Lal to file the petition on behalf of the society. It was disclosed that the Naval Technical Officers CGHS Society Ltd. was working under an Administrator and therefore a person claiming to be the President of the society could not file a writ petition on behalf of the society. In this background, learned counsel appearing on behalf of the petitioners had stated that Shri Manohar Lal has been arrayed in person as petitioner No.1 and Shri Surinder Singh had filed the writ petition as petitioner No.2.

4. The society was directed to be impleaded/transposed as the

respondent No.4 while the Commissioner of Police was directed to be deleted from the array of parties. An amended memo of parties in terms of the order dated 24th of January, 2012 stands filed on record.

5. It is noteworthy that though the writ petitioner made several prayers on 24th of January, 2012, the petitioner confined the challenge in the writ petition to the first prayer that is the quashing of the order/notification dated 17th October, 2011 whereby the one time exemption etc. was given.

6. Mr. Sanjay Poddar, learned Senior Counsel appearing for the respondent No.4 society submits during the pendency of the writ petition, elections to the managing committee of the respondent No.4 society were held and as such a duly elected managing committee is looking after the affairs of the society since December, 2012. The submission is that Shri Manohar Lal was not a member of the respondent No.4 society at any point of time and that he had not made payment of any amount to the society.

7. So far as Shri Surender Singh is concerned, the submission is that he stood removed from the membership of the society and the resolution of the society removing him from the membership of the society stands duly approved by an order passed on 17th October, 1997 dispatched on 18th November, 1998. This document has been placed before us. It appears that Shri Surender Singh was one of 48 defaulter members who were expelled from the membership of the society. His expulsion stands approved as per the order dated 17th October, 1998. The submission is that neither

Shri Manohar Lal nor Shri Surender Singh were members of the society on 17th October, 2011 when the notification was issued. It is further contended that therefore it is not open to either Shri Manohar Lal or Shri Surender Singh to maintain any challenge qua the working of the affairs of the respondent No.4 society.

Learned counsel for the petitioner is unable to point out any document to support the membership of Shri Manohar Lal. The order dated 17th October, 1998 affirming the expulsion of Shri Surender Singh has also not been assailed before any forum and has attained finality. Hence clearly neither Shri Manohar Lal nor Shri Surender Singh have locus to file the present writ petition.

8. Mr. B.S. Randhawa, Advocate appearing for the petitioners would seek to place a challenge in these proceedings to the order dated 17th October, 1998 whereby the expulsion of Surender Singh from the membership of the society was approved. We may also note that apart from the general prayer made in Sr.No.(b) of the prayer clause, the petitioner has not pleaded any ground of challenge to the order dated 17th October, 1998 nor placed a copy thereof with the writ petition. It is the society which has placed the copy thereof on record with its counter affidavit. In any case, so far as this challenge is concerned, the petitioner had an efficacious alternative statutory remedy of revision available to him under Section 112 of the Delhi Cooperative Societies Act which he ought to have availed if he was assigned thereby. The challenge pressed at this stage before us by Mr. Randhawa is involving disputed question of facts and the present writ petition is certainly not the

appropriate remedy to go into this question.

9. It is apparent that this writ petition could have been dismissed on the short ground that the petitioners are not the members of the society and have no locus standi to bring or to maintain the petition. We would have disposed of the writ petition on this short technical ground. But we cannot do so in view of the order dated 24th of January, 2012 recorded in this writ petition.

10. The writ petitioners have assailed the notification dated 17th October, 2011 issued by the Lt. Governor of Delhi in exercise of powers conferred by Section 127 of Delhi Cooperative Societies Act, 2003 giving the one-time exemption from the rigours of Section 77(1) of the said Act and regularising the self-draw conducted by the 26 cooperative housing societies which have been named in the notification. In addition, the Lt. Governor has been pleased to direct the manner in which the regularization would be effected. Given the nature of the challenge, this court while issuing notice to the respondents on the 24th of January 2012 had noted the opposition of the Registrar of Cooperative Societies to the self-draw conducted in various societies. This court had taken a prima facie view that the grant of the exemption may not be permissible inasmuch as the will of the Parliament, while enacting Section 77 of the Act, should not be diluted and that in case such allotment pursuant to the self-draw was finally recognized, there was a possibility of third party interest being created. In this background, pending consideration of the respondents' response, this court had directed maintenance of the position as on the 24th of January 2012

permitting the application submitted by the society to be processed, but without permitting the RCS to finally recognise the allotment made in pursuance to the self-draw. The issue raised is of importance and has far reaching consequences.

