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

W.P.(C) 5192/2007

SANTOSH GANDHI & ANR. Petitioner

versus

SITA COOPERATIVE GROUP HOUSING SOCIETY LTD.
.... Respondent

W.P.(C) 1634/2015 and CM No. 2932-2934/2015

SITA RAM SINGHAL Petitioner

versus

J.R. ARYAN & ORS Respondents

W.P.(C) 2856/2015 and CM No. 5127/2015

SURESH KUMAR RATHEE Petitioner

versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS.. Respondents

W.P.(C) 8039/2015 and CM No. 16489/2015

SHIV KUMAR SINGHAL Petitioner

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES & ORS
.... Respondents

W.P.(C) 8029/2015 and CM No. 16462/2015

RADHEY SHYAM SINGHAL Petitioner

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES & ORS
.... Respondent

W.P.(C) 7285/2015, CM No. 13384/2015 & CM No. 2608/2016

VIKRAM KUMAR Petitioner

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES & ORS

..... Respondents

+ **W.P.(C) 5724/2015, CM No. 10292/2015 & CM No. 2607/2016**
REKHA RANI

..... Petitioner

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES & ORS

..... Respondents

+ **W.P.(C) 10315/2015 & CM No. 25716/2015**
MADHU AGGARWAL

..... Petitioner

versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS.

..... Respondents

+ **W.P.(C) 6831/2015 & CM No. 12492/2015**

ANUP SINGH

..... Petitioner

versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS.

..... Respondents

Appearance:-

Mr Sandeep Kumar, Adv. for Sita Cooperative Society.

Mr L.K. Singh and Mr Deepak Singhal, Advs for the petitioner in Item No. 14.

Mr Anuj Aggarwal, Additional Standing Counsel for R-2 (RCS) in Item No. 14.

Mr Kunal Sharma and Mr Abhishek, Advs for R-4 (DDA) in Item No.14.

Mr J.P. Singh, Sr. Adv with Mr Rajiv Vig, Adv for the petitioner in Item No. 15.

Mr Vinod Kuhar Bhati for Mr Devesh Singh, ASC for R-1 in Item No. 15.

Mr Sanjeev Anand and Ms Swati Sinha, Advs. for respondents 3 and 5 in Item No. 15, 20 & 21.

Mr. Naushad Ahmed Khan, Additional Standing Counsel for GNCTD.

Ms Mansi Bajaj, Adv. for R-2 (DDA) in Item No. 16, for R-3 in Item No. 17.

Mr R.P.S. Sirohi and Mr Rajendra Singh, Advs for petitioner in Item No. 17.

Mr Anuj Aggarwal, Additional Standing Counsel for R-1 in Item No.17.

Mr L.K. Singh and Mr Deepak Singhal, Advs for petitioner in Item No. 18 and 19.

Mr D.S. Mehandru, Adv for DDA in Item no. 18.

Mr Sanjeev Sabharwal, Standing Counsel, DDA in Item No. 19.

Mr Rajiv Vig, Adv for petitioner in Item No. 20.

Mr Santosh Kumar Tripathi, ASC, GNCT of Delhi

Mr J.P. Singh, Sr. Adv with Mr Rajiv Vig, Advs for petitioner in Item No. 21.

Mr Shtrajit Banerji for Mr Gautam Narayan, ASC for GNCTD (R-1) in Item No. 21.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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21.03.2016

The common controversy in all these writ petitions is with regard to the report dated 03.12.2014 submitted by Mr. J.L. Arya, Retired District Judge, pursuant to directions made by this Court.

By an earlier order of 29.07.2010, several writ petitions (W.P.(C) No. 4367/2002 and connected writ petitions as well as the later appeals) were disposed of. The Court then had to consider the legality of allotments made, in their allotment of flats in Sita Cooperative Group Housing Society (hereinafter referred to as “the Society”). The 65 flats were constructed by the Society by the time the order dated 29.10.2010 was made, 49 were allotted by virtue of a draw-of-lots held on 28.09.1999. The controversy which this Court had to deal with was as to the rival claims sought up by several

petitioners who complained that their names have been wrongfully excluded in the said draw-of-lots held in 1999 and that their entitlement to be considered for those flats are crystallised on account of final awards/orders made in their favour. It had been contended by them *inter alia* that some of the allottees (out of the 49 allotments made) were either junior to them and thus disentitled for the allotments.

This Court after considering all submissions was of the opinion that the 49 allotments finalised in the draw-of-lots on 28.09.1999 ought not to be disturbed in the larger interest of the members and the Society.

However, to resolve the *inter se* claims of 39 members as against the available 16 flats, the Division Bench was of the opinion that the matter would be best resolved by leaving it to a Committee headed by former Supreme Court Judge Late Justice Arun Kumar. The Committee was requested to consider the documents and claims of each of the 39 members keeping in mind three broad circumstances i.e. the compliance with eligibility criteria (for allotment of flat); the date of enrolment of the concerned member-for the purposes of seniority; and correlation of payments made by the concerned members with the payments made by the society and extensions given if any.

