

**201 (3 Cases)**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

1. **LPA No. 1175 of 2010 (O&M)**  
**Date of Decision: 06.03.2020**
- SUDHIR MAHAJAN* *... Appellant*
- VS.
- UNION TERRITORY OF CHANDIGARH AND OTHERS* *... Respondents*
2. **LPA No. 1365 of 2012 (O&M)**
- K.L. GUPTA AND OTHERS* *... Appellants*
- VS.
- UNION TERRITORY OF CHANDIGARH AND OTHERS* *... Respondents*
3. **LPA No. 1384 of 2012 (O&M)**
- CHARANJIT SINGH AND OTHERS* *... Appellants*
- VS.
- UNION TERRITORY OF CHANDIGARH AND OTHERS* *... Respondents*

**CORAM:** **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**  
**HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Dr. Anmol Rattan Sidhu, Senior Advocate, with  
Mr. Manhar S. Saini, Advocate,  
for the appellant in LPA No. 1175 of 2010

Mr. I.S. Saggu, Advocate,  
for the appellants in LPA No. 1365 of 2012.

Mr. Arun Sharma, Advocate  
for Mr. R.S. Bajaj, Advocate,  
for the appellants in LPA No. 1384 of 2012.

Mr. Suman Jain, Advocate and  
Mr. Shubham Jain, Advocate,  
for respondent No. 1 to 3 in LPA 1365 of 2012.

Mr. Ashwani Prashar, Advocate,  
for respondent No. 9 in LPA No. 1175 of 2010.

**LPA No. 1175 of 2010 (O&M) and two other connected appeals**

Mr. Sanjiv Ghai, Advocate,  
 Ms. Shubreet Kaur, Advocates,  
 for respondents No. 1 to 3 in LPA No. 1175 of 2010  
 and LPA No. 1384 No. 2012

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**RAKESH KUMAR JAIN, J. (Oral)**

This order shall dispose of three connected Letter Patent Appeals bearing LPA No. 1175 of 2010 (1<sup>st</sup> Appeal) titled as Sudhir Mahajan Vs. Union Territory of Chandigarh and Others, LPA No. 1365 of 2012 (2<sup>nd</sup> Appeal) titled as K.L. Gupta and others Vs. Union Territory of Chandigarh and Others and LPA No. 1384 of 2012 (3<sup>rd</sup> Appeal) titled as Charanjit Singh and others Vs. Union Territory of Chandigarh and Others as the question of law involved in all the three appeals is common. However, for the sake of convenience, facts are being extracted from the 1<sup>st</sup> Appeal.

This case has a chequered history but the brief facts are narrated as under:-

This appeal is filed in order to challenge the order dated 14.07.2010 of the learned single Judge by which the writ petition filed by the appellant against the order dated 22.09.2009 passed by the Adviser to the Administrator, U.T., Chandigarh was dismissed.

Respondent No. 8-Progressive Cooperative House Building First Society Ltd. (for short “the Society”) was allotted the land for construction of dwelling units/multi storeyed flats on freehold/chunk basis by the Chandigarh Housing Board on 25.01.2002. According to the respondents, one of the salient feature of the said allotment letter was contained in Para 21 which read as under:-

*(21) The society shall allot the dwelling units to its eligible members, (category wise) as per list enclosed. A copy of allotment*

*letter issued to each member (as mentioned in the list attached) shall be sent to the Chief Executive Officer, Chandigarh Housing Board and Registrar, Coop. Societies. If the dwelling unit is allotted to some other person, whose name does not include in the enclosed list, the allotment of that dwelling unit shall be cancelled, and the earnest money so deposited shall be forfeited. However, substitution of members as per prescribed policy/procedure with the prior approval of the Registrar, Cooperative Societies, U.T., Chandigarh may be allowed subject to fulfillment of the eligibility conditions under the scheme called "The Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991."*

Since, the dispute is regarding substitution of members, therefore, the relevant portion of Clause 21 of the allotment letter is dissected as under:-

- i) Substitution of members as per prescribed policy/procedure.
- ii) Prior approval of the Registrar, Cooperative Society, U.T., Chandigarh, subject to fulfillment of eligibility conditions under the Scheme.

