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

CWP-5593-2017

Date of decision: 09.09.2022

**MANAGING COMMITTEE OF THE CHANDIGARH CHIEF
AUDITOR PUNJAB COOPERATIVE EMPLOYEES COOPERATIVE
HOUSE BUILDING FIRST SOCIETY LIMITED AND ANOTHER**

...Petitioners

VERSUS

THE ADVISOR, U.T. CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ajay Mahajan, Advocate
for the petitioners.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Sukhwinder Singh Chatrath, Advocate
for respondent No.4.

JAISHREE THAKUR, J.

1. This is a petition that has been filed seeking issuance of a writ in the nature of certiorari for quashing revisional order dated 23.08.2016 (Annexure P-14) passed by respondent No.1, appellate order dated 21.08.2015 (Annexure P-13) passed by respondent No.2 and order dated 14.05.2014 (Annexure P-11) passed by respondent No.3 contending that the same have been passed without jurisdiction.

2. The instant writ petition has been filed by the Managing Committee of the Chandigarh Chief Auditor Punjab Cooperative Employees Cooperative House Building First Society Limited, Sector 50-B, Chandigarh

through its President Sh. Harbhajan Singh Bajwa-petitioner No.2. A resolution dated 02.10.2016 has been Annexed as Annexure P-1 authorizing the President to initiate proceedings. The said Society is a cooperative society duly registered under the Punjab Cooperative Societies Act, 1961 as applicable to U.T., Chandigarh. The Society was allotted land for construction of dwelling units/multi storeyed flats by the Chandigarh Administration and Chandigarh Housing Board. The Society got the flats constructed for its members and one Sh. Karam Singh, member of the Society was allotted flat No.1005, which he surrendered later on. The said surrendered flat was to be allotted by substituting a new person, who could be eligible to be a member of the Society as per the substitution policy dated 08.06.2006 (Annexure P-4).

3. As pleaded by the petitioners, respondent No.4-Swaran Soni was inducted as a member of the Society and the flat was allotted to her by way of substitution. Respondent No.4 was not eligible to be a member of the Society as per registered bye-laws of the Society and notification dated 28.05.1991 (Annexure P-5) as area of operation of the Society was Chandigarh and respondent No.4 was also not an employee/official of the Cooperative Audit Department and was rather a teacher in a private school at Batala, Punjab and was residing there. However, she was allowed to become member of the Society and obtain the flat for Rs.30,00,000/-, without prior approval of the Registrar, Cooperative Societies, U.T., Chandigarh. Since a mistake was committed by the previous Managing Committee by wrongly substituting the flat to respondent No.4, a complaint was made regarding void allotment of flat and the said complaint was investigated into. The Inquiry Officer so appointed closed the complaint on

the ground that proper remedy is available under Section 55 of the Punjab Cooperative Societies Act, 1961. Audit Department vide its audit report for the period 01.04.2010 to 31.03.2011 found that the allotment was contrary to the instructions of General Body Meeting of the Society and also that the price of the flat had been reduced from Rs.60,00,000/- to Rs.30,00,000/- without justification despite the fact that there were 38 other persons ready to pay the price of the flat at Rs.60,00,000/-. The Society cancelled the membership and allotment of the flat to respondent No.4, which led to her filing a petition under Section 55 (1) (b) of the Punjab Cooperative Societies Act, 1961, which was heard by respondent No.3. Respondent No.3 while exercising the power of Registrar, Cooperative Societies, U.T., Chandigarh heard the matter and allowed the petition vide order dated 14.05.2014 (Annexure P-11). Thereafter, an appeal was preferred by the petitioners against the order of respondent No.3, which was dismissed by the Appellate Authority i.e. respondent No.2 vide order dated 21.08.2015 (Annexure P-13) and the Revisional Authority too i.e. respondent No.1, dismissed the revision petition filed by the petitioners vide order dated 23.08.2016 (Annexure P-14). Aggrieved against the impugned orders, the instant writ petition has been filed.

