

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.12255 of 2007

Smt.Kumud Choudhary, wife of Shri S.K. Choudhary, resident of F-44, Sector III, HEC Colony, Ranchi, District- Ranchi (Jharkhand).

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Registrar, Cooperative Societies, Bihar, Patna New Secretariat, Patna.
3. Patliputra Cooperative House Construction Society Limited, Patliputra Colony, Patna-800013, through its Hony. Secretary.
4. Board of Directors of Patliputra Cooperative House Construction Society Limited, Patna-800013, through its Hony. Secretary.
5. Smt. Swati Pandey, wife of Major Prem Singh.
6. Smt. Anvita Pradhan, wife of Dr. Ajit Pradhan.  
Both are residents of 111 Patliputra Colony, Patna-13.
7. Smt. Yamica N. Pandey, wife of Mr. H. Ananth Narayanan, A-1103 Hill Orange, Hiranandani Estate, Godbendar Road, Patli-Purdda Thana (West) Mumbai-400607, Maharashtra.

.... .... Respondent/s

With

### Civil Writ Jurisdiction Case No. 3277 of 2009

Smt.Kumud Sahu Choudhary, wife of Shri S.K. Chaudhary, resident of F-44, Sector III, HEC Colony, Ranchi, District- Ranchi (Jharkhand).

.... .... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna, New Secretariat, Patna.
3. Patliputra Cooperative House Construction Society Limited, Patliputra Colony, Patna 800013 through its Hony. Secretary.
4. Board of Directors of Patliputra Cooperative House Construction Society Limited, Patna-800013, through its Hony. Secretary.
5. The District Cooperative Officer, Patna.
6. The Addl. Collector, Land and Order, Patna.
7. Smt. Swati Pandey, wife of Major Prem Singh.
8. Smt. Anvita Pradhan, wife of Dr. Ajit Pradhan.  
Both are residents of 111 Patliputra Colony, Patna-13.
9. Smt. Yamica N. Pandey, wife of Mr. H. Anant Narayanan, A-1103, Hill Orange, Hiranandani Estate, Godbendar Road, Patli-Purdda Thana (West) Mumbai-400607, Maharashtra.

.... .... Respondent/s

#### Appearance :

(In CWJC No.12255 of 2007)

For the Petitioner/s

: Mr. Ashutosh Jha  
Mr. Narendra Pandey  
Mr. Bijay Kant Mishra  
Mr. Avinav Kumar

For the Respondent/s : Mr. Priyank Deepak, AC to SC-9  
Mr. Neeraj Raj, AC to SC-19  
For the Patliputra Cop. Soc. : Mr. Rajendra Narain, Sr. Advocate with  
Mr. Anju Narain  
Mr. Vivek Prasad  
For the Private Respondents : Mr. Chittaranjan Sinha, Sr. Advocate with  
Mr. Sunil Kumar Sharma  
For the Intervenor : Mr. Mohan Kumar Singh  
Mr. Anup Kumar Sinha

(In CWJC No.3277 of 2009)

For the Petitioner/s : Mr. Ashutosh Jha  
Mr. Narendra Pandey  
Mr. Bijay Kant Mishra  
Mr. Avinav Kumar

For the Respondent-State : Mr. Sanjay Mandal, AC to SC-6  
For the Patliputra Co. Soc. : Mr. Rajendra Narain, Sr. Advocate with  
Mr. Anju Narayan  
Mr. Vivek Prasad

For the Private Respondents : Mr. Chittaranjan Sinha, Sr. Advocate with  
Mr. Sunil Kumar Sharma

For the Intervenors : Mr. Mohan Kumar Singh  
Mr. Anup Kumar Sinha

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**ORAL JUDGMENT**  
**Date: 24-06-2016**

Heard Mr. Ashutosh Jha, learned counsel appearing for the petitioner in the two writ petitions, learned counsel for the State in the respective writ petitions, Mr. Vivek Prasad, learned counsel appearing for the Patliputra Co-operative House Construction Society (hereinafter referred to as 'the Society') and Mr. Chitranjan Sinha, learned Senior Counsel appearing for the private respondents in the two writ petitions.