The eligibility is provided under Clause 6 of the Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991 (for short "the Scheme") read as under: -

**6. Eligibility** – *A society may be considered eligible for allotment of land if it is duly registered with the Registrar, Cooperative Societies, Union Territory, Chandigarh functioning properly having sufficient funds/resources to pay the premium, to undertake the construction work, to complete it in a stipulated period, and that each of its members fulfils the following conditions:-*

- (i) *He is a bona fide resident of the Union Territory of Chandigarh and should be residing in Union Territory, Chandigarh atleast for last two years on the date of the allotment of land to the Society;*
- (ii) *He is an employee of the Central Government/Corporation owned or controlled by Central Government stationed at Chandigarh on the date of notification of Scheme or has served in the past at Chandigarh, or*
- (iii) *He is an employee of Union Territory Administration or the States of Punjab and Haryana or any Corporation owned or controlled by Union Territory or State Governments referred to above and is either serving at Chandigarh on the date of notification of the Scheme or has served in the past; or*
- (iv) *He is a retired from the Government or Corporation referred to at (ii) and (iii) above and residing at Chandigarh.*

*An applicant member may be eligible for allotment of dwelling unit in accordance with his monthly income i.e. one dwelling unit out of the dwelling units constructed per acre, as per category given below:-*

|             |                                                                        |                     |
|-------------|------------------------------------------------------------------------|---------------------|
| <i>[(A)</i> | <i>(1) 25 Dwelling Units per acre</i>                                  | <i>Category "A"</i> |
|             | <i>(2) 25 Dwelling Units per acre</i>                                  | <i>Category "B"</i> |
|             | <i>(3) 45 Dwelling Units per acre</i>                                  | <i>Category "C"</i> |
|             | <i>The density shall not in total exceed 40% of the covered area)]</i> |                     |

|            |                                                             |                                    |
|------------|-------------------------------------------------------------|------------------------------------|
| <i>(B)</i> | <i>Income Group</i>                                         | <i>Category for which eligible</i> |
|            | <i>Members having monthly income of Rs. 5,001 and above</i> | <i>"A"</i>                         |
|            | <i>Members having monthly income of Rs. 2,001 to 5,000</i>  | <i>"B"</i>                         |
|            | <i>Members having monthly income upto Rs. 2,000</i>         | <i>"C"</i>                         |

*Provided that no society shall be eligible for allotment of a site under this Scheme if any of its members, their spouses or dependent children already owns, either on free-hold, lease-hold or hire purchase basis, a dwelling unit or a residential house/site/flat at Chandigarh, Manimajra, Panchkula and S.A.S. Nagar (Mohali): ber of any such Society and not more than one dwelling unit shall be allotted to one family*

*Provided further that not more than one member of a family shall be a member of any such Society and not more than one dwelling unit shall be allotted to one family:*

*Provided further that no individual/Society shall part with the possession of the land or dwelling unit before the expiry of atleast 5 years from the date of allotment.*

Counsel for the respondents has laid stressed on to the first proviso of Clause 6 of the Scheme, referred to hereinabove, as per which no society was eligible for allotment of a site in the Scheme if any of its member, their spouse or their dependent children were already owing either on freehold, leasehold or hire purchase basis a dwelling unit or residential house/flat at Chandigarh, Manimajra, Panchkula or SAS Nagar, Mohali. The proviso thus means that the Society shall run a risk of losing the entire allotment in case it allows any person to become its member who violate the eligibility condition in regard to having any dwelling unit or residential house/flat either in his own name or in the name of spouse or dependent children either on freehold, leasehold or hire purchase basis in Chandigarh, Manimajra, Panchkula or SAS Nagar (Mohali).