11. We are informed by Mr. V.K. Tandon, learned counsel representing the respondent no.1 that as a result, the process of scrutiny and acceptance of the allotment qua 26 societies, in accordance with the notification dated 17th October, 2011 has been halted. For this reason, having regard to the importance of the issues flagged by the court and noted in the order dated 24th January, 2012 and also the fact that counsel for the parties (petitioners' counsel as well) on both sides have made extensive submissions on the merits of the challenge, we are adjudicating on the issues noted and pointed out by this court in the order dated 24th of January, 2012.

12. The legislative assembly for the National Capital Territory of Delhi enacted Delhi Cooperative Societies Act, 2003 inter alia with the object of consolidating and amending laws relating to the cooperative societies, to facilitate voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid to enable them to promote their economic and social betterment and to provide for regulation, management, functional autonomy of such societies. In exercise of the powers under Section 137, the Delhi Cooperative Societies Rules were also notified. The statutory provisions came to be amended in the year 2000 which amendments took effect from 1st

April, 2004, whereafter the Rules under the enactment were also amended which took effect from 19th October, 2007.

13. The Naval Technical Officers Group Housing Society Ltd. stands constituted and registered as a cooperative group housing society in accordance with the provisions of the Delhi Cooperative Societies Act, 1972. There is no dispute with regard to the registration of the respondent no.4 society.

14. It appears that the respondent no.4 society was allotted a plot of land admeasuring 160000 sqr.mtrs. by the Delhi Development Authority on the recommendations made by the respondent no.1. As per the counter affidavit of the respondent no.4, it had an approved list of 238 members who contributed their share in the cost of the land as well as their pro-rata shares in the construction of 238 flats effected by the society through a contractor. The submission is that an amount of over Rs.30 crores has been paid by the respondent no.4 from funds made available by the members to the contractor. It is necessary to note that the members of the society, amongst others, include retired and serving officers of the central government. These members made the contribution towards land cost and construction by availing loans from various sources, for which they obviously had to pay interest.

15. An Administrator had been appointed under Section 87 of the Delhi Cooperative Societies Act to manage the affairs of respondent no.4. The counter affidavit which was filed on behalf of the society by the Administrator encloses a list of members as on 31st March, 2011 as well as their contributions to the funds of the

society.

16. The list placed before this court would show that these members have paid between Rs.14 lakhs and Rs.45 lakhs from the year 2000 to 2011 towards the construction of the flats. It is also on record that the construction of the flats was completed and the flats were ready for occupancy in the year 2005.

17. Before allotment of the flats could be effected, it appears that in the year 2004, a writ petition bearing ***W.P.(C)No.10066/2004*** entitled ***Yogi Raj Krishna Cooperative Group Housing Society Ltd. v. Delhi Development Authority & Anr.*** was filed in this court. On examination of this petition, a Division Bench of this court directed the Central Bureau of Investigation to register a case and conduct an investigation into the affairs in the office of the Registrar of Cooperative Societies pertaining to an alleged scam whereby builders and architects had illegally managed registration of societies with either fake membership or their friends and relatives lending names to complete the membership to enable registration. These builders financed the amounts which had to be paid to the DDA by way of premium for allocation of lands by the DDA to group housing societies. After the land was allotted, membership of these societies was sold at hefty premiums by completing records through spurious resignations of name lenders or fictitious members. As a result, valuable land was got allotted from the DDA at the special rates notified by the central government for group housing societies by unscrupulous builders and architects. In this writ petition, the court stayed allotment of

flats of the cooperative societies whose affairs had to be investigated. Determination had to be effected with regard to the genuineness of the societies.

