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

\+	**W.P.(C) 11997/2015**

Reserved on : 18th July, 2016
Pronounced on: 14th September, 2016

SHRI KANT & ORS. ..... Petitioners

Through Mr. C. Harishankar, Sr. Advocate with Mr. Pardeep Dahiya, Advocate.

versus

THE REGISTRAR, CO-OP. GROUP HOUSING SOCIETY & ORS
..... Respondents

Through Mr. Sanjoy Ghose, ASC, GNCTD & Ms. Pratistha Vij, Advocate for respondent No. 1. Mr. Rakesh Mittal, Advocate for respondent No. 2-DDA.

W.P.(C) 12012/2015

B.N. SINGH ..... Petitioner

Through Mr. C. Harishankar, Sr. Advocate with Mr. Pardeep Dahiya, Advocate.

versus

THE REGISTRAR, CO-OP. GROUP HOUSING SOCIETY & ORS.

..... Respondents

Through Mr. Devvrat, Advocate for respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

These two writ petitions raise similar issues and are, therefore, being disposed of by this common judgment. The prayers made in the two writ petitions are identical and read:-

> "i) Quash and set aside the notification dated 17.10.2011 to the extent it debars the members against whom criminal cases are pending, from getting the flats regularized;
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> ii) Direct the respondents to regularise the self-draw of lots conducted by the petitioner's society held on 3rd January 2010;'
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> iii) Pass any other or further relief in the facts and circumstances of the Case."

2. The petitioners Shri Kant, Rajbir Singh, Jagdish Chander Beniwal and P.K. Jaiswal in W.P.(C) No.11997/2015, are members of Saptaparni Cooperative Group Housing Society Ltd. and the petitioner B.N. Singh in W.P.(C) No.12012/2015, is a member of IDC Cooperative Group Housing Society Ltd. The petitioners in W.P.(C) No.11997/2015 claim that they were enrolled as members of Saptaparni Cooperative Group Housing Society Ltd. between the period 31st December, 2000 and 31st January, 2001 and each of them have paid Rs.32,25,000/- as their contribution towards the construction of flats. B.N. Singh, the petitioner in W.P.(C)

No.12012/2015 states that he was enrolled as a member of IDC Cooperative Group Housing Society Ltd. on 1st April, 2001 and has paid Rs.28,00,000/- as his contribution towards the construction of flats. The aforesaid contribution was in full and no further amount is due and payable towards the construction cost.

3. The petitioners are facing prosecution and trial in the charge-sheet filed by the Central Bureau of Investigation (CBI) under Sections 120-B read with Section 406, 420, 468, 471, 477A of the Indian Penal Code, 1860, read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Charges have been framed against B.N. Singh. However, at present, the Supreme Court has stayed the criminal proceedings vide order dated 9th September, 2013 in SLP (Criminal) Nos. 7591-7592/2011. The aforesaid charge sheets were filed pursuant to the order dated 2nd August, 2005 of High Court of Delhi in W.P.(C) No. 10066/2004, ***Yogi Raj Krishna Cooperative Group Housing Society Ltd. v. Delhi Development Authority & Anr.,*** directing the CBI to conduct a thorough investigation into the affairs and matter of 135 cooperative societies.

4. The ***Anjuman CGHS Ltd.*** had filed W.P.(C) No.1064/2007 against the Registrar, Cooperative Societies and some others in the High Court of

Delhi to direct the Delhi Development Authority to issue the completion certificate, provisional occupancy certificate and to direct the Registrar of Cooperative Societies to hold a draw of lots for the allotment of flats to members of the cooperative societies. By the judgement and order dated 29th August, 2008, the High Court disposed of the writ petition with a rider that the charge sheeted office bearers and the members of the society, including former members, would not be eligible for consideration for allotment of flats till they were found blemishless on acquittal and on exoneration in the inquiry conducted by the Registrar, Cooperative Societies. For the sake of completeness, we would like to reproduce clause (VI) of the aforesaid order, which reads as under:-

> "(VI) We also direct that the charge sheeted office bearers and/or members of the petitioner society including former members, shall not be eligible for consideration for allotment of a flat till they are found blemishless after the acquittal and exoneration in any inquiry by the Registrar of Cooperative Societies."