Para 26 and 27 of the allotment letter dated 25.01.2002 also have some relevance because Para 26 provides that *“In the event of default and non-compliance of any of the conditions of allotment as contained herein, the site and the building erected thereon shall be resumed/cancelled and the whole or part of the amount paid to the Chandigarh Administration towards the price of the site will be forfeited in accordance with the provisions of the Capital of Punjab (Development and Regulation) Act, 1952.”*

Similarly Para 27 of the allotment letter provides that *“the terms and conditions of the allotment letter shall be in addition to the provisions of the Capital of Punjab (Development & Regulation) Act, 1952, the Chandigarh (Sale of sites and Building) Rules, 1960 and the provisions of Chandigarh*

*allotment of land to Cooperative House Building Societies Scheme, 1991 which shall be binding on the Society.”*

Be that as it may, after allotment of the land, the Society bifurcated the same into 597 dwelling units of three categories i.e. A, B and C. The controversy in this case took birth with the availability of 8 dwelling units i.e. 5 by way of surrender and 3 due to vacancy. The issue was about substitution of members in respect of those dwelling units and in this regard, first letter which has been referred to is dated 05.10.2001 issued by the Registrar, Cooperative Societies, U.T., Chandigarh addressed to the General Secretary of the Society under the subject of “Clarification regarding substitution of members” in which it was averred as under:-

*“You are hereby informed that the allotment of a flat surrendered by an eligible member may be made to the senior most eligible member of the Society enrolled before 31.10 1990. In case no willing and eligible member enrolled before 31.10.1990 is available, then fresh enrollment may be undertaken as per bye-laws of the Society and the case for substitution may be sent to this office for clearance.*

*You are advised to act accordingly.”*

As per Section 23 (1) of the Punjab Cooperative Societies Act, 1961 (as applicable to Union Territory, Chandigarh), the final authority of the Cooperative Society shall vests in the General Body of the members. Even otherwise, the bye-laws of the Society also provides the same. In view thereof, the General Body of the Society convened a meeting on 16.11.2003 with the following agendas:-

1. Approval of accounts and expenditure and work due from time to time till date.
2. Approval of sample houses of all categories.
3. Action against defaulters members.
4. Any other items with the permission of Chair, after deciding the Agenda. The Chairman will close the proceedings under his signatures.

There was no agenda circulated to the members about the substitution of members, however, it was decided in the agenda that the action for the substitution of members be taken by the Managing Committee. The minutes were recorded to the effect that *“In this regard the Managing Committee would be competent to substitute the members by inviting the applications from the public through public notice. The General Body further decided that the Managing Committee would substitute the members through public notice if no decision/guide lines are intimated by the Registrar Cooperative Societies by 15<sup>th</sup> Dec. 2004. No substitution has been done by the Society so far.”*

About a month thereafter, the Managing Committee published an advertisement in the Hindustan Times, Chandigarh on 16.12.2003, Tuesday which read thus:-

*“Notice*

*Few seats are available for substitution from open market against surrendered dwelling units in ongoing project. Persons willing may contact the Society office on or before 22.12.2003 personally for completing related formalities on 1<sup>st</sup> come 1<sup>st</sup> serve basis.”*

Thereafter on 16.12.2003 itself, ten applications were received on first come first serve basis till 3 P.M. out of which two applicants were found ineligible and eight applications were found in order. Since, there were eight flats in question, therefore, all of them were allotted accordingly. Thereafter, share certificate were also issued after receiving the requisite amount. It is pertinent to mention that the Joint Registrar, Cooperative Societies, U.T., Chandigarh sent a letter dated 18.12.2003 to S.K. Miglani, Inspector Grade-I, Cooperative Societies, U.T., Chandigarh on the subject of “Approval for change of category for flats – Dwelling Unit which was also endorsed to the Society with the following averment:-

*“A copy of the above is forwarded to the President, Progressing Cooperative House Building First Society Ltd., Plot No. 2, Sector 50-B, Chandigarh for information and with the direction not to substitute till the policy framed by the Chandigarh Administration.”*

The Joint Registrar, Cooperative Societies, U.T., Chandigarh also sent a letter dated 06.01.2004 to the Society on the subject of “Regarding Substitution of Members” in which it was averred thus:-

*“It has been observed that certain Coop/H/B Society Ltd. are making substitution of members/transfer of shares whereas the policy of substitution is yet to be framed by the Chandigarh Administration. Till the policy is framed and conveyed to the individual societies, no substitution shall be made. Failure to comply with the directions the entire responsibility will lie with the Managing Committee of the respective society.”*