18. So far as the instant society was concerned, the CBI found that there was no defect in the registration of the society and that its membership was genuine. It was also ascertained that the finances for construction had been provided by duly enrolled members.

19. We are informed that because of these reasons, in addition to the respondent no.4 society, there were 25 other similarly situated cooperative societies whose members continued to suffer because of the non-allotment of the duly constructed flats on land which was allotted to the societies which allotment had been found to be genuine.

20. It appears that documents for verification of the genuineness of members as well as approval of the membership of the respondent no. 4-society were forwarded to the Registrar of Cooperative Societies vide letter dated 15th September, 2006.

21. It is submitted by Mr. Sanjay Poddar, learned Senior Counsel for the respondent no.4 that the members of these societies were heading towards financial crisis, many of them being retired government officials who were subsisting on paltry pensions and were being compelled to pay not only the interest towards loans taken by them to pay towards the land allotted to the society and construction of the flats, but also had to bear monthly rentals for accommodation. Penalties by way of penal and overdue interest were also accumulating and being levied upon these members and

the situation was assuming desperate proportions. In these circumstances, in a general body meeting of the respondent no.4 society held on 10th January, 2010, pursuant to a unanimous decision, a self-draw of lots was conducted for allocation of the constructed flats amongst the 238 enrolled members.

It is an admitted position before us that pursuant to the self-draw, members took possession of the flats drawn by them in the self-draw held by the society.

22. Similar draw of lots were conducted by the 25 other societies whose registration and membership had been ascertained as genuine by the DDA.

23. We are informed by Mr. V.K. Tandon, learned counsel appearing for the Registrar of Cooperative Societies, that various representations had been made to the Government of NCT of Delhi with regard to the delays in allotment of flats in cooperative housing societies. For this reason, deliberations were conducted by the Government of NCT of Delhi and all aspects of the matter including the hardship to the members; the status of the investigation in various cases by the CBI; the directions of this court in W.P.(C)No.10066/2004 were considered. Given the urgency placed before it, the Government of NCT of Delhi constituted a committee consisting of two members namely, Shri K.K. Mathur, Former Chief Secretary, Government of NCT of Delhi and Shri Y.D. Venkata, IAS (Retd.) with the following terms of reference :

> "(i) To suggest measures which could be taken for

verification of membership in such cooperative group housing societies which have already held self draw of lot in violation of DCS Act and Rules.

(ii) To suggest procedure for verification of membership in such cooperative group housing societies, original records of which have been lost/misplaced by the society/RCS office.

(iii) To suggest measures for verification of membership in such cooperative group housing societies in which charge sheets alleging various illegalities/irregularities have been filed by CBI in the competent Court of law and are pending trial.

(iv) To suggest measure to ensure that matters which led to CBI investigation do not recur.

(v) To suggest measures to strengthen the office of the RCS so as to enable it to meet the expectation of the people.

(vi) To examine the existing infrastructure in the office of RCS and to suggest measures to improve the same."

24. Referring to the Order No.F 47/RCS/Policy/152/2011/164-175 dated 30th March, 2011 of the Government of NCT of Delhi, this Committee submitted a report dated 10th June, 2011 giving detailed recommendations after a close examination of every aspect of the construction and functioning of the group housing cooperative societies in Delhi as well as of the Office of the Registrar of Cooperative Societies.

25. It was after confabulation with the concerned departments and consultations at the highest level, that a decision was taken by the Lt. Governor on the 31st May, 2011 directing that, societies, who had conducted the self-draw, may be considered for regularization by the DDA if the members of the societies were

unanimous in the decision taken and also fairness of the self-draw was transparent as well as affidavits stood given by the members and the secretary of the societies to the effect that they had no objection either to the manner or the outcome of the self-draw.