5. Aggrieved by the aforesaid direction, the members and office bearers facing prosecution had assailed clause (VI) quoted above, in the SLP (Civil) No. 512/2009. By the order dated 6th January, 2009, notice was issued in the Special Leave Petition and in the meanwhile, it was directed that the Rule 90 Committee would consider the application of the

petitioners therein for allotment but would not make any final allotment till disposal of the petition. This interim order dated 6th January, 2009 was made absolute vide order dated 31st March, 2009, which had decided and disposed of the aforesaid SLP and other connected SLPs. For the sake of completeness, we would like to reproduce the relevant portions of the two orders dated 6th January, 2009 and 31st March, 2009, which read as under:-

> **<u>Order dated 6.1.2009</u>**
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> "In the meanwhile, as directed in the said order, the Rule 90 Committee shall also consider the petitioner's application for allotment, but shall not make any final allotment till the disposal of this petition."
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> **<u>Order dated 31.3.2009</u>**
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> "On 5th December, 2008, when the special leave petition was initially taken up for consideration and notice was issued, we had observed that as some of the respondents had not been served, we were not in a position to dispose of the same. In fact, an ad-interim order was made on that date, which in effect, virtually disposed of the special leave petition.
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> Now when the parties have been duly served, we make the said interim order absolute. The special leave petition is disposed of accordingly.
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> This order will also govern SLP (C) No.512 of 2009, where the same order was passed. Consequently, the process of allotment shall continue."

It is clear from a reading of the aforesaid orders that the Supreme Court had directed that the Rule 90 Committee appointed under the Delhi Cooperative Societies, Rules 2007 shall consider the cases of the charge sheeted members for allotment, but no final allotment would be made till the disposal of the SLP. This order was affirmed and treated as a final order when the SLP was disposed of by the order dated 31st March, 2009.

6. The effect of the aforesaid orders was that the condition No. (VI) imposed in the judgment dated 29th August, 2008 passed in ***Anjuman CGHS*** (supra) was partly modified. It was directed in clause (VI) that the charge sheeted office bearers or members including former members would not be eligible for consideration whatsoever till they are found blemishless on acquittal and exoneration in any inquiry by the Registrar, Cooperative Societies, albeit the Supreme Court had directed and permitted that the application of such persons can be considered for allotment by the Rule 90 Committee but no final allotment would be made. In other words, the allotment process could not be finalised viz. the members who had been charge-sheeted in the prosecutions filed by the CBI. According to us, the petitioners herein are wrongly interpreting the orders passed by the Supreme Court in the aforesaid SLPs as implying that the charge sheeted

members became entitled to consideration in the draw of lots for allotment of flats in their names in their respective societies. The said assertion of the petitioners is unacceptable and is not in terms of the directions issued by the Supreme Court.

7. It is the case of the petitioners that members of Saptaparni Cooperative Group Housing Society Ltd. had conducted a self draw of lots in which they had included the name of the petitioners in W.P.(C) No.11997/2015. Accordingly, Shrikant was allotted Flat No. B-64, Rajbir Singh was allotted Flat No. B-14, Jagdish Chander was allotted Flat No. B-101 and P.K. Jaiswal was allotted Flat No. A-51. Similarly, in the case of IDC Cooperative Group Housing Society Ltd., a self-draw of lots was held by the members in January, 2010 and B.N. Singh was allotted Flat No. B-81. It is pertinent to mention that the said draw of lots, held in January, 2010, was contrary to Section 77 of the Delhi Cooperative Societies Act, 2003 (Act, for short), which for the sake of convenience is reproduced below:-