There was another letter dated 11.02.2004 by the Joint Registrar, Cooperative Societies, U.T., Chandigarh to the Society on the subject of “General Body Meeting – Action against defaulters” in which it was stated that *“In this connection you are directed vide this office Memo No. Coop/HB/K-38/6929-30 dated 18.12.2003 not to make any substitution till the finalization of substitution policy. However, you are advised to file the arbitration case before the competent authority rather to expel the members the case sent for substitution is rejected.”*

Against the letter/order dated 11.02.2004, the Society filed an appeal before the Registrar which was dismissed vide order dated 15.03.2005. The Society then filed revision petition bearing No. 62 of 2007 before the Court of Adviser to the Administrator, U.T., Chandigarh in order to challenge the orders dated 11.02.2004 and 15.03.2005. The said revision petition was filed on 20.10.2005 through Kamal Kant Sharma, Advocate for the Society. The said revision petition was allowed vide order dated 02.07.2008 and the matter was remanded back to the Registrar.

At this stage, it is submitted before us that the new Managing Committee had taken over which was reluctant in pursuing the said revision petition No. 62 of 2007 which was remanded back to the Registrar, therefore, allottees came forward to pursue the same. The Registrar dismissed the said appeal on 04.08.2009, filed through Kamal Kant Sharma. The said order was challenged again before the Adviser by way of revision petition No. 137 of 2009 only by three allottees i.e. Charanjit Singh, Shashi Bala and Darshana. Be that as it may, the revision petition was dismissed on 22.09.2009. Sudhir Mahajan, appellant in the first appeal was though not the revisionist before the Adviser but was an appellant before the Registrar, came in a writ petition

bearing CWP No. 17874 of 2009 titled as Sudhir Mahajan Vs. Union Territory of Chandigarh and Others which was also dismissed on 14.07.2010. It is stated that said the writ petition was filed through Harish Khanna, Advocate. In order to challenge the said order, intra Court appeal bearing LPA No. 1175 of 2010 was filed through K.K. Goel, Advocate titled as Sudhir Mahajan Vs. Union Territory, Chandigarh and Others which too was dismissed by this Court on 14.11.2011 with the following directions:-

- i) *That the claim of the petitioner-appellant for becoming substituted member is rejected;*
- ii) *That respondent No. 8 is permitted to proceed in accordance with 1991 Rules. Accordingly, it is has to first offer allotment to the old members if any dwelling unit/flat on account of surrender becomes available then a notice be issued by publishing the same in daily English newspaper like The Tribune and notice be also issued in a daily newspaper of Hindi language. The applications then shall be considered in accordance with Rules.*

The aforesaid decision of the Division Bench was challenged by Sudhir Mahajan by way of Special Leave Petition (C) No. 30746 of 2012 which after admission was converted into Civil Appeal No. 6672 of 2014 and was allowed by the Hon'ble apex Court on 22.07.2014 with the following observations:-

*“From the plain reading of the impugned judgment, we find that the Division Bench while noticing the argument advanced by the parties without giving any reason dispose of the appeal with the directions aforesaid. In view of the fact that judgment in*

*question lacks reasoning, we have no option but to set aside the impugned judgment and remit the case back to the Division Bench for its decision on merit. We ordered accordingly. Parties should co-operate the Court to ensure that the latter patent appeal is decided on an early date.*

*The appeal stands disposed of with aforesaid observations.*

*In view of the order passed above, no order is passed in the application for impleadment. Applicant may move such application before the High Court.”*

After the remand, while this appeal was pending in this Court, an application bearing CM No.1420-LPA of 2011 was filed by Vinod Kumar Sharma to become a party to the main appeal. The said application was allowed by this Court on 12.10.2015 with the following observations:-

*The application is on behalf of Shri Vinod Kumar Sharma seeking his impleadment as a respondent in the letters patent appeal for the reason that he is a bona fide member of the Society and has a right of allotment of a dwelling unit. It is the stand of the applicant that similar application remained undecided when the matter was decided by the Letters Patent Bench on 14.11.2011. In SLP, the applicant has sought impleadment, which matter stands remanded to this Court for fresh adjudication.*

*Since there is dispute regarding membership of a Cooperative Society and consequential allotment of a dwelling unit, we deem it appropriate to allow the present application and implead Shri Vinod Kumar Sharma as respondent No.9. The appellant shall be entitled to file any counter affidavit if the*