The inter-party dispute relates to a Plot no. 252, Mohalla-

Patliputra Colony, P.S.- Patliputra in the town and district of Patna. The writ petitioners as well as the private respondents both claim allotment of the plot in question from the society. That the contest ultimately ended in favour of the private respondents hence the writ petitions.

While the petitioner in CWJC No.12255 of 2007 questions the order dated 17.7.2007/23.7.2007 passed by the respondent-Registrar, Co-operative Societies, Bihar, Patna in Miscellaneous Case No.186 of 1996 whereby the miscellaneous case preferred by the private respondents has been allowed and the resolution dated 24.7.1990 passed by the Board of 'the Society' cancelling the allotment in favour of the private respondents has been held to be invalid, CWJC No.3277 of 2009 has been filed by the writ petitioner questioning the order of the District Co-operative Officer, Patna dated 19.11.2008 bearing Memo No.2957 dated 20.11.2008 impugned at Annexure-1 to the said writ petition whereby the District Co-operative Officer has put the private respondents in possession of the property in question.

The order sheet in CWJC No.3277 of 2009 transpires that vide order passed on 18.3.2009 a co-ordinate Bench of this Court while directing analogous hearing of the two writ petitions, directed for the restoration of *status quo ante* as existing on 25.1.2009 by



putting the writ petitioner back in possession which order was made subject to modification if any. The said order was modified on 17.4.2009 in view of the order passed in L.P.A. No.443 of 2009 whereby the Division Bench directed that the private respondents would not be evicted till disposal. The position continues and the two writ petitions after being admitted have been taken up for final hearing when the parties have been heard at length.

For the sake of convenience I shall be referring to the pleadings and Annexures as occurring in CWJC No.12255 of 2007 unless clarified by specific reference to the other writ petition.

The sum and substance of the argument advanced by Mr. Jha, learned counsel appearing for the petitioner to question the order passed by the Registrar, Co-operative Societies, Bihar, Patna in allowing the Miscellaneous Case No.186 of 1996 is that:

- (a) no reasons have been assigned;
- (b) the order has been passed without adjudication on the dispute;
- (c) the opinion expressed is without application of mind; and
- (d) the Registrar has abdicated his adjudicatory jurisdiction to the opinion expressed by the High Court on the writ petition filed by the private

respondents arising from CWJC No.4593 of 2001, a copy of which is placed at Annexure-31 to the writ petition.

According to Mr. Jha, although the allotment was initially made in favour of the grandfather of the private respondents namely Late R.N. Pande but he died before the allotment could be finalized and was succeeded by his widow and thereafter his son i.e. the father of the private respondents Late G.S. Pande who had stepped into the shoes of the original allottee. It is argued that due to continuous default by Late G.S. Pande to fulfill the terms of allotment that 'the Society' chose to cancel the allotment and the plot in question was allotted in favour of the writ petitioner who made a deposit of Rs.10,69,800/- vide deposits made on 16.8.1998, 30.11.2000 and 31.12.2000. It is argued that although a deed of absolute conveyance was executed by the society on 14.3.1989 in favour of Late G.S. Pande but the allotment was cancelled by the Board vide order passed on 26.5.1990 and which decision was endorsed in the resolution of the Board passed on 24.7.1990 affirming the cancellation.