Late Justice Arun Kumar commenced the task allotted to him, however, unfortunately before its completion, he passed away. Consequently, Mr. J.R Aryan was appointed instead by an order of this Court dated 26.03.2014. He completed the task and furnished his report dated 03.12.2014.

Counsel for the petitioners had argued in the proceedings that

despite availability of the documents, the Commissioner/Committee misapplied the criteria and held several members ineligible. It was sought to be urged that some of the members were ousted from consideration and the seniority list (to be forwarded to the Delhi Development Authority by the Registrar) was arrived at only on the basis of *prima facie* determination and not on the basis of appreciation of all the circumstances. It was particularly highlighted that the documents such as receipts etc were disregarded on flimsy grounds, and as to whether the Society really received the amounts within the dates prescribed for it or otherwise, was not decided. Counsel for the respondents and the Society on the other hand urged that the Committee fulfilled the task assigned through a painstaking report which has considered each submission and contention urged on behalf of the parties. It was argued that the final order of this Court dated 29.07.2010 recorded that parties would not challenge the decision of the Committee and that this Court in the circumstances should direct the Registrar to accept it. It was also pointed out that infact the Registrar-based upon the list of 16 eligible members, recommended 13 of them to the Delhi Development Authority, however, the draw-of-lots or allotment on that basis has not been completed.

This Court had at the time of issuance of notice directed the respondents to reserve a flat in favour of some of the petitioners who have approached this Court.

We have considered the submissions of the parties. There is no dispute that the Committee undertook the task in an elaborate and painstaking manner and had furnished a report. Nevertheless on a close

reading of the report would indicate that in fact, at least in some instances, the Committee took note of certain extraneous factors such as allegations pertaining to past mismanagement by a few individuals. This coupled with the *prima facie* nature of the determinations with respect to them, has prejudiced at least some of the petitioners. Furthermore, we note that the Registrar appears to have merely transmitted the names of 13 members out of the 16 finally found in the final list drawn by the Committee. The Registrar of Cooperative Societies did not undertake the task of scrutinising the seniority list drawn by the Committee, particularly from the point of view of those who were excluded i.e. 23 members, some of whom are before us. The Registrar had emphasised that the statutory responsibility of ensuring that the names forwarded to the DDA reflect truly, the seniority of the eligible members and also the eligibility according to the dates of the payments having regard to the amounts received by the Society. Furthermore, the Registrar has to clearly indicate why particular individuals are excluded and/or are ineligible. This would enable such members to seek the redressal from the proper forum in accordance with law.

There can be no doubt that this Court's attempt in its order dated 29.07.2010 was to ensure quietus to the entire controversy in the shortest possible time. However, the effort to resolve the dispute quickly should not result in injustice. In other words, while there is need for speedy justice, there should not be the casualty. In this view of the matter, the Court hereby directs the Registrar to consider the Committee's recommendations/report dated 03.12.2014 and pass a

comprehensive order on the basis of the materials (that were considered by the Committee, as well as other such materials which may be furnished to the Registrar) in respect of the 39 members who are now claiming the 16 unalloted flats. The seniority list or lists will have to be drawn with reference to specific dates and in the case of those found ineligible, the Registrar should specifically record his reasons for arriving at such conclusion. The entire process shall be conducted in such a manner that the concerned individuals are given reasonable opportunity. In any event the parties concerned shall be allowed to file representations not exceeding three pages with the supporting proof of payments etc. The Registrar shall consider the accounts, especially the bank accounts, statements for the relevant period or periods concerning the members while verifying whether the amounts infact deposited into the Society account or paid to it.

After having considered all the above factors, the Registrar shall pass a comprehensive speaking order. The Registrar shall complete the task and at the utmost experience in any case by 31.08.2016. The present writ petitioners and all the parties before the Court (including the contesting respondents) shall appear before the Registrar for further directions on 31.03.2016 at 3 p.m.

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The claim in this writ petition is also in respect of the erstwhile member Ms. Santosh Gandhi towards a flat. During her lifetime, Ms. Santosh Gandhi, claimed that she was member of the Sita Cooperative Group Housing Society (hereinafter referred to as 'the Society'). Her membership was disputed by the Society; the dispute was referred to

arbitration. The Arbitrator in his award ruled in favour of the Late Ms. Santosh Gandhi. The award attained finality.

During the pendency of these proceedings, Ms. Santosh Gandhi had expired. In these circumstances, the heirs of Sh. Ram Lal Gandhi who had been impleaded as a party in the present proceeding are entitled to assert the claims to his predecessor-in-interest i.e. Ms. Santosh Gandhi in the proceedings before the Registrar, remitted pursuant to the common order in W.P.(C) No. 1634/2015 and connected cases. In the event the Registrar holds that Ms. Santosh Gandhi was entitled to consideration and recommendation of her name, a further decision as to the membership of Ram Lal Gandhi shall also be made in the order. A separate order in this regard as to the entitlement of Ram Lal Gandhi having regard to the provisions of the Delhi Cooperative Society's Act and the concerned succession enactments (the Hindu Succession Act and Indian Succession Act) shall be taken.

The writ petitions are disposed of in the above terms.

Order *dasti*.

The copy of the order be independently transmitted to the Registrar of Cooperative Society directly by the Registrar.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 21, 2016

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