

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.03.2016
Pronounced on: 19.07.2016

+ **W.P.(C) 253-257/2004, C.M. NO.18676/2014**

R.P. SHARMA AND ORS.Petitioners

Versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS.

....Respondents

+ **R.P.69/2012 IN W.P.(C) 5027/2001**

PARWANA CO-OP GROUP HOUSING SOCIETY LTD.

.....Petitioners

Versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS.

....Respondents

Through: Ms. Poli Kataki and Ms. Srishti Agnihotri, Advocates.

Sh. Santhosh Kumar Tripathi, ASC, GNCTD.

Sh. Ajay Aroraa and Sh. Sandeep Singh, Advocates, for MCD.

Ms. Nandni Sahni and Ms. Pavni Goel, Advocates, for Respondent No.3.

Sh. Rajiv Bansal, Sr. Standing Counsel with Sh. Gautam, Advocate, for DDA.

Sh. Jayant. K. Mehta and Sh. Saurabh Dev Karan Singh and Sh. Alok Shankar, Advocates, for Respondent Nos. 41, 42 and 45.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

%

1. In this proceeding, various directions are sought. The principal claim is for direction to the respondents, especially the third respondent, Parwana Co-operative Group Housing Society (hereafter “the society”) to ensure that a flat is allotted to the writ petitioner. It is claimed that he has been unjustly excluded from allotment of a flat, despite his seniority as a member of the society. Together with the writ petition, a review proceeding seeking review of the order dated 16.07.2002, disposing of W.P.(C) 5027/2001 to the extent of the concession recorded therein, on behalf of the society, is sought. Counsel for the parties had finally argued the writ petition and the review petition.

2. The brief facts giving rise to the present petition are that the petitioners claim to be enrolled as members of the society in the year 1987-88. The petitioners contend that they paid the membership fee and share money as well as the other amounts demanded of them and were issued share certificate bearing nos.17653, 7682, 17131, 17680 and 17106, respectively. On being enrolled as members, the petitioners were entitled to all rights and privileges as members of the society, including the allotment of a flat therein as per their seniority. It is stated that the society was allotted land by the Delhi Development Authority (DDA) to construct residential flats for allotment to each of its members. The society is, therefore, under a legal obligation to construct the requisite number of flats permissible under the law, to accommodate each and every member of the society.

3. The petitioners claim that allotment of flats in a cooperative society is to be done on the basis of seniority of members, meaning thereby that a

person who has been enrolled at a prior point of time and is thus senior to persons enrolled subsequent thereto is to be given priority and preference in the matter of allotment of flats. They claim entitlement to possession of the flats upon the construction by the society. It is contended that the Managing Committee of the society, with vested motives, deprived the petitioners of the flats on the frivolous plea that their enrollment was not legal and valid. The petitioners contend that this stand of the society was contrary to law and was challenged by the petitioners by filing arbitration cases under Section 60 of the Delhi Cooperative Societies Act, 1972.

4. Counsel for the Petitioners, Ms. Sandhya Kohli urges that the learned Arbitrator after considering the parties' pleadings and the materials placed on record, held that they were legally and validly enrolled as members and are entitled to all rights of membership in accordance with law. Those awards were challenged by the society. The said appeal(s) of the society were dismissed by order, dated 29.12.1995 passed by the Delhi Cooperative Tribunal. It is alleged that despite the issuance of the awards, the society did not take any steps for enforcing them and allotting the flats to the petitioners, to which they were entitled as members of the society. Individuals junior to the petitioners had been allotted flats in the society. The petitioners initiated proceedings seeking execution of the arbitration award. In those execution proceedings a direction (dated 09.07.2001) was given to the society to obtain sanction and construct the residential flats for allotment to the petitioners. The direction was given in view of the amended bye-laws which permitted construction of an additional floor area ratio and additional storeys being constructed by the society. The society challenged the said order before this

Court. This Court by its order dated 16.07.2002, held that the executing officer was not authorized to issue such directions which are beyond the award. However, the membership of the petitioners was upheld and it was left open to them to seek the enforcement of their rights as per law. This order- dated 16.07.2002 is the subject matter of review proceedings at the behest of the society.