It is the argument of Mr. Jha that thereafter plot was allotted in favour of the writ petitioner on 9.7.1996 who has proceeded to make the deposits as required by the society. It is the argument of



Mr. Jha that the cancellation of allotment was challenged by Late G.S. Pande in Miscellaneous Case No.186 of 1996 but was dismissed on 29.6.1998 and questioned in CWJC No.6621 of 1998. It is argued that on grounds of denial of opportunity of hearing that the order was set aside and matter remitted to the Registrar who again endorsed his earlier decision by dismissing the Miscellaneous Case on 28.11.2000. It is submitted that the dismissal led to another challenge in CWJC No.4593 of 2001 and the matter was again remitted to the Registrar, Co-operative Societies for fresh consideration of the issues raised but this time the Registrar has allowed the miscellaneous case and the reasons are missing. It is the argument of Mr. Jha that on the same set of facts while the earlier two attempts of the private respondents was rejected, but the third time has proved lucky for the private respondents. Learned counsel has relied upon the judgment of the Supreme Court reported in **AIR 2010 SC 1285 (The Secretary & Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and Ors.)** to submit that an order without reason is a nullity and cannot be upheld. Mr. Jha has also relied upon another judgment of the Supreme Court reported in **AIR 1967 SC 1494 (Thakur Jugal Kishore Sinha, vs. The Sitamarhi Central Co-operative Bank Ltd.)** to submit that even if the matter required a decision on the right, title and interest

of the contesting parties over the property in question, the Registrar was fully vested with power of a civil court to adjudicate on the issue but he has abdicated this jurisdiction and has mechanically endorsed the opinion expressed by this Court in the order of remand.

According to Mr. Jha, once the allotment made in favour of the late father of the private respondents has been cancelled, there was neither any occasion for the society to again entertain their claim nor any right sustained in the private respondents who were in continuous default of the society all through.

The alternative argument advanced by Mr. Jha is relying upon the judgment of the Supreme Court reported in **(2006) 10 SCC 96 (A. Jithendernath vs. Jubilee Hills Cooperative House Building Society and Anr.)** to submit that in case the arguments advanced on behalf of the petitioner is not upheld then appropriate directions be issued to 'the Society' for refund of the amount deposited by the petitioner together with interest since the same has been lying in the account of 'the Society' for almost two decades.

While learned counsel for the State has simply endorsed the opinion expressed by the Registrar in the two writ petitions to submit that in the nature of dispute so raised in the two writ petitions, the opinion expressed by the Registrar cannot be faulted since it rests on lawful support, the argument of Mr. Jha is contested



by Mr. Prasad, learned counsel appearing for 'the Society' and Mr. Sinha, learned Senior Counsel appearing on behalf of the private respondents. Mr. Sinha, learned Senior Counsel appearing for the private respondents submits that since 'the Society' had transferred the plot in question through a registered sale deed in favour of the father of the private respondents as back as on 14.3.1989 which sale deed has not been questioned on its validity by the writ petitioner, 'the Society' or any other person before a Court of competent jurisdiction, neither 'the Society' was within its jurisdiction to cancel the sale deed or annul the allotment by an administrative order nor any right accrued in favour of the writ petitioner by virtue of the allotment made by 'the Society' on 9.7.1996. Mr. Sinha, learned Senior Counsel has referred to a judgment of this Court reported in **2009 (3) PLJR 529 (Jaideo Yadav & Ors. vs. Raghunath Yadav & Anr.)** more particularly paragraph-19 to submit that a registered sale deed cannot be annulled by the executive order.

Mr. Prasad, learned counsel for 'the Society' took this Court through the observation of the Bench in the judgment and the order passed in CWJC No.4593 of 2001 more particularly paragraph-18, to submit that there could not have been any other conclusion on the issue.

I have heard learned counsel for the parties and I have perused the records.

Some of the dates which shall be relevant for the purpose are as follows:

1. **13.5.1965** - Plot No.252 in Patliputra Colony was allotted by the Society in favour of Late R.N. Pandey who expired in the same year.
2. **3.10.1966** - Wife of Late R.N. Pandey, Raj Muni Devi was inducted as a Member of the Society who also expired in November 1966.
3. **16.1.1978** - The society transferred the membership in favour of G.S. Pande, father of the private respondents.
4. **8.3.1989** - Mr. G.S. Pande submitted application for registration of sale deed in his favour (Annexure-E, Page-216 and 217).
5. **14.3.1989** - The deed of absolute conveyance was registered by the Society in favour of G.S. Pande (Annexure-G, Page-223

to 229).