*appellant considers it necessary in the facts and circumstances of the case.*

*CM applications stand disposed of.”*

Pursuant to the aforesaid order, newly added respondent No.9- Vinod Kumar Sharma filed his counter affidavit which was taken on record on 03.04.2017 with the following order:-

*“Counter affidavit on behalf of respondent No. 9 and supporting annexures filed along with the application are taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.*

*CM stands disposed of”*

The newly added respondent No. 9 was an old member of the Society who failed to get the dwelling unit. According to him, had the substitution by the Managing Committee not done in clandestine manner and the old members were also given a notice for the said purpose, he would have perhaps been a successful allottee.

The learned senior counsel appearing on behalf of the appellant has vehemently argued that the impugned orders are patently illegal, erroneous and a result of the misreading of the documentary evidence on record. He has further submitted that the first letter was issued by the Administration on 18.12.2003 whereas proceedings had already taken place.

It is also submitted that the decision of the General Body is final in view of Section 23(1) of the Act as well as the By-Laws and the Society cannot challenge its own decision. It is further submitted that the defaulters have already been returned their amount which has been accepted without any demur and no other member has come forward to challenged the decision of

the Society except Vinod Kumar Sharma who can be adjusted even now by allotment of a flat which is available for him. It is also submitted that the appellants have already deposited the entire amount of the value of flat for the purpose of its construction as well as the cost of the land but so far possession of the flat has not been delivered to them and in this long period of litigation, the flats which were allotted to them have become dilapidated. Counsel for the appellants has also highlighted the hardship of the appellants who have deposited their hard earned money with the Society even after raising loan from the Bank and had been repaying the amount of loan with huge interest. Besides this, the appellants are living somewhere else by paying hefty rent.

Counsel appearing on behalf of the Society has vehemently opposed the contentions raised by the counsel for the appellants on the ground that it is a case where the appellants and also the then Managing Committee of the Society have played a calculated fraud upon the Society without looking into the interest of the Society as a whole because enrolling even one member who was not eligible, would have costed the Society dearly as not only the land but also the entire Society would have been cancelled/forfeited. In order to demonstrate the fraud having been played by the then Managing Committee in collusion with the present appellants, he has first referred to Clauses 21, 26 and 27 of the conditions of allotment wherein it is mentioned that the substitution of members has to be as per the policy/procedure with the prior approval of the Registrar, Cooperative Societies, U.T., Chandigarh and also subject to the fulfillment of the eligibility condition under the Scheme. He has then referred to the reply of the Society filed to the writ petition in which the details of all the 8 appellants have been given which is reproduced as under:-