5. It is contended that the petitioners approached the respondents for allotment of specific flats to them as their membership had been upheld and they were declared as valid members of the society. In that capacity, they were entitled to the flats. It is alleged that members junior to the petitioners had been given allotment and possession of the flats; the petitioners argue that they could not be deprived of such allotment and possession.

6. It is urged that being senior to many members who were allotted and given possession of flats, depriving the petitioners negates their legal rights. The petitioners are entitled to the allotment of flats in preference to the persons who have been enrolled after their enrolment. The flats are liable to be recalled from such persons and allotted to the petitioners. It is submitted that the society's plea that allotment is not possible because no flats are available with it is untenable in law. The society has vacant flats, which have been illegally kept from the petitioners. It is submitted that the building bye-laws relating to the cooperative societies had been amended by the Union of India and the second respondent.

7. In terms of the amended bye-laws, 175 dwelling units are permissible per hectare in a cooperative society. The additional FAR has been permitted to redress the problems relating to paucity of space and to grant a benefit to

the societies which are in genuine need of such additional area. This society too is entitled to the benefit of such additional area. Under the amended bye-laws the total constructed area which is available to the society is in the range of over 46,000 sq. ft. on which it can construct 40 additional dwelling units. The society is under a legal obligation to raise the said construction, more so in view of the fact that the petitioners who are the members of the society are entitled to flats which are being denied only for the reason that the society does not have flats available with it. It is urged that earlier, in group housing societies FAR of 133% was permissible. Now the same has been increased to 167%. The maximum height of the buildings has also been increased from 26 meters to 33 meters. Under the amended bye-laws the density of the dwelling units has been increased to 175 units per hectare. Thus, due to the said amendments, the society has available with it over 46,000 sq. ft. of area over which it can construct. It can add another 40 dwelling units. The flats in the society are only 4 storied, i.e. of a height of around 15 meters. The society can raise additional floors to accommodate the petitioners.

8. Ms. Poli Kataki, learned counsel argued on behalf of the petitioner that the claim made before the Arbitrator under Section 60 was allowed by award, dated 24.04.1995. That award declared that the petitioners were enrolled as members and were entitled to all rights and benefits, which accrued on the continuation of such membership. The Society's appeal under Section 76 in Arbitration Case No.74/DR/93 was dismissed. Therefore, since the Award became final, the question of denying the petitioner's membership cannot arise at all. It is urged that the execution proceedings initiated by the

petitioners were allowed on 09.07.2001; a direction was issued to the Society to apply for enhancement of FAR since the permissible FAR ratio had been exceeded in the meanwhile. It was this order, which was challenged by the Society and not the award, or the appellate order. This meant that only the mode of execution, i.e. direction to apply for enhancement and consequently construct, constituted the challenge of the Society. It could not have challenged the basic entitlement of the petitioners.

9. Learned counsel urged that there is nothing in the Act or rules preventing or in any manner restraining a validly appointed Administrator from enrolling new members, if there are vacancies. In this context, learned counsel relied upon the orders made in other cases, i.e. W.P.(C) 910/1981 (decided on 17.01.1982). She also relied upon *P. Bhandari v. Retreat Cooperative Group Housing Society* 1999 (48) DRJ 413 and *Supreme Court Group Housing Society Vs Financial Commissioner and Anr.* 2011 (123) DRJ 297.

10. It is submitted that the petitioners had approached and sought legal remedy in 1993 when they were denied membership. The membership controversy was settled finally in 1995. The petitioners thus cannot be blamed for not approaching and seeking legal redress within the time prescribed. On the contrary, the Society is clearly at fault because it both denied membership as well as the right to a flat. Learned counsel relies upon many orders made by the Court in these proceedings, issuing directions to the respondents, particularly to the authorities and the MCD to take steps for re-drawing the seniority list based upon the declaration of the petitioner's rights on the one hand and taking all steps to construct additional flats on the

other. It is, therefore, submitted that this Court has to give due recognition to the petitioner's rights and ensure that justice prevails.