4. Learned counsel appearing on behalf of the petitioners raised a preliminary contention that a person can be admitted as a member of the Society only if he is a resident of U.T., Chandigarh for atleast two years, whereas respondent No.4 was working as a teacher in private school at Batala, Punjab and residing there and, therefore, could not have been admitted as a member of the Society and thus, the substitution and allotment of the flat to her was void. It is argued that the cost of the flat was fixed to be

Rs.60,00,000/- but the said flat was allotted to respondent No.4 only for Rs.30,00,000/- and, therefore, a fraud had been played upon the Society. Moreover, respondent No.4 is not an employee of the Cooperative Audit Department of Punjab, nor posted at Chandigarh.

5. Learned Senior Advocate appearing on behalf of respondent No.4 would on the other hand submit that the matter has been deliberated by three authorities, who have rightly held that the cancellation of membership and allotment of flat was not sustainable. It is also submitted that respondent No.4 had no role to play in the fixing of price of the flat and the same was fixed by the General Body and Managing Committee of the petitioner-Society as per the guidelines, policy and bye-laws of the Society. Respondent No.4 had applied for the allotment of the flat pursuant to an advertisement published in the local newspapers and the flat in question was allotted to her by following due procedure as laid down under the bye-laws of the petitioner-Society and the price of the flat in fact had been fixed in a meeting held on 01.11.2006 and then on 08.11.2006 under the Chairmanship of Registrar, Cooperative Societies, U.T., Chandigarh. In the said meetings, it had been decided that the cost of the flats to be allotted to the general public is to be fixed judiciously by keeping in view the land cost, construction cost and rate of interest thereon after taking approval of the Registrar, Cooperative Societies, U.T., Chandigarh. The resolution of the General Body Meeting dated 28.03.2007 held under the Chairmanship of petitioner No.2 himself had re-fixed the price of the flat at Rs.30,00,000/- and, therefore, respondent No.4 cannot be held liable for any alleged loss to the petitioner-Society.

6. I have heard learned counsel for the parties and have also perused the pleadings of the case.

7. It is an admitted fact that respondent No.4 was allotted a flat, which had been surrendered by a previous member of the petitioner-Society. The price of the flat had been fixed by the General Body itself in its resolution dated 20.06.2009. It is interesting to note that petitioner No.2 was very much a party to the said resolution which had taken a conscious decision to fix Rs.30,00,000/- as price of the flat and, therefore, there can be no quarrel with the price fixed at this stage. It is also worthwhile to note that it is the General Body that had decided to dispose of flat No.1005 vide its resolution dated 21.02.2009, for which the Managing Committee was authorized to do so after adopting the proper procedure. Even the inquiry report notices that the Society had adopted the proper procedure as the decision had been taken by the General Body and, therefore, the Managing Committee of the Society cannot overrule the decision taken by the General Body as in the Cooperative Societies, General Body is the supreme and final authority to take decisions. The substitution policy of the Chandigarh Administration dated 08.06.2006 (Annexure P-4) empowered General Body to take decisions regarding substitutions and the General Body in its decision had allowed the substitution of respondent No.4 as a member of the Society. It is also interesting to note that in the General Body Meeting held on 20.06.2009, the agenda to dispose of flat No.1005 in the Society had been approved at a consolidated price of Rs.30,00,000/- by inviting applications by public notice in two local newspapers and, thereafter, the said flat was duly allotted to respondent No.4. Therefore, the impugned orders as passed have taken into account the fact that substitution of respondent No.4 has

been done in terms of the substitution policy of the Chandigarh Administration and it is the General Body of the petitioner-Society that has approved the price fixation of the flat and allotment of the same.

8. Consequently, finding no infirmity in the proceedings and the impugned orders, the instant writ petition is hereby dismissed, being devoid of any merit.

9. Since the instant writ petition stands dismissed, conveyance deed, if not executed, be executed in the name of respondent No.4 by the Competent Authority.

09.09.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No