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6. **26.5.1990** - A deed of annulment was executed by the Honorary Secretary of 'the Society' (Annexure-I, Page- 233).
  7. **24.7.1990** - The Board of the society passed a resolution cancelling the allotment made in favour of Late G.S. Pande.
  8. **3.7.1996** - Mr. G.S. Pande questioned the cancellation of allotment vide Miscellaneous Case No.186 of 1996 and an order of *status quo* was passed by the Registrar, Co-operative Societies (Annexure-L, Page-243).
  9. **9.7.1996** - Despite the order of *status quo* passed by the Registrar in Miscellaneous Case No.186 of 1996, the society proceeded to allot a portion of plot no.252 (252/A) in favour of the writ petitioner (Annexure-25, Page-109).
  10. **29.6.1998** - Miscellaneous Case No.186 of 1996 was dismissed by the Registrar, Cooperative Societies.

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11. **July,1998** CWJC No.6621 of 1998 was filed by  
- Late G.S. Pande questioning the order  
of dismissal passed in Miscellaneous  
Case No.186 of 1996.
12. **23.8.1998** - Remaining portion of plot no.252  
(252/B) was allotted to the writ  
petitioner (Annexure-26, Page-111).
13. **24.8.1998** - Status quo order was passed by the  
High Court in CWJC No.6621 of  
1998 (Annexure-O, Page-248).
14. **25.4.2000** - CWJC No. 6621 of 1998 was allowed  
and Miscellaneous Case No.186 of  
1996 was remanded for fresh decision  
(Annexure-27).
- 15 **28.11.2000** - Miscellaneous Case No.186 of 1996  
was again dismissed by the Registrar  
(Annexure-28, Page-126).
16. **2001** - Late G.S. Pande questioned the  
dismissal in CWJC No.4593 of 2001  
but during the pendency of the writ  
petition the petitioner died and was  
substituted by the private

respondents.

- 17     **3.4.2007**     -     CWJC No.4593 of 2001 was allowed. The order passed by the Registrar dated 28.11.2000 was set aside and the matter remitted back for fresh decision (Annexure-31, page 151).
18.     **23.7.2007**     -     Miscellaneous Case No.186 of 1996 was allowed and has been questioned in CWJC No.12255 of 2007 (Annexure-1, page 52).
19.     **27.8.2007**     -     The allotment of plot no.252 earlier made in favour of the writ petitioner was cancelled and restored to the legal heirs of Late G.S. Pande. The Board also resolved to return the cancellation amount to the writ petitioner (Annexure-U, page 253).
- 20     **17.9.2007**     -     Since final orders had been passed by the Registrar in Miscellaneous Case No.186 of 1996 hence the L.P.A. No.479 of 2007 filed by the writ petitioner was dismissed (Annexure-

5, page 251).

21. **19.11.2008-** Order passed by the District Cooperative Officer for grant of possession of plot no.252 to respondent nos.5 to 7 and which is put to challenge in CWJC No.3277 of 2009.

The dates relevant for the purpose of adjudication of the matter in dispute has been consciously reproduced by me hereinabove to demonstrate the swings that has taken place in the contest. Even while there has been a decision of 'the Society' adversely affecting the allotment made in favour of the father of the private respondents but one thing that is very relevant for the purpose of adjudication on contest is that the allotment in question has been translated into a registered sale-deed executed by 'the Society' on 14.3.1989 in favour of late G.S. Pande, a copy of which has been placed at Annexure- G. Even though a deed of annulment was executed by the Honorary Secretary on 26.5.1990 which was followed by the resolution cancelling the allotment on 24.7.1990 but then these impugned actions by 'the Society' did not have an affect of nullifying the registered sale-deed or to set aside the same. Once the allotment was translated into a registered deed of transfer, then the validity of the registered document could only be questioned before a court of competent civil jurisdiction and who

alone is competent to set aside the same.