11. The society denies the claim in the petition and states that it was formed in 1979. Since no elections took place for some time, the Registrar of Cooperative Societies (RCS), on 26.02.1986 appointed one Sh. S.S. Harit (hereafter "Sh. Harit") as Administrator. The RCS also appointed a Chartered Accountant. The mandate of the Administrator was to manage the affairs of the Society and hold elections. However, Sh. Harit did not hold elections as required of him; the RCS extended his term by order dated 27.05.1986 and 30.01.1987. Instead of holding elections and ensuring that an appropriately constituted Management took over the affairs of the Society, Sh. Harit pursued his own agenda, acting hand in glove with those who were illegally controlling the affairs of the Society. Despite a general meeting, Sh. Harit did not record the minutes correctly. The members of the Society represented to the RCS demanding the withdrawal of order appointing Sh. Harit. On 25.07.1987, the RCS directed that the elections be completed within one month. Sh. Harit was not interested in complying with this order. In view of all these omissions, one Sh. Jawahar Mishra on 19.02.1988 ultimately replaced Sh. Harit. Despite this order, Sh. Harit did not hand over charge to the newly appointed Administrator. Consequently, an order was made, declaring that all acts of Sh. Harit, including appointment of functionaries, architect and members would be considered void. All these irregularities led to the filing of W.P.(C) 1874/1988. In those proceedings, on 29.08.1988, Sh. Harit was restrained from functioning as Administrator. It was thereafter that Sh. Harit enrolled 82 members and backdated such

enrolment. This led to contempt of court proceedings and ultimately, on 21.04.1989, the RCS was directed to hold elections according to law.

12. It is contended that the 82 members enrolled by the Sh. Harit could not have been so enrolled because there was no vacancy. The Society relies upon the order of the Lieutenant Governor dated 19.08.1992, upholding the order of the RCS, declaring that such memberships were void and of no legal effect. The said order reads as follows:

"I have heard the parties and gone through the records produced before me. The Registrar, Cooperative Societies had ordered that the enrollment of members, appointment of architects and contractor made during the tenure of ex-Administrator Sh. S.S. Harit were invalid and illegal. It was on the basis of this order that the respondent society had ceased the membership of the petitioners. This issue was challenged before the High Court of Delhi and the Supreme Court as well, and they have upheld the orders passed by the Registrar Cooperative Societies. The Society has only complied with those orders. I find no merit in these revision petitions and the same are hereby dismissed.

Announced."

13. Several third parties, who were member allottees of the third respondent Society, felt that any relief granted in these proceedings would be prejudicial to their interests. They moved an application for being impleaded as party respondents (C.M. No.15371/2008). This application was allowed and those third parties were directed to be impleaded as Respondent Nos. 5-46. The Municipal Corporation of Delhi (MCD) was, by the same order, impleaded as the fourth respondent. The contesting Respondent Nos. 5-46 are hereafter referred to as "the contesting respondents".

14. The contesting respondents point out that the petitioners are guilty of suppressing material facts in that they did not disclose the filing of another writ petition, i.e. CW 1874/1988, which was disposed of on 16.03.1989. They point out that in the proceedings, particularly by an order dated 29.08.1988 in the said W.P.(C) 1874/1988, the Administrator who had been appointed to look after the affairs of the third respondent Society (Sh. Harit) had been restrained from functioning as Administrator of the Society. A copy of the said order has been produced. It is contended that the said Sh. Harit was appointed merely as an Administrator to carry out the day-to-day functioning of the Society and could not have enrolled any valid member, as he had no authority to do so. The contesting respondents state that the petitioners are not legally enrolled members and that if their claim is accepted, the settled legal rights of third parties who paid the complete price for the flats they were allotted duly to the third respondent Society as far back as in 1993, after obtaining loans etc., would be in peril.