> **"77. Allotment of plots, flats or houses through draw of lots.**
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> (1) Allotment of plots of land, flats, houses or other dwelling units shall be made by the committee of a co-operative housing society to the members strictly on the basis of draw of lots only in respect of such

> members whose enrolment as a member of a co-operative housing society is found proper in accordance with the provisions of this Act, rules framed thereunder and the bye-laws of the cooperative housing society by the Registrar with the prior approval of a committee as prescribed and such a draw of lot shall be conducted by the lessor of the land in accordance with the terms and conditions of lease.
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> (2) If any draw of lot is held in violation of the above provisions it shall be void and any financial loss on account of this shall be recovered as arrears of land revenue from persons who were responsible for it and such persons shall be debarred from holding any office in the co-operative housing society in future.
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> (3) Every member of a co-operative housing society, whether registered before or after the commencement of this Act, to whom plots of lands, flats, houses or other dwelling units have been allotted, shall be issued certificate of occupancy by the co-operative housing society under its seal and signature in such form, on such terms and on such conditions as may be prescribed and such certificate shall be issued forthwith when all the dues as may be determined and notified by the co-operative housing society are duly paid by the member.

Admittedly, the lessor of the land in the present case is the Delhi Development Authority and, therefore, the mandate of Section 77 is that the draw of lots shall be conducted by the Delhi Development Authority. There was also violation of the stipulation that the membership should have first been approved by the Registrar, Cooperative Societies. By the orders dated 6th January, 2009 and 31st March, 2009 in the SLPs, the Supreme

Court had directed that the Rule 90 Committee shall consider the application of the charge sheeted members for allotment, but would not make any final allotment. Sub-Section (2) to Section 77 of the Act states that if any draw of lots is held in violation of the above provisions, the same shall be void and the financial loss on account of this shall be recovered as arrears of land revenue from the persons responsible for it and such persons shall be debarred from holding any office in the cooperative housing society in future. Violation of the said section is punishable under sub-section (7) to Section 118 of the Act. The said sub-section stipulates that if any allotment of plot or flat made by the committee is in contravention of the provisions of Section 77(1), the committee and its members responsible could be punished with imprisonment, which may extend to seven years, and they shall also be liable to pay fine.

8. The two cooperative societies in question and 24 others had conducted the aforesaid self draw of lots. One of the reasons was the abnormal delay in the allotment of flats on account of the fact that certain members and office bearers had been charge sheeted and were facing prosecution. Consequently, the innocent members, who had paid in full, were suffering. In some cases, the records of the society were found to be

clean and no prosecution was filed by the CBI yet there was a never ending wait. The writ petitions filed in the High Court in such cases were disposed of directing the Registrar, Cooperative Societies to forward the name of the eligible members.

9. Faced with the aforesaid alarming situation and discontent, the matter was examined by the Lieutenant Governor of Delhi. By the notification published in the Delhi Gazette, Part-IV dated 17th October, 2011, in exercise of power conferred under Section 127 of the Act, the Lieutenant Governor was pleased to regularise the draw of lots conducted by the 26 cooperative societies including the two cooperative societies in question, condoning the violation of sub-section (1) to Section 77 of the Act as a one-time exemption. The exemption in the case of IDC Cooperative Group Housing Society Ltd. was subject to the outcome of SLP (C) Nos. 4802-03/2011.

10. The terms and conditions stipulated for regularisation in the notification dated 17th October, 2011 stated :-

> "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 ahs (sic) 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 or penalty by each member who have carried out self draw without the approval of RCS as follows:-

1. Owners of 02 bedrooms houses-Rs. 15,000/-
2. Owners of 03 bedroom houses-Rs.15,000/-
3. Owners of 04 bedroom houses- Rs. 25000/-

4) One time exemption in r/o self draw society of restricted only upto the provision of section 77(1) of DCS Act-2003."

