

In brief, land measuring 24578.517 sq. yards in Sector 51-B, UT, Chandigarh was allotted to the Ajanta Cooperative House Building Society Limited, Sector 51-D, Chandigarh (hereinafter referred to as the “society”), in the year 2002 under the Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991. The society had 150 members including Shashi Bhushan Sharma S/o Late Piare Lal Shama, resident of House No.3572, Sector 37-D, Chandigarh, as an original member. Petitioner no.1 is the widow of Shashi Bhushan Sharma, who died on 18.11.1989. He had appointed petitioner no.1 as her nominee. After the death of her husband, the share of

Shashi Bhushan Sharma was transferred in favour of petitioner no.1, who was allotted Flat No.3099, Category-B, Sector 51-D, UT, Chandigarh. At the time of succeeding to the property of her husband, petitioner no.1 sworn an affidavit that she did not own or possess any house in Chandigarh, Mohali and Panchkula. Petitioner no.1 transferred the aforesaid flat and her share of Rs.100/- in the society, received as a nominee of her husband being membership No.13/48, to petitioner no.2 on 02.03.2009, with the permission of the society and on 20.06.2009, the society also acknowledged the said transfer by petitioner no.1 to petitioner no.2.

However, a complaint was filed by the step-son of petitioner no.1, namely, Sanjiv Sharma, that petitioner no.1 had sworn a false affidavit of not possessing any other house in Chandigarh. It was alleged that petitioner no.1 had a lease hold plot no.4089 in Sector 46, Chandigarh, allotted to her on 14.05.1982 by the Estate Office, UT, Chandigarh.

The Joint Registrar, Cooperative Societies, UT, Chandigarh, exercising the powers of the Registrar of the Societies, served a show cause notice to the society as to why action be not initiated against both the society and petitioner no.1 for filing a false affidavit that she did not own and possess a plot/house in Chandigarh bearing no.4089, Sector 46, Chandigarh.

In view of the show cause notice issued by the Registrar, Cooperative Societies, Chandigarh, the President of the society issued a show cause notice to petitioner no.1 regarding cancellation of the allotment of Flat No.3099 of Category-B, Sector 51-D, Chandigarh in her favour. The said show cause notice was challenged by petitioner no.2 by way of revision filed under Section 69 of the Punjab Cooperative Societies Act, 1961 (hereinafter

referred to as the “Act”) before the Secretary, Cooperation, UT, Chandigarh. The said revision petition was dismissed on 19.03.2012 on the ground that the Registrar, Cooperative Societies, Chandigarh had only issued a show cause notice and did not pass any final order and, thus, the revision petition was not found to be maintainable.

Petitioner no.2 challenged the order dated 19.03.2012 by way of CWP No.10579 of 2012, which was dismissed by this Court on the ground of being pre-mature. Thereafter, the society called a meeting to consider requisition about cancellation of membership of petitioner no.1, which ultimately affected the rights of petitioner no.2 who had purchased the flat in question from petitioner no.1. It appears that petitioner no.2 against the said action filed CWP No.20894 of 2013 before this Court but it was withdrawn. Ultimately, on 29.11.2013, the impugned resolution was passed on the ground that petitioner no.1 had concealed the fact of owning plot/house No.4089 in Sector 46, Chandigarh at the time she had filed affidavit to succeed to the property of her husband as a nominee. Thereafter, petitioner no.2 filed another CWP No.28665 of 2013, which was also withdrawn on 21.12.2013.

The society, vide its impugned order dated 08.07.2014, also asked petitioner no.1 to hand over vacant possession of the flat, otherwise she would be liable to pay *mesne* profits @ Rs.25,000/- per month. This led to the filing of the present petition to challenge the resolution Annexure P-15 by which membership of the petitioner no.1 was cancelled and the letter Annexure P-19 by which petitioner no.1 has been asked to hand over vacant possession of the flat and in the absence thereof, to pay the *mesne* profits.

Counsel for the petitioners has submitted that the society did not

apply its mind while passing the order of cancellation as it has been threatened by the Cooperative Department either to cancel the membership or to face the consequences. Otherwise, it is submitted that the plot/house no.4089, situated in Sector 46, Chandigarh, allotted to the petitioner on 14.05.1982 by the Estate Office, UT, Chandigarh was already sold by petitioner no.1 on 18.02.1987 to Smt. Surjit Kaur W/o Ranjit Singh, resident of House No.2373, Sector 22-C, Chandigarh vide GPA with power of sale, which was duly registered in the office of Sub Registrar, UT, Chandigarh at Sr. No.6983, Volume No.72, Page 252, dated 18.12.1987. It is also submitted that petitioner no.1 had no other plot in her name in UT Chandigarh at the time when she succeeded to the estate of her husband after his death as his nominee and was not an allottee. It is further submitted that both these aspects have not been appreciated by the society at all and have cancelled the allotment in her favour illegally and arbitrarily.

Counsel for the respondents have stuck to their stand that petitioner no.1 had filed a false affidavit of not having property in Chandigarh though she was the owner of plot/house No.4089, Sector 46, Chandigarh. They have referred to Rule 6-A of the Rules in this regard.

Counsel for the petitioners has submitted that petitioner no.1 has not violated any Rule, much-less Rule 6-A, as she had already disposed of the property owned by her in 1987, whereas her husband had expired in 1989, when she became eligible to succeed to his property as a nominee.

I have learned counsel for the parties and perused the record with their able assistance.

The question as to whether petitioner no.1 is guilty of *suppressio*

veri and suggestio falsi in respect of the allotment of the plot/flat has not been appreciated by the society as there is no reference in the impugned resolution of the stand taken by petitioner no.1 of having disposed of plot no.4089, Sector 46, Chandigarh in 1987, much before the death of her husband in the year 1989 and that her succession to the property of her husband as a nominee and not as an allottee. These are crucial circumstances which should have been taken into consideration before taking a decision of cancellation of the flat allotted to the husband of petitioner no.1, which has not only been inherited by her as a nominee but also allegedly she had no other property in her name at that time.

Consequently, in view of the aforesaid facts and circumstances, it would be just and expedient to give one more opportunity to the petitioners to project their case before the society as they had allegedly not responded to the show cause notice.

Thus, the present writ petition is hereby allowed, the impugned resolution dated 29.11.2013 (Annexure P-15) and the impugned letter dated 08.07.2014 (Annexure P-19) are hereby quashed and the matter is remanded back to the society to allow the petitioners to file their reply and lead evidence in support of their case and then pass any appropriate order in accordance with law. The entire exercise shall be done within a period of three months from the date of appearance of the petitioners and till then, status quo granted in this case on 26.11.2014 shall continue. The parties are directed to appear before the society on 08.08.2017.

July 11, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No