15. Learned counsel for the contesting respondents Ms. Nandini Sahni and Mr. Jayant Mehta, submit that this Court should not exercise its discretionary relief in favor of the petitioners whose entire claim is based upon firstly their so-called acceptance as members by Sh. Harit - a legally incompetent person. The petitioners' names were never included in the list of members after the Administrator was divested of his office; they never complained of their exclusion in any manner known to law. The materials placed on record do not show that they ever participated and voted in any election. It is also contended that besides these facts, after the sanctioning of the building plan of the Society, when members were called upon to pay up amounts after

which flats were constructed, the petitioners were nowhere in the picture. It is stated that in these circumstances, that during the time that the Administrator functioned, he indulged in various illegalities, such as unauthorized exclusion of 23 valid individuals, questionable resignation shown in the records of the Society, of 16 individuals, whose signatures were forged and deletion of five valid members' names. All these came to light after the Managing Committee was handed back the charge of the Society; a letter was addressed to the RCS on 25.09.1989 in this regard. The contesting respondents rely upon the said letter. They also rely upon the directive issued by the RCS on 22.02.1984, requiring that no Society should maintain the Waiting List of members for allotment of a flat.

16. The contesting respondents point-out that like in the case of petitioner, others were granted membership by the Administrator - Sh. Harit. However, upon the Society refusing to recognize their membership, the aggrieved individuals had approached the RCS. The RCS directed that enrolment of such members was invalid and illegal. It is pointed out that the plea of the said parties was also rejected by the Lieutenant Governor in revisional proceedings under Section 80 of the Delhi Cooperative Societies Act, 1972. Reliance is placed upon the order of Lieutenant Governor dated 19.08.1992.

17. Learned counsel for the respondents - including the Society, urge that the petition is without merit. At the outset, they point out that the petitioner made no effort to assert his right. In 1989 or any time between 1989 and 1993, when the constructions were sanctioned and undertaken and amounts were claimed from valid members who even obtained loans and financial assistance for the flats. Having opportunistically not sought any remedy, the

petitioner relied upon the highly questionable membership granted to him by Sh. Harit. When he in fact raised a dispute in 1983, others like him whose membership had been granted rights by Sh. Harit had lost rights. This was on account of orders of RCS, which was upheld by the Lieutenant Governor. Unfortunately, the Arbitrator did not take note of these proceedings even though he was aware of the fact that Sh. Harit was removed and replaced by another Arbitrator and ultimately elections were held. Eventually on a wrong textual reading of Section 27(3), the Arbitrator held that the petitioner was a valid member. It is contended that RCS as an authority is only entitled to supervise the affairs of the Society and frame policies in that regard. The authority to appoint an Administrator is for the functioning of the Society and cannot in any manner impinge with its great autonomy whether to admit anyone and if so on what terms. It is submitted that the rights of the existing members of the Society to grant membership to third parties is an exclusive preserve, which cannot be usurped by a rank outsider, like an Administrator who was a statutory appointee for a limited purpose. Unless the statute warrants enrolment of members by a third party (such as the RCS or Administrator), the right to admit or refuse membership is an integral part of the Society's right to function autonomously and those of its members to decide whether to admit others, or not. In this regard, learned counsel, relies upon the judgments of the Supreme Court reported as *K. Shantharaj and Anr. v. M.L. Nagaraj and Ors.* 1997 (6) SCC 37. Reliance is also placed upon the subsequent judgment in *Joint Registrar v. T.A. Kuttappan* 2000 (6) SCC 127.

18. It is also pointed out that the order of the RCS made upon the petitioner's claim is only for declaration of membership rights; the petitioner in fact never sought for an entitlement to a flat at that point of time because of his conscience. This, urges Mr. Mehta, belies his contention about entitlement to a constructed flat or for a direction to the Society to construct a flat for him at this late stage.

19. The Society in its additional affidavit states that 219 flats were sanctioned and were constructed. It also states that the new Managing Committee, which was constituted after elections were held on 10.06.1989, undertook construction of the flats. The construction of the flats was financed by member's payments on the basis of circulars issued by the Society. It is stated that the Society enrolled 68 new members on 10.06.1989 after being taken over by the new Managing Committee. This was based upon the vacancies duly notified to the RCS and after following the procedure prescribed, i.e. advertising the membership, due consideration by the Managing Committee and endorsement of the Society according to law. Such new members' particulars were also intimated to RCS. The document in support of these resolutions and intimations to the RCS has been enclosed.