**LPA No. 1175 of 2010 (O&M) and two other connected appeals**

| <i>Sr. No.</i> | <i>Substituted Member</i>             | <i>Discrepancies in the application</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <i>Apparent relation with the member of the last Executive Committee</i>               | <i>Name of member of the Executive Committee</i>                                                                     |
|----------------|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| 1              | <i>Darshana Devi 'A' Category</i>     | <i>Affidavit substituted on 04.05.2004</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                        |                                                                                                                      |
| 2              | <i>Charanjit Singh 'B' Category</i>   | <i>No affidavit given till date</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                        |                                                                                                                      |
| 3              | <i>Ranbir Datt 'A' Category</i>       | <ol style="list-style-type: none"> <li><i>1. Affidavit not as per requirement.</i></li> <li><i>2. Not specifically asked for 'A' category.</i></li> <li><i>3. Salary certificate and other documents of 2004 only</i></li> </ol>                                                                                                                                                                                                                                                                                                                                                            | <i>Senior Divisional</i>                                                               | <i>Harish Khanna, Agent, LIC</i>                                                                                     |
| 4              | <i>K.L. Gupta 'B' Category</i>        | <ol style="list-style-type: none"> <li><i>1. Affidavit not as per requirement.</i></li> <li><i>2. Employment certificate 19.12.2003.</i></li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>Branch Manager, LIC.</i>                                                            | <i>Harish Khanna, Agent, LIC</i>                                                                                     |
| 5              | <i>Sudhir K. Mahajan 'B' Category</i> | <ol style="list-style-type: none"> <li><i>1. Affidavit not as per requirement.</i></li> <li><i>2. Salary certificate dated 24.04.2003 showing his posting at Nangal.</i></li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                         | <i>LIC Officer</i>                                                                     | <i>Harish Khanna, Agent, LIC</i>                                                                                     |
| 6              | <i>Chaitanya Sharma 'B' Category</i>  | <i>1. Affidavit not as per requirement.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <i>LIC Officer</i>                                                                     | <i>Harish Khanna, Agent, LIC</i>                                                                                     |
| 7              | <i>Shashi Bala 'B' Category</i>       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Related to Last Executive Member</i>                                                | <i>Sh. R.K. Bansal, Cashier.</i>                                                                                     |
| 8              | <i>C.L. Mohal 'A' Category</i>        | <ol style="list-style-type: none"> <li><i>1. Affidavit not as per requirement.</i></li> <li><i>2. Other documents of 2004 only.</i></li> <li><i>3. Enrolment letter in his case is of 17.12.2003 whereas in all other cases the enrolment letter is of 18.12.2003.</i></li> <li><i>4. As per information supplied by the Public Information Officer, Punjab and Haryana High Court vide letter dated 11.10.2010 (copy annexed R-3) he owned a plot measuring 209 sq. mt. in Section 26, HUDA, Panchkula and as such was not even eligible to become a member of the society.</i></li> </ol> | <i>CJM Chandigarh in 2003 and one Executive Member was directly working under him.</i> | <i>Sh. Sukhdev Lal, Reader to CJM, Chandigarh, General Secretary of the last Executive Committee of the Society.</i> |

Thereafter, he has referred to an affidavit (Annexure R-2) of the appellant which was a mandatory requirement as per the eligibility first proviso to Clause 6 of the Scheme which read as follows:-

*“Affidavit*

*I Sudhir Kumar Mahajan S/o Sh. B.R. Mahajan hereby solemnly affirm and declare as under:*

- 1. That I have no residential plot/house in Chandigarh, Mohali, Pkl.*
- 2. That I am residing in Chandigarh for the last more than 3 years.*

Then he has referred to the Income Tax Return filed by the appellant at Nangal showing therein that he was a resident of Nangal at the relevant time whereas in the affidavit dated 16.12.2003 referred to hereinabove, he has shown that he has been residing in Chandigarh for the last more than three years. It is further submitted by him that the advertisement issued on 16.12.2003, inviting applications for substitution from the open market from the eligible candidates upto 22.12.2003 by giving only six days' time and that too on first come first serve basis was only a ploy to allot the flats/dwelling unit to the present appellants. It is submitted that on 16.12.2003, the advertisement was issued and on the same day all the appellants applied for the same and on the same date decision was taken by the Managing Committee for allotment of the flats/dwelling units. He has further referred to the information derived from the Public Information Officer, Punjab and Haryana High Court, Chandigarh regarding one of the appellants, namely, C.L. Mohal who happened to be the Additional District & Sessions Judge at Panipat at that time in which it is mentioned that he had one residential plot No. 805 measuring 209 sq. meter situated in Sector-26, HUDA, Panchkula which was purchased by him on 06.11.2002 because being a Judicial Officer he was liable to disclose the details of his property to the High Court. It is then submitted that the Deputy Commissioner, Brijender Singh, who was the Registrar, Cooperative Societies, U.T., Chandigarh at that time filed a short reply to the writ petition filed by the present appellant in the 1<sup>st</sup> appeal in which he had

averred that *“the petitioner did not swear affidavit on the above lines and hence allotment of flat to such a person might render the whole society ineligible for allotment of a plot. Copy of the affidavit filed by petitioner is attached as Annexure R-2.”* But as a counsel for the Society, it is submitted that the then Managing Committee did not look into the interest of the Society and sacrificed the same for the purposes of allotment of the flats to their favourites by throwing the advice of the Registrar, Cooperative Societies, U.T., Chandigarh to the winds that substitution should not be done until and unless substitution policy is framed and became operative. It is submitted that the policy came into force on 08.06.2006 in regard to *“Allotment of flats surrendered by members of various Cooperative House Building Societies available on account of expulsion/cancellation for default in payment etc. – Substitution thereof.”* The text of the said letter by the Registrar to all the Cooperative Societies of U.T., Chandigarh is as under:-