The said notification also expressly and clearly postulated that the members and other office bearers who had been charge-sheeted by the CBI would not be given benefit of the said regularisation, and their names should not be sent to the Delhi Development Authority till the criminal cases pending against them are finally decided as in the case of other CBI investigated societies. Clause (1) of the aforesaid notification, reads:-

"1) However, the members and other office bearers of the CBI investigated societies, who have been [sic (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."

11. The petitioners in support of their contention that the aforesaid clause (1) should be struck down and is invalid, have relied on Rule 20 of Delhi Cooperative Societies Rules, 2007, which reads as under:-

> "20. **Disqualification of membership**
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> (1). No person shall be eligible for admission as a member of a co-operative society if he:-
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> (a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or
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> (b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence, or
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> (c) In the case of membership of a co-operative housing society,
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> (i) owns a residential house or a plot of land for construction of residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale: Provided that above clause shall not be applicable,
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> (a) in case of co-sharers of property whose share is less than 66.72 sq. metres of land; or if the residential property devolves on him by way of inheritance;
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> (b) in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person

applies for the transfer of membership of the housing society concerned;

(ii) deals in purchase or sale of immovable properties either as principal or as agent in the National Capital Territory of Delhi; or

(iii) his spouse or any of his dependent children is a member of any other cooperative housing society.

(2). Notwithstanding anything contained in the rules or the bye-laws of the co- operative society, if a person becomes, or has already become a member, subject to any disqualification specified in sub-rule (1), he shall cease to be a member from the date when the disqualifications were incurred. However, before disqualifying a member, the Registrar shall give an opportunity of personal hearing to the concerned member and the society.

(3). A person who ceases to be a member of a co-operative society under sub-rule (2), shall not be entitled to exercise rights of memberships or incur liability as member with effect from the date of order passed by the Registrar referred to in sub-rule (2) but as from the date he becomes a creditor of the co-operative society in respect of the amount due to him on account of paid up share capital, deposit, cost of land deposited or any other amount paid by him to the co-operative society as its member. As from the date of his ceasing to be a member of the society under sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative society within three months and if the co-operative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative society.

(4). If any question as to whether a member has incurred any of the disqualification referred to in sub-rule (1) arises, it shall be referred to the Registrar for

> decision. The decision of the Registrar in this behalf shall be final and binding on all concerned. The Registrar shall not delegate this power to any other person appointed to assist the Registrar."

It is highlighted that the said Rule and the two orders passed by the Supreme Court dated 6th January, 2009 and 31st March, 2009 were considered by a Division Bench of this Court in W.P.(C) No. 2908/2014 titled ***Sanjay Bajaj & Ors. Vs. Registrar of Co-operative Societies and Ors***. and vide order dated 28th March, 2016, it was held as under:-

> "8. This Court is of the opinion that the tenor of the impugned notification/order dated 17.10.2011 clearly suggests that the allotment of flats to members in the 26 listed societies where self draws were conducted was a subject matter of consideration. The L.G. exercising powers under the Act directed that the self draw would not be regularised in the cases of those charge-sheeted by the CBI. The entire impugned order clearly states that it is only in the cases of self draw where the issue of regularisation arises. For purposes of that benefit, the names of the members - who were given allotment otherwise than in accordance with the Act and Rules - would not be considered if any of them are charge-sheeted. However, one cannot infer or deduce that the said order is per se applicable to all situations. In other words, if a member who is otherwise qualified is entitled to be considered in accordance with the provisions of the Act and Rules and is not subjected to any of the disqualification set out in either Section 22 or Rule 20 (particularly Rule 20(i)(b) which talks of conviction in criminal proceedings as a bar, the entitlement to be considered in a draw of lots cannot be ruled out at all. This Court is fortified by the conclusion further on account of the

> fact that that Rule 90 spells out only one consequence, i.e., that the concerned individual is not permitted to contest the elections. In other words, barring a conviction after completed proceedings in a duly conducted criminal trial, a member who is merely charge-sheeted cannot be precluded from participation in the draw of lots. Any other interpretation would be contrary to the Act and even the Rules. It is well settled that even the rule making authority cannot exceed the parent enactment. In this case, the rule making authority clearly envisioned only one circumstance, i.e., disqualification upon conviction of a member. Clearly, that situation has not arisen and some of the members, i.e., the present petitioners are named in a charge-sheet. In the case of one petitioner apparently even charges have not been framed."