An argument has been advanced by Mr. Jha, learned counsel appearing for the petitioner relying upon a judgment of the Supreme Court rendered in the case of **Thakur Jugal Kishore Sinha** (supra) to term the disposal by the Registrar, Cooperative Societies as an abdication of statutory obligation but in my opinion, the issue settled by the Supreme Court in the judgment under reference is entirely distinct and has no bearing on the issue canvassed by Mr. Jha. In that case an issue arose whether the court of Assistant Registrar is a court for the purpose of drawing proceedings under the Contempt of Courts Act and the Supreme Court after making discussions on the provisions underlying the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act') has concluded that the statutory authorities discharging functions of adjudicating disputes under section 48 of 'the Act' have all the trappings of a Court and exercise the powers vested in a civil court in many respect including the power to summon, examine the witnesses etc.

There is absolutely no dispute on the proposition that the authorities discharging functions under section 48 of 'the Act' have the trappings of a court rather the issue is as to the nature of dispute to be adjudicated by the Registrar and the authorities vested with powers of the Registrar under the said Act especially in the

backdrop of the provisions underlying Section 48(8) of 'the Act.

Section 48 of 'the Act' very specifically provides that any dispute touching the business of a registered society, inter alia, amongst members and others as categorized in the various clauses accompanying the provision, is to be referred to the Registrar and who may adjudicate on the same himself or refer it to any other authority notified under section 6(1) of 'the Act'. Thus the proceedings of 'the Society' in cancellation of the sale deed as well as the allotment in favour of the writ petitioner was rightly questioned by the predecessor in interest of the private respondents before the Registrar. The issue is where the claim of the predecessor in interest of the private respondents on the plot in question rested on a registered sale-deed present at Annexure-G and which is the foundation for questioning its cancellation and subsequent allotment in favour of the writ petitioner by 'the Society', there could be any other conclusion than the one impugned herein and whether the Registrar had the jurisdiction to comment on the validity of the registered sale-deed.

Two rounds before the Registrar did not draw in favour of the predecessor in interest of the private respondents late G.S. Pande while the third round ultimately drew in favour of the private respondents since in the meanwhile G.S. Pande had deceased and stood substituted. The reasons assigned by the Registrar for



upholding the claim of the private respondents and for setting aside the order dated 24.7.1990 passed by 'the Society' whereby allotment had been cancelled though rests on the opinion expressed by the Bench but since it is founded on sound principles of law, it cannot certainly be held an abdication of statutory responsibility. In fact the observations of this Court present at paragraphs 14 to 18 of the judgment passed in CWJC No.4593 of 2001 is by itself sufficient to uphold the claim of the private respondents and to dismiss the writ petition and which in my opinion is conclusive on the issue. For ready reference I am tempted to reproduce the conclusion of the Bench as present at paragraphs 14 to 18 of the judgment passed in CWJC No.4593 of 2001 which runs as follows:

“14. So far the cancellation of the sale deed is concerned, it is admitted fact that the sale deed in question was executed by the Manager of the Society on 14.3.1989, whereafter it was duly registered, whereas the deed of annulment of the said sale deed was executed by the Society on 26.5.1990, although the allotment of the plot in question in favour of the original petitioner is said to have been cancelled by the Board on 24.7.1990. Thus, it is apparent that the deed of annulment of sale deed was executed at a time when the allotment of the plot in question in favour of the original petitioner was continuing and was not even cancelled by the Board and the said order of cancellation of allotment was obtained about two months after the execution of the deed of annulment of the sale deed. Hence there was no occasion at all on 26.5.1990 for the Society to cancel the sale deed of the original petitioner at a time when the plot in question was running in the name of the original petitioner himself and neither there was any post fact sanction for the cancellation of the sale deed, nor any exigency,

necessity and urgency was even shown to be present at the said time. It, thus, clearly shows that the Society had made up its mind before hand to cancel the allotment of the plot in favour of the petitioner without even giving any show cause notice to the original petitioner or giving any opportunity of hearing to him before executing the deed of cancellation of petitioner's sale deed.