26. It appears that the matter did not end here and the issue was again raised by the Registrar of Cooperative Societies. By an order passed on 20th September, 2011, the Lt. Governor had observed that so far as conducting the self-draw of lots was concerned, it was merely a procedural irregularity, and therefore, the recommendations of the Shri K.K. Mathur Committee regarding imposition of charges for the same in money terms may be followed. The consideration shows that the Lt. Governor was conscious of the statutory power conferred under Section 127 of the Delhi Cooperative Societies Act, 2003 to exempt the applicability of any provision of the enactment through cooperative society. It is this power which was exercised in granting the one time exemption. This consideration and the directions came to be notified formally by the impugned notification dated <u>17th October, 2011</u> which reads as follows :

> *"No.F.47/86/RCS/Policy/2009/2009/PF/519 Date: 17.10.2011*
>
> ***<u>ORDER</u>***
>
> *No. F.47/86/RCS/Policy/2009/2009/PF In exercise of the <u>powers conferred by section 127 of Delhi Cooperative Societies Act, 2003</u> (Delhi Act No.3, of 2004), the Lt. Governor of the National Capital Territory of Delhi is <u>pleased to regularize the selfdraw conducted by the following 26 cooperative Housing Societies from the operation of sub section (1) of section 77 of the said Act by giving one-time exemption</u>, namely:-*

1.	*Air India CGHS Ltd.*	*2.*	*Appu Enclave CGHS Ltd.*

3.	*Baroda House NRI CGHS Ltd.*	*4.*	*Batukji CGHS Ltd.*
5.	*Bharat Jagriti CHGS Ltd.*	*6.*	*Chitrakootdham CGHS Ltd.*
7.	*Crown CGHS Ltd.*	*8.*	*Delhi Apartment CGHS Ltd.*
9.	*IDC CGHS Ltd. (Subject to outcome of Special Leave Petition No.4802-03/2011*		
10.	*Karuna Vihar CGHS Ltd.*		
11.	*Khattar CGHS Ltd.*	*12.*	*Mahajan Shree CGHS Ltd.*
13.	*Maharani Aventibai CGHS*	*14.*	*Mahavir CGHS Ltd.*
15.	*Manisha CGHS Ltd.*	*16.*	***Naval Technical Officers CGHS Ltd.***
17.	*Pragti Sheel Bharva CGHS Ltd.*	*18.*	*S.B. Youth CGHS Ltd.*
19.	*Sanchar Vihar CGHS Ltd.*	*20.*	*Sant Sunder Dassji CGHS Ltd.*
21.	*Sapna Ghar CGHS Ltd.*	*22.*	*Saptapami CGHS Ltd.*
23.	*Sarve Satyam CGHS Ltd.*	*24.*	*Satyam CGHS Ltd.*
25.	*Shree New Anamika CGHS Ltd.*	*26.*	*Shri Racha Krishna CGHS Ltd.*

(1) However, the members and other office bearers of the CBI investigated societies who have been charge sheeted by CBI shall not get the benefit of such regularization and their names shall not be sent to DDA till the criminal cases pending against them are finally decided as in the case of other CBI investigated societies.

(2) The allotment would be provisional in nature and indemnity bond on non-judicial stamp paper of Rs.100/- has to be submitted by members as well as President/Secretary of the society. Separate affidavit has to be filed by the members & Secretary of the society to the effect that they had no objection to the manner of conduct & outcome of the self draw.

(3) The regularization of self draw shall be subject to payment of penalty by each member who have carried out self draw without the approval of RCS as follows:-

1. Owners of 02 bedrooms houses – Rs.15000/-
2. Owners of 03 bedrooms houses – Rs.20000/-
3. Owners of 04 bedrooms houses – Rs.25000/-
(4) One time exemption in r/o self draw society is restricted only up to the provision of section 77(1) of DCS Act – 2003."

(Underlining by us)

27. We are informed that pursuant to the said notification, the Office of the Registrar of Cooperative Societies had called upon the 26 societies to submit the required documentation as a one time exemption.