This judgment also refers to the order dated 12th September, 2013 passed in W.P.(C) No.5588/2013 filed by S.P. Saxena, who was also the petitioner in the SLP mentioned above. The order dated 12th September, 2013 reads :-

> "The first prayer in the present Writ Petition is for issuance of a writ, order or direction in the nature of certiorari thereby quashing/setting aside the minutes of the meeting dated 11th August, 2010 recorded by the Committee constituted under Rule 90 of the Delhi Cooperative Societies Rules, 2007 in so far as the same relate to the refusal by the said Committee to recommend the name of the Petitioner to DDA for allotment and consequently declare the order dated 26th July, 2013 as null and void and inoperative. The second prayer of the Petitioner is for a direction to the Respondent No.1 to recommend the name of the Petitioner to DDA for holding draw of lots for allotment of a draw in favour of the Petitioner.

> On the last date of hearing we had issued notice to the Respondent No.1, Registrar of Cooperative Societies and directed him to be present in person today. The Registrar is present in person today and states that in view of the orders of this Court and of the Hon'ble Supreme Court dated 5th December, 2008 passed in CC No.15738/2008 which orders were made absolute on 31st March, 2009, the application made by the Petitioner for allotment of flat shall be considered under Rule 90 of the Delhi Cooperative Societies Rules, 2007 and the name of the Petitioner in case the Petitioner is found eligible, will be recommended for allotment to DDA. Learned counsel for the Petitioner states on instructions from the Petitioner who is present in Court today that the Petitioner is satisfied with the aforesaid statement made by the Registrar Cooperative Societies since the final allotment has been stayed by the Hon'ble Supreme Court.
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> In view of the aforesaid statement of the Registrar, Cooperative Societies which is taken on record, nothing further survives to be considered in the instant petition, which is accordingly disposed of."

12. Learned counsel for the respondent, Government of National Capital Territory of Delhi, on the other hand, relies on the judgment dated 5th May, 2015 passed in W.P.(C) No.519/2012, ***Manohar Lal & Anr. Vs. The Registrar, Cooperative Group Housing Society & Ors.***

13. Manohar Lal, by way of the said writ petition, had challenged the notification dated 17th October, 2011 issued by the Lieutenant Governor under Section 127 of the Act giving one-time exemption to the self-draw of lots held by the Cooperative societies from the applicability of Section

77(1) of the Act. The aforesaid decision refers to the various contentions raised herein and examines the genesis of the dispute, referring to W.P.(C) No.10066/2004, titled Y***ogi Raj Krishna Cooperative Group Housing Society Ltd. v. Delhi Development Authority & Anr***., wherein the scam involving builders and architects who had illegally managed registration of societies with either fake membership or by lending names of their friends and relatives to complete the membership to enable registration. These illegalities, it was observed, had led the Division Bench of this Court in Y***ogi Raj Krishna Cooperative Group Housing Society Ltd.*** (supra) to direct the CBI investigation. A two member Committee comprising of Mr. K.K. Mathur and Mr. Y.D. Venkata was thereafter constituted by the Government of Delhi for, inter alia, suggesting measures for verification of membership etc. There was consultation within the concerned department at the highest level, before the notification dated 17th October, 2011 was issued. The decision observes that it was impossible for the Legislature to contemplate every possible factual situation and that the provisions of the Act were incapable of meeting complex situations that had arisen in the course of the working of the Act. The notification was upheld holding that rigorous application of some of the provisions could itself result in frustrating the very object and purpose of the enactment instead of advancing them. So long as the power was exercised in advancement and furtherance of the objectives of the Act, the exercise of the said power would not be struck down. The Division Bench specifically noted and highlighted that only such persons, who would meet the requirements of the statutory provisions, as well as the Rules and had complied with the financial modalities imposed by the society, would be entitled to regularisation. There were adequate safeguards provided in the notification dated 17th October, 2011, as it had specifically excluded the charge-sheeted members and office bearers from its ambit. Such members and office bearers were not to be granted the benefit of regularisation, and their names were not to be sent to the Delhi Development Authority. We would like to quote the relevant portion from the ***Manohar Lal & Another*** (supra), which reads as under:-