15. Bye Law no.46 (v) of the Society specifically provides that before cancelling any allotment, the Society should issue a show cause notice to the allottee member in order to afford him an opportunity of being heard, but in the instant case the Society grossly violated the said provision by not issuing any such show cause notice. So far the Reliance of the respondents upon letter dated 31.3.1990 (Annexure-A series) sent by the Society to the petitioner is concerned, it is clear from its reading that it is definitely not a show cause notice, rather it is a mere communication about the decision of the Board to cancel the allotment made in favour of the petitioner. It is nowhere stated in that letter that the petitioner is required to submit any show cause nor any time for submission of any such show cause has been given therein and the content is clearly a mere communication about the decision of the Board regarding annulment of allotment. The above facts as well as the undue haste shown by the respondent-Society in the matter of execution of a deed of annulment of the sale deed even prior to cancellation of allotment of the plot in question show that the respondents did not act legally and in an unbiased manner.

16. The original petitioner had come up with clear and unambiguous facts stating that although he did not receive any communication from the Society with respect to approval dated 15.02.1981 granted by the Society to his plan, but he made construction of boundary wall and garage according to the plan submitted by him in anticipation of its approval, but the said constructions were subsequently demolished by the encroachers who wanted to occupy the plot in question. This fact has not been denied by the respondents in clear terms. The petitioner had throughout specifically claimed that he got knowledge and information about the approval of his plan by the Society in the year 1996

during the pendency of the Miscellaneous Case but the said fact could also not be disproved by the respondents by any valid chit of paper. Hence the ground taken by the authorities concerned for cancellation of allotment is absolutely non-est and baseless as neither the petitioner had made any misrepresentation of facts, nor he ever committed any fraud for getting the deed of sale executed and registered in his favour.

17. Although the Registration Act, 1908, does not specifically provide any mode or manner in which a deed of transfer earlier registered before the Registrar or Document could be cancelled by a subsequent deed of annulment, but even if the Registrar of Document had the power to admit such a deed of annulment for registration, it had to be done as per the requirements of principles of natural justice and cannot be done to the detriment of the person in whose favour the earlier deed of transfer was registered. Furthermore, once a property is transferred by a registered document, a vested civil right devolves upon the transferee and to nullify such vested right only a Civil Court of competent jurisdiction has the authority and the Registrar has no such power or authority of a Civil Court to decide right and title of a party.

18. From the impugned order passed by the Registrar, Cooperative Societies, it is quite apparent that he has dealt with the question of determination of title of the parties on the basis of Section 48 of the Act and which provides that Registrar acts as a Court in respect of disputes between the parties, but the said provision cannot be extended beyond the limits of the Act, nor the Registrar has been authorised to exercise the jurisdiction vested in a Civil Court of competent jurisdiction for the determination of right and title of a person with respect to a property."

*(Emphasis supplied by me)*

The argument of Mr. Jha that an order of a statutory authority adjudicating on a contest has to be a speaking order and the order of the Registrar impugned at Annexure-1 merely resting on the observations of this Court in CWJC No.4593 of 2001 does