28. This notification stands challenged by way of the present writ petition resulting in the observations noted by the court on 24th January, 2012. At first blush, there appears to be substance in the observations of this court to the effect that prohibition under Section 77 of the Delhi Cooperative Societies Act, 2003 is absolute and no exemption thereto ought to be permissible, given the fact that it takes effect to ensure fair allocation of property in a cooperative group housing society and is in keeping with the spirit, object and intendment of the Act. Of course the requirements of fairness in the allocation of the properties of the cooperative societies cannot be diluted, no matter what the situation may be. However, the situation and the background facts in which the self-draw came to be conducted and was put to effect in the instant case arise in a peculiar situation.

29. We have heard learned counsel for the parties on the various submissions made on the issue which we are considering in this factual background and are evaluating the legality and fairness of the notification dated 17th October, 2011 to ensure the highest

standards of transparency and equality.

30. Let us first and foremost examine the scope of Section 127 of the Delhi Cooperative Societies Act, 2003. This is best stated in the pronouncement of the Supreme Court reported at ***(1980) 1 SCC 340 The Registrar of Cooperative Societies Trivandrum & Anr. v. K. Kunjabmu & Ors.*** The Supreme Court was considering the vires of Section 60 of the Madras Cooperative Societies Act, 1932 which is pari materia to Section 127 of the Delhi enactment. While considering the vires of the statutory provision, the Supreme Court also delineated the scope and policy of the aforesaid statutory provisions in paras 11 and 12 which deserve to be considered in extenso and read thus :-

> "11.................The provision is a near Henry VIII clause. But to give it a name is not to hang it. We must examine the preamble, the scheme and other available material to see if there are any discernible guidelines. Sure the Cooperative Societies Act is a welfare legislation. Its preamble proclaims:
>
>> "Whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the State of Madras."
>
> 12. The policy of the Act is there and so are the guidelines. *Why the legislation*? "To facilitate the formation and working of Cooperative Societies". Cooperative Societies, for what purpose ? "For the

promotion of thrift, self-help and mutual aid". Amongst whom ? "Among agriculturists and other persons with common economic needs". To what end ? "To bring about better living, better business and better methods of production". The objectives are clear; the guidelines are there. There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committees of societies, dissolution of societies, surcharge and attachment, arbitration etc. We refrain from referring to the details of the ***provisions*** except to say that they are ***generally designed to further the objectives set out in the preamble. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous application of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by s. 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act.*** Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. ***The power given to the Government under s. 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.***"

(Emphasis above)

31. We have noted above the spirit, object and purpose of the Delhi Cooperative Societies Act. It cannot be disputed that the power under Section 127 can be exercised only for furtherance of the purposes of the Act and for none other. The challenge as made to the action of the Lieutenant Governor in the present case has to bear scrutiny from this aspect alone.

32. It appears that the exercise of power by the Lt. Governor under Section 127 of the Act exempting the applicability of the provision of the statute had not arisen in 2010/2011 for the first time. The respondents have placed before us an office order issued by the DDA dated 2nd February, 1996 in this regard whereby the Commissioner (Housing) notified the policy laid down by the Vice Chairman, Delhi Development Authority to regularise/confirm self-draw of lots conducted by a few cooperative group housing societies for allotment of flats to their members on their own, in violation of the prohibition under the RCS norms/directives. As per this decision, the DDA had laid down the policy to regularize/confirm such draws subject to the following conditions:

> "(i) Result sheet of draw of lots alongwith a list of members duly verified by Registrar Coop. Societies.
> (ii) Attested copy of form 'D' or occupancy certificate issued by DDA.
> (iii) Receipt of payment of upto date ground rent and other dues, if any, as may be payable.
> (iv) Third copy of challans against deposit of Rs.1000/- (Rupees one thousand only) per flat, in the authorised branch of State Bank of India and Central Bank of India as a token of penalty for the said violation

> of the prescribed procedure by conducting draw on their own."

It is an admitted position that above order was duly implemented. The grant of the exemption by the Lieutenant Governor is not by itself assailable without anything more.