> "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."

14. Learned counsel for the petitioner has submitted that the decision of Division Bench in ***Sanjay Bajaj and Ors.*** (supra) would be squarely applicable, for the said decision also refers to the notification dated 17^{th} October, 2011 and the directions were issued quo members who were charge sheeted and were facing criminal prosecution. However, the argument, as raised, overlooks a critical and pregnant fact which is clearly noticed and elucidated in ***Sanjay Bajaj and Ors.*** (supra). The Division Bench was conscious of the notification dated 17^{th} October, 2011 and clause (1) thereof, which had excluded members and other officer bearers of CBI investigated societies. The notification dated 17^{th} October, 2011 was applicable to cases wherever there was a self draw of lots and the members had sought the benefit of said self-draw. It was emphasised and stressed that no self-draw of lots had been conducted in the case of ***Sanjay Bajaj and Ors.*** (supra) and the petitioners therein had sought allotment of

flat on the strength of their membership. The relevant portion of the decision in ***Sanjay Bajaj and Ors.*** (supra) reads:-

> "2. It is argued by the writ petitioners that the directions sought to be relied upon by the Registrar cannot be applied blindly and that it is applicable only in the cases of members of Societies who were given the benefit of draw of lots wherever there was a self draw. In the present case, however, no "self draw" was conducted and the petitioners claim to be entitled to allotment of a flat on the strength of their memberships. Learned Counsel also relies upon the Delhi Cooperative Societies Act and the Rules framed thereunder to submit that barring Rule 90, which expressly stipulates that such members who indulge in any irregularity in respect of draw of lots are not permitted to contest election in any office in the Society, and there is no disqualification. Counsel relies upon Section 22 and Rule 20."
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> x x x x x
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> "7… The entire impugned order clearly states that it is only in the cases of self-draw where the issue of regularisation arises. For purposes of that benefit, the names of the members - who were given allotment otherwise than in accordance with the Act and Rules - would not be considered if any of them are charge-sheeted. However, one cannot infer or deduce that the said order is per se applicable to all situations…"

15. In these circumstances and when the Division Bench in ***Sanjay Bajaj and Ors.*** (supra) had itself made the said distinction, it will not be appropriate and correct to apply the ratio to set aside and nullify clause (1) of the notification dated 17^{th} October, 2016. The ratio of the decision is

Sanjay Bajaj and Ors. (supra) would clearly not be applicable, for the Division Bench, while making the said pronouncement and expounding the ratio, had itself drawn the critical distinction. It is an accepted and admitted position that the petitioners herein pursuant to the said draw of lots, are in occupation of flats and thus, there has been a violation of Section 77(1) of the Act. In such circumstances, we do not think that the ratio of the decision in ***Sanjay Bajaj and Ors.*** (supra) would help and assist the case of the petitioner. In fact, the decision dated 5th May, 2015 in ***Manohar Lal & Anr.*** (supra) would be squarely applicable. It is in this context that we have reproduced the prayers made by the petitioners in paragraph 1 above. The directions as sought cannot be granted.

16. In view of the aforesaid discussion, we do not find any merit in the present writ petitions and the pleas raised by the petitioners. The writ petitions are dismissed. In the facts of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(SUNITA GUPTA)
JUDGE

SEPTEMBER 14th, 2016/NA