R.P.69/2012 in W.P.(C) 5027/2001

20. In the Review Petition, the Society contends that its counsel had no authority to give up the challenge to the award of the RCS - which was the subject matter of W.P.(C) 5027/2001.

21. It is submitted that the sequence of events disclosed to this Court in the Society's affidavit show that not only the petitioner but several other

individuals were illegally enrolled as members. The right to enroll members is exclusively of members of the cooperative society and is an integral part of their internal autonomy of functioning. The question of saying that one or few of such illegally enrolled members could be continued without a valid resolution of all members of the Society approving such action did not arise. It is pointed out that the order of the Division Bench in W.P.(C) 5027/2001 requires to be consequently reviewed. Learned counsel also relies upon the order of the Supreme Court permitting the filing of the review.

Analysis and conclusions

22. Before proceeding to deal with the rival contentions, it would be useful and necessary to extract Section 32 of the Delhi Cooperative Societies Act, 1972, which reads as under:

"32. Super session of committee.

(1) If, in the opinion of the Registrar, the committee 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 or commits any act which is prejudicial to the interest of the society, or its members, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee; and

i. order fresh election of the committee, or

ii. appoint one or more administrators who need not be members of the society to manage the affairs of the society for a period not exceeding one year specified in the order which period may, at the discretion of the Registrar be extended from time to time so; however, that the aggregate period does not exceed three years.

(2) The Registrar may fix any remuneration for the administrator, as he may think fit. Such remuneration shall be paid out of the funds of the society.

(3) The administrator shall, subject to the control of the Registrar and to such instructions as he may from time to time give have power to exercise all or any of the functions of the committee he may from time to time give have power to exercise all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of society.

(4) The administrator shall at the expiry of his term of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.

(5) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing institution to which it is indebted.

(6) Notwithstanding anything contained in this Act, the Registrar shall in the case of a cooperative bank, if so required in writing by the Reserve Bank in the public interest or for preventing the affairs of the co-operative bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of a co-operative bank pass an order for the suppression of the committee of the co-operative bank and appoint an administrator therefore, for such period or periods not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank."

23. The lynchpin of the petitioner's claim is that the award rendered in 1995 places a seal of finality on the issue of membership. The society counters this with two arguments: first that an Administrator, being an outsider has no authority (unless expressly provided by statute) to *admit to membership* any third party. The second submission is that the Administrator

who allegedly enrolled the petitioner was not empowered to do so, because his limited mandate was to conduct elections. The last argument is that the society's concession made in its petition of 2001 was invalid and not binding, because the counsel could not have bound it on a question of law.

24. A society or association of persons, enjoys the full range of protection of its “core right” to admit to its membership those its existing members approve. Such right to admit new members- i.e right to associate with others- is a fundamental right under Article 19 (1) (c) of the Constitution of India. The Supreme Court, in *Damayanti Naranga v Union of India* [1971] 3 SCR 840 declared that

“..the right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any opinion being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association”.

Thus, the right to association would lose meaning unless

“it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming it.”

25. A similar reasoning was adopted later in *Asom Rastrabhasa Prachar Samiti and Anr. v. State of Assam & Ors* AIR 1989 SC 2126. Therefore, it is for the members of an association- and members only- to decide who should be admitted to the society and under what terms and conditions. That essential part of the right cannot be ceded nor impliedly eroded by clothing a

rank outsider- and a statutory authority having no accountability to the society's mechanisms nor even being its member- to decide for it, on this very fundamental issue.