33. The question of the legality of the allotments by self-draws has also been raised before this court on several prior occasions. Reliance is placed before us on the case of ***Dr. Zakir Hussain Cooperative Group Housing Society Ltd. (W.P.(C) No.1203/2010)*** wherein a similar self-draw had been regularized by the Lt. Governor of Delhi. We may extract the relevant portion of the order of this court dated 21st May, 2010 in W.P.(C) No.1203/2010 in ***Dr. Zakir Hussain Cooperative Group Housing Society Ltd. (supra)*** in this regard which reads as follows :

> "It is the case of the petitioner that in a similarly situated case of another Society, Yamuna CGHS Limited, which has done allotment of flats on its own without any recommendation of respondent no.1, the Lieutenant Governor/respondent nO.2 regularized the same. Respondent No.2 has further directed while regularizing the flats of the Society on 2.6.2008 that the Registrar should examine and process similar cases expeditiously so that appropriate decision could be taken on merits in each case. Even this direction seems to have had no effect. xxx xxx xxx
>
> In view of the averments made in the writ petition which are unrebutted we consider it appropriate to issue directions to respondent no.1 to forthwith act in pursuance to the general directions of respondent No.2 contained in the order dated 2.6.2008 and the case of the petitioner Society be forwarded to the DDA within a

> maximum period of one (1) month from today.
> On such file being received by the DDA, the concerned officer of the DDA will process the case of the petitioner within a maximum period of two (2) months thereafter.
> The writ petition stands allowed in the aforesaid terms leaving the parties to bear their own costs."

34. In the case of yet another society namely, ***Nehru Cooperative Group Housing Society***, the respondents were objecting to the enrolment of members in violation of the Rule 24(2) of the Delhi Cooperative Housing Society Rules. These persons filed W.P.(C)No.494/2011. On the 9th of May, 2011, the petitioners conceded that they would be satisfied if the case was considered within the established parameters for regularization of membership and their agreement was recorded that they would file fresh applications with all requisite documents for regularization of membership within two weeks from the date of the order. We may note that this regularization of membership was in terms of the notification dated 31st July, 2008 permitting the same for regularization of members who had been enrolled in contravention of Rule 21(2) of the Rules.

35. Learned senior counsel for the respondent no. 4 has placed yet another instance to the exercise of the power to exempt application of the provisions of the Delhi Cooperative Societies Act to a particular society. It is pointed out that Section 88 of the Delhi Cooperative Societies Act, 1972 was in pari materia to Section 12 of the Delhi Cooperative Societies Act, 2003. The

Lieutenant Governor of Delhi had opportunity to exercise the power conferred upon him by Section 88 of the then extant enactment to the effect that Section 12 of the Delhi Cooperative Societies Act would not apply to the Rehabilitation Ministry Employees Cooperative House Building Society Limited. Disputes with regard to this order were taken to the court. While the matter was sub-judice before the Supreme Court of India, the Lieutenant Governor appears to have issued yet another order dated 29th August, 1990 rescinding the earlier order.

36. By virtue of the exemption under Section 88, it had been directed that the condition with regard to a member of a society being a resident of Delhi would stand relaxed in favour of those persons who were employees of the Ministry and had been posted outside Delhi who had the intention to settle in Delhi after retirement. Such persons who intended to settle in Delhi thus could not be barred from membership of a society. In order to comply with the benefit of this order of the Lieutenant Governor, the bye-laws of the society were permitted to be amended by the Registrar of Cooperative Societies after statutory compliance. Upon considering the challenge in the judgment reported at ***(1991) 4 SCC 485, H.C. Suman & Anr. v. Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi & Ors.***, the Supreme Court noted that the order granting the exemption from the operation of Section 12 was for the benefit of the members of the society and in furtherance of the object of the Act. It was held that the grant of exemption to the society from the operation of

Section 12 was not ultra vires the statutory provision. Consequently, the order dated 27th October, 1987 was upheld while the order rescinding the same dated 29th August, 1990 was quashed.