*“The matter has been examined and it has been decided that after allotment of land to the societies, some of the members withdrew, surrendered their shares and also some dwelling units have become available due to expulsion, cancellation for default in payment etc. and the said dwelling units are unallotted. For this purpose the substitution issue was discussed in detail and it was decided that the Cooperative House Building Societies may take their own substitution decisions in their General Bodies, provided such decisions are consistent with:-*

- 1. The provisions of the Cooperative act and rules framed thereunder.*

2. *Articles of associations /Bye-laws of the said Cooperative House Building Society;*

3. *The terms and conditions of allotment of land to the society.”*

It is submitted that the decision of the General Body of the Society has to be consistent with the terms and conditions of the allotment of the dwelling units of the Society and has referred to Clause 21 of the terms and condition of the allotment of the land which provides that substitution of members, as per prescribed policy/procedure with the prior approval of the Registrar, Cooperative Societies, U.T., Chandigarh and subject to fulfillment of eligibility criteria.

According to the counsel for the Society, none of the members were fulfilling the eligibility criteria as prescribed under Clause 6(1) of the Scheme.

In order to counter the legal issue raised by counsel for the appellant that the letter dated 18.12.2003 would not operate retrospectively in respect of the decision having been taken on 16.11.2003, it is submitted that even in the proceedings recorded by the General Body it has been decided that *“the General Body further decided that the Managing Committee would substitute the members through public notice if no decision/guidelines are intimated by the Registrar Cooperative Societies by 15.12.2004.”* It is submitted that there are three letters were issued on 18.12.2003, 06.01.2004 and 11.02.2004 informing not to substitute the members in the absence of the substitution policy which ultimately came into being on 08.06.2006.

Counsel appearing on behalf of respondent No. 9 has also supported the arguments raised by both the counsel appearing on behalf of the respondent-Society and the U.T., Chandigarh.

We have heard counsel for the parties and perused the record with their able assistance.

From the resume of the aforesaid facts and circumstances, it is very well clear that the land to the Society was allotted on 25.01.2002 with certain conditions in which condition No. 21 which we have already reproduced in the earlier part of the order, lays down the salient features in regard to substitution of members. It is provided therein that the substitution of members shall be as per the prescribed policy. Meaning thereby, the substitution could not have been done until and unless the policy was in place. Secondly, the said policy has the approval of the Registrar, Cooperative Societies, U.T., Chandigarh and thirdly, the substitution has to be made to the members who will fulfill the eligibility conditions provided under the Scheme, much less 1<sup>st</sup> proviso of Clause 6 of the Scheme.

We have threadbare perused the record and thereafter we have reached to this conclusion that the appellants to whom the allotment of the dwelling units have been made were not eligible and in that regard we would reiterate the details of all the 8 persons culled out from the reply of the Society filed to the writ petition. Besides this, from the proceedings, which were initiated vide letter dated 16.11.2003 by the Managing Committee, giving only six days' time for inviting applications and that too first come first serve basis to the fresh candidates to allot the dwelling unit and all the 8 appellants had applied on the same day and were allotted the dwelling units without looking into the fact that they were not eligible in terms of first proviso to Clause 6 of the Scheme speaks volumes about the act and conduct of the then Managing Committee which had for their personal gain or whatever, did not think even

for a minute about the ultimate interest of the entire Society in which there are 597 dwelling units.

In view of the aforesaid facts and circumstances, all the three appeals are hereby dismissed as they are found without any merit and it is ordered that claim of the appellants for becoming substituted member of the Society is hereby rejected. The Society shall proceed in accordance with the Scheme and offer the allotment of the available dwelling units to the old members at the first instance and then notice be issued by publishing the same in English and Hindi newspapers and the applications received shall then be considered in terms of provisions of law.

[ RAKESH KUMAR JAIN]  
JUDGE

March 06, 2020  
Ess Kay

[ ASHOK KUMAR VERMA]  
JUDGE

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