26. It was keeping in mind this truth that *K. Shantaraj & Anr v M.L. Nagaraj & Ors* 1997 (6) SCC 37 held that an Administrator cannot enroll new members of a co-operative society. That decision was followed later in *Joint Registrar Co-operative Societies v T. A. Kuttappan* 2000 (6) SCC 127 which contains a lucid enunciation of the principle:

“What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Cooperative Society (and not merely functions), took the view that the administrator or a special officer can exercise powers and functions only as may be required in the interests of the Cooperative Society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a Cooperative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowered a special officer to exercise and perform all the

powers and functions of Committee of Management of a Cooperative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

27. Whatever be the semantics of the provision, the essential fact, i.e an Administrator (charged with a limited remit to set right the affairs of the society or to conduct election) cannot encroach upon the right of a co-operative society or its members to enroll fresh members. Barring regulatory provisions enacted under reasonable restrictions clause (Article 19 (4)) which generally deal with the public interest controls to be placed on its functioning it is doubtful whether such a power can ever be usurped through statute. Therefore, the society's right in contending that the petitioner was not validly enrolled according to its bye-laws and procedures, but rather admitted by a third party, an officer appointed to conduct elections, is

substantial and valid. The Court also holds that the society's counsel could not have made a concession on a fundamental aspect, which went into its core right, without a proper authorization by the society to be bound by such decision. To hold otherwise would result in anomaly where regardless of the wishes of all or majority of members of a society or association, third parties and officials would be permitted to impose members who the association or society does not wish to include in its fold. The award completely ignored this salient position in law. It is well settled that inherent lack of jurisdiction of a court to make an order, vitiates it: (*Chiranjilal Shrilal Goenka (deceased) Through Lrs. v. Jasjit Singh & Ors* (1993) 2 SCC 507; *Kiran Singh v Chaman Paswan* AIR 1954 SC 340 and *Union of India v Rangila Ram* 1995 (5) SCC 585). Likewise, the order of an authority not competent to make it, is void and unenforceable (Ref. *State of Punjab v Gurdev Singh* AIR 1991 SC 2219). In *Chief Justice Of A.P. & Anr vs L.V.A. Dikshitulu & Ors* AIR 1979 SC 193 it was held that to deny relief on the ground that though the authority lacked jurisdiction, yet the party was estopped from claiming it, because of *res judicata* or other technical barriers, would be in effect, to confer legality- an untenable proposition. Since the Administrator could not have enrolled members, the admission of the petitioners, without the sanction of the members of the society, did not, therefore, confer any right upon them.

28. This court is also of the opinion that the Petitioners cannot be accorded special treatment for the reason that all others, like them (who were granted membership by Sh. Harit) no longer are treated as members of the society. This is because such memberships were cancelled by the society and upheld by the Registrar. This action of the Registrar was held to be correct

and legal by the Lieutenant Governor. The arbitrator who held in favour of the petitioners completely overlooked this aspect. Therefore, this court cannot hold that the petitioner has to be accorded special treatment and given membership rights.

29. As far as the question of directing the respondents to take action towards constructing new flats in view of the increased FAR goes, it is held that this is an aspect entirely within the domain of the society. The materials on record show that the Registrar approved 219 members; their names were included in the allotment conducted at the relevant time and construction started in 1989. They- including the contesting respondents, paid up amounts as and when called upon to do so, at the stage of construction. Some of them had to obtain loans from banks and financial institutions. Acceding to the petitioners' claim would not only be jeopardizing their interests adversely after nearly two and a half decades, but also placing a premium on what essentially is the result of abuse of authority by the Administrator. Here the use of the principle of finality would lead to hardship. Rather, it is held that the award of the arbitrator was unenforceable as it violated the fundamental tenets of voluntariness and sought to invest legality to a patently illegal order of the Administrator, conferring membership. This court is also unpersuaded by the petitioners' submission that the previous orders of the court directing construction of flats by the society finally settles their rights. What is noticeable from those orders is the courts' assumption that the petitioners' rights were settled and had attained finality. There was no adjudication of the respondents' and the society's contentions. Being purely interlocutory, the directions cannot be invested with the force of final determinations.

30. For the above reasons, it is held that the present writ petitions lack merit; the reliefs claimed cannot be granted. The writ petitions are, therefore, dismissed. The review petition, R.P.69/2012 - in W.P.(C) 5027/2001 is for the same reasons, allowed. No further directions are called for in the said W.P.(C) 5027/2001, in view of the findings that the petitioners could not have validly claimed relief as members of the society.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JULY 19, 2016