It thus needs no further elaboration that if the order of exemption under Section 127 of the Delhi Cooperative Societies Act, 1972 is intended for the benefit of the society and is in furtherance of the statutory aims and objects, the Lieutenant Governor is justified in exercising his power to do so by virtue of Section 127 of the Act.

37. It needs no elaboration that it is impossible for even the legislature to contemplate every possible factual situation which could arise in the functioning of societies. It has been noted in the judicial pronouncements set out above that to rigor an application of some of the provisions of the enactment may itself result in frustrating the very objectives of the statute instead of advancing them. For this reason, the government is vested with the power to relax the rigors of the application of particular statutory provisions which power has to be exercised only to advance the spirit intendment and purpose of the statute.

38. Mr. Sanjay Poddar, learned senior counsel appearing for the respondent no. 4 has drawn our attention to certain writ petitions wherein similar problems faced by other societies had arisen and relaxation from the operation of Rule 90 of the Delhi Cooperative Societies Rules, 2007 was approved. Amongst others, the learned senior counsel has drawn our attention to the following orders :-

> "1. Order dated 18th August, 2010 in W.P.(C) No. 5619/2010 (page 183)
> 2. Order dated 9th September, 2010 in W.P.(C) No.5164/2010 (page 185)
> 3. Order dated 10th March, 2011 in W.P.(C) No. 1463/2011 (page 188)
> 4. Order dated 21st April, 2011 in W.P.(C) No.1654/2011 (page 193)"

39. We may note that the whole essence of selections and making allocations by a draw of lots is to ensure that each participant gets an equal and fair opportunity for consideration of the allotment or in the selection process. In order to ensure that no element of illegality is brought into the allotments, Section 77 prescribes that the draw of lots is conducted by the Delhi Development Authority. This necessarily has to be strictly complied with especially keeping in view the value of property in Delhi as well as the large number of persons who are members of the society and have contributed to the construction which was undertaken by the society.

40. Undoubtedly, when a self draw is conducted, there is violation of the statutory provision. In the instant case, the respondent no.4 society has given a reasonable explanation that the circumstances in which the members took it upon themselves to conduct the self draw. The decision to conduct the self draw is stated to be unanimous. Pursuant to the self draw, the members of the society came to occupy the flats which they had drawn in the process. Other than the petitioner, not a single person who participated in the draw of lots and is occupying the flats (or may

not have been allotted a flat) has come forward with any allegation of malafide, bias or wrongful allegations.

41. It is therefore, noteworthy that so far as the several procedural requirements under the statutory provisions are concerned, whether they are in the nature of fulfilling the requirements for enrolment on a particular date or in a particular manner or be it in the manner in which allotment of flats would be conducted, the respondents have exercised the discretion vested in them under Section 127 of the Delhi Cooperative Societies Act and permitting exemption of one or the other provisions of the statute keeping in view the specific exigency which is placed before the concerned authority. To this extent, the respondents do not appear to have treated failure to comply with a specified requirement (for instance, allotment by a draw of lots by a particular agency) as a mandatory requirement of law but as a mere irregularity which could be regularized on terms and conditions as are considered and laid down by the respondents.

42. It is implicit in the statutory scheme that a self-draw which is conducted as a matter of course cannot be regularized. Compliance with the statutory requirement is a must. The power under Section 127 has to be exercised only in grave and exceptional circumstances. In the above cases, the exemptions have been permitted only under a stringent scrutiny upon satisfaction of specified conditions that too under unique conditions which had arisen.

43. So far as the case of the respondent no.4 society is

concerned, as noted above, 238 flats stood constructed after receipt of payments between Rs.14 to 48 lakhs from the members of the respondent society between 2000 to 2011. All these persons awaiting the possession of the flats. We have noted above the huge financial liability which was recurring on a daily basis on all these persons. The statute could not have anticipated this situation. The draw was conducted by these members with the participation of all members. There is not a single objection before us to either the draw, or the allotments. Not a single objection has been filed regarding the occupancy of the flats.