not reflect an independent exercise of mind is, though sound on principle but is difficult to be applied in the present case for the reason that the opinion expressed by the Registrar to uphold the sale deed executed in favour of the private respondents dated 14.3.1989 and to set aside the order of the Board of 'the Society' dated 24.7.1990 is on grounds that the Board of 'the Society' had no jurisdiction to set aside a registered sale deed and which conclusion is founded on sound principles of law for such jurisdiction to set aside a registered sale-deed is exclusively vested in a court of competent civil jurisdiction. That the Registrar is also vested with the powers of a Civil Court while adjudicating on a dispute under section 48 of 'the Act' but such adjudication is restrictive to a dispute touching the business of a society but where it comes to adjudicate on the interpretation of a document e.g. a registered sale-deed especially on its validity and legality or to set it aside then such jurisdiction stands transferred with the court of competent civil jurisdiction and it is for this reason that the Legislature has consciously included sub-section (8) to section 48 of 'the Act' vesting jurisdiction in the Registrar to refer a matter to the District Judge for adjudication on any such issue. It is not that 'the Act' is silent on the issue rather the jurisdiction is clearly demarcated and discretion is reserved in the Registrar to refer such matters to the District Judge for adjudication and which cannot be held to be an



abdication of responsibility. Reference in this regard is made to a judgment of the Supreme Court reported in **AIR 1973 SC page 2451 (Gorakh Nath Dube vs. Hari Narain Singh)** more particularly paragraph 5 wherein on a similar issue being debated before the Supreme Court as regarding the power of a consolidation authorities to set aside a sale deed it has been held that where there exists a document having a legal effect which can only be taken away by setting aside the same or by cancellation, the consolidation authorities have no power to cancel the same and the document would be binding on them as long as it is not set aside by a court having power to cancel it.

The observation of the Supreme Court referred to above completely answers the argument of Mr. Jha questioning the order impugned as an abdication of responsibility by the Registrar and as well confirms the opinion of the Registrar to uphold the sale-deed executed in favour of the predecessor in interest of the private respondent and to set aside the resolution of the Board of 'the Society.

Another absurdity of the matter is that while the Honorary Secretary of 'the Society' hurries to annul the Sale Deed administratively vide order passed on 26.5.1990, the resolution of the Board of 'the Society' cancelling the allotment in favour of late G.S. Pande followed thereafter on 24.7.1990. Meaning thereby the



registered sale deed executed in favour of late G.S. Pande has been cancelled even before a resolution is passed by the Board of 'the Society' to cancel the allotment. The most important aspect of the matter is that even when such was the opinion of the Board of 'the Society', they took no steps for cancellation of the sale-deed by questioning it before a court of competent civil jurisdiction which has since attained finality and confirms the right, title, interest and possession of the private respondents over the property in question.

For the reasons so discussed, I find no infirmity in the opinion expressed by the Registrar in his order recorded on 17.7.2007/23.7.2007 passed in Miscellaneous Case No.186 of 1996 impugned at Annexure-1 to the writ petition whereby the Registrar has upheld the transfer in favour of the predecessor in interest of the private respondents, inter alia, on grounds that it was made by way of registered sale-deed and has set aside the order dated 24.7.1990 passed by the Board of 'the Society' whereby the allotment in favour of late G.S. Pandey has been set aside.

Since the order dated 19.11.2008 passed by the District Cooperative Officer bearing Memo no.2957 dated 20.11.2008 and the order dated 23.1.2009 of the Additional Collector impugned at Annexures 1 and 2 of CWJC No.3277 of 2009 are only a consequence flowing from the order of the Registrar impugned in CWJC No.12255 of 2007 hence for the reasons so assigned

hereinabove, the same also calls for no interference.

In result, the two writ petitions are dismissed and since there is already an order passed on 27.8.2007 by the Board of ‘the Society’ resolving to return the amount deposited by the writ petitioner for allotment and it is the petitioner who has been contesting the matter before the Court and has not taken steps for refund thereof, all that this Court would observe is that should the petitioner approach the Board of ‘the Society’ for refund of the amount deposited by her, they shall be duty bound to refund the same within a maximum period of three months from the date of filing of any such claim and in case the refund is not made within the said period of three months then the petitioner would be entitled to claim interest thereon at the Bank rate.

The two writ petitions are dismissed with the observations aforementioned.

**(Jyoti Saran, J)**

Deepika/SKPathak

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