44. It has been urged on behalf of the official respondent that the notification dated 17th October, 2011 has been issued pursuant to a decision taken in the larger interest of the members of the societies and not for the interest of a selected few. The aim of this notification, therefore, is to extend benefits to all the members of the society in the peculiar factual matrix which had arisen. It is an action which is in furtherance of the acts and objects of the statute set out above.

45. We consequently find substance in the submission of learned counsel for the respondents that in issuance of the notification dated 17th October, 2011, the Government has taken a careful view after application of mind to the facts which emerged by deciding to exempt the 26 societies from the applicability of Section 77 of the Act and regularising the centre of place. We see that the respondents have issued the notification carefully inasmuch as the notification has excluded members and other office bearers of the

CBI investigating societies who have been charge-sheeted by the CBI shall not get the benefit of such regularisation and their names shall not be sent to the DDA till criminal cases pending against them are finally decided. The regularisation is subject to payment of penalties for the self draw which have been prescribed. The exemption is only one time and restricted to the application of the provisions of Section 77(i) of the Delhi Cooperative Societies Act, 2003.

46. It is also explicit that the one time exemption is restricted only to the provisions of Section 77(i) of the Delhi Cooperative Societies Act, 2003. Inherent therein is the statutory requirement that all other provisions of the statute which had to be satisfied. The Registrar of Cooperative Societies is therefore required to conduct the necessary verification for eligibility in accordance with Schedule (vii) of the Delhi Cooperative Societies Rules, 2007. Apart from this requirement, the indemnity bonds have to be submitted by the members as well as the president/secretary of the society. An affidavit has to be filed by the members as well as the secretary of the respondent no. 4 to the effect that they have no objection to the manner of conduct and outcome of the self-draw.

47. It appears that this is in consonance with the directions of this court in ***Yogi Raj Krishna's*** case with regard to the CBI investigating societies. The members who have carried out the self-draw and are also required to pay penalty in accordance with para 3 of the notification dated 17th October, 2011.

48. We have noted in the earlier part of the order that the

petitioners have admittedly not made any contribution to the construction raised by the society. Sh. Surender Singh-petitioner no.2 stood expelled from the membership of the society. These facts also factually support the correctness of the decision taken by the Lieutenant Governor in the larger interest of the members of the respondent no. 4 society.

49. Therefore, looked at from any angle, the respondent nos. 1-3 shall ensure that only a person who meets the requirement of the statutory provisions as well as the rules therein and who has complied with the financial discipline imposed by the society gets regularisation of the allotment made to him. The conditions thus ensure that the allocation is by a draw of lots which was fair and gives an equal opportunity to all bonafide and genuine members to participate. A draw of lots which is in the spirit of the statute and as per its scheme.

50. We are of the view that adequate safeguards have been provided to ensure substantial compliance with every provision of the law. Given the several orders noticed above in the several writ petitions which have been filed and disposed of prior hitherto, it appears that the apprehensions noted by the court in the order dated 24th January, 2012 are not justified in this instance.

51. For all these reasons, apart from the fact that petitioners have no locus standi in the matter, we are of the view that there is no merit at all in the challenge which has been laid to the notification dated 17th October, 2011.

52. The writ petitioners were able to persuade the court to pass

an ad-interim ex-parte order dated 24th January, 2012 as a result the entire process has been unwarrantedly stalled.

53. In view thereof, we are of the view that the petitioners deserve to be burdened with heavy costs. Mr. Pratap Sahni on earlier dates as well as Mr. B.S. Randhawa, Advocate have vehemently pressed the writ petition.

At this stage, learned counsel for the petitioners pray that the petitioners believed that they were entitled to bring the writ petition as they were the members of the respondent no. 4 society and that they were acting in their zeal to protect the interest of genuine members. They pray that in this view of the matter, no costs should be imposed on the petitioners. Given the factual narration with regard to the membership of the two petitioners, it is obvious that the concerns of the petitioners were misplaced. However, on a consideration of the request on behalf of the petitioners for waiving costs, we are not imposing any costs.

This writ petition is dismissed.

There is no order as to costs.

GITA MITTAL, J

P.S.TEJI, J

MAY 05, 2015
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