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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 20th July, 2022

Pronounced on: 1st August, 2022

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W.P. (C) 3971/2011

DR.SUMAN PUJARI

..... Petitioner

Through: Dr. Anurag Kr. Agarwal, Mr.
Ram Gupta and Mr. Prateek
Agarwal, Advocates.

versus

**THE REGISTRAR CO-OPERATIVE SOCIETIES,
GOVT OF NCT OF DELHI & ORS.** Respondents

Through: Ms. Ajay Arora, Mr. Kapil
Datta, Advocates along with
Mr. Suyash Rastogi,
Advocates.

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W.P.(C) 1647/2015

RAJESH SHARMA

..... Petitioner

Through: Ms. Amita Gupta, Ms. Pinki
Aggarwal and Mr. Ankit
Kumar, Advocates.

versus

**THE REGISTRAR CO-OPERATIVE SOCIETIES,
GOVT OF NCT OF DELHI & ORS.** Respondents

Through: Dr. Anurag Kr. Agarwal, Mr.
Ram Gupta and Mr. Prateek
Agarwal, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE AMIT SHARMA



JUDGMENT

AMIT SHARMA J.

1. The present writ petitions under Articles 226 read with Article 227 read with Article 14 read with Article 300A of the Constitution of India involves a dispute with respect to an allotment of Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd. (respondent no.2 in both the petitions). With the consent of learned counsel for the parties, the said writ petitions were taken up for final hearing and are being disposed of vide this common judgment.

2. In order to appreciate the issue involved in the present matter, following facts, spanning nearly three decades, are relevant for deciding the present subject dispute involved in the aforesaid writ petitions. The following facts are being culled out from the Counter affidavit filed by respondent No. 4 (Dr. Suman Pujari) in **W.P. (C) No. 1647/2015**;-

- (i) That on 21.01.1990, respondent no. 4 applied for membership of respondent no.2 society and deposited Rs.110/- towards admission fee and share money with application form and Rs.75,000/- towards cost of construction and land money.
- (ii) Thereafter, on 09.09.1990, respondent no.2 society conferred membership no. 143 to respondent no.4 against resignation of Mr. R.K. Kediya.
- (iii) Further, on 14.09.1990, respondent no.2 society requested respondent no.4 to sign the membership register and also informed that the printed share certificate would be issued to her shortly.



- (iv) That on 01.10.1991, the Joint Secretary of respondent no.2 society issued a letter informing respondent no.4 that an amount of Rs.75,000/- received from her by the previous managing committee stands deposited as 'non members' against which the society does not give her any assurance for providing membership.
- (v) Respondent No.4 preferred an arbitration U/s.60 of Delhi Cooperative Societies Act, 1972 praying for declaration that she is a member of respondent no.2 society with membership no.143 and for direction to respondent no.2 society to allot a residential flat to her.
- (vi) Consequently, on 14.06.1995, The Award was passed by Sh. S.C. Gupta in arbitration case no.109/JRI/GH/1993-94 to the effect that respondent no.4 was never admitted as a member of respondent no.2 society and the amount of Rs.75,000/- + 110/- was accepted by the society from her as 'non-members'. The membership of respondent no.4 was never accepted by the managing committee of the society and it is alleged that **the then President Sh. Sant Lal Gupta**, deceived respondent no.4 by communicating the decision which was never taken by the managing committee of the society and the action of the then President was uncalled for and malicious. As the record of the society established the receipt of amount of Rs,75,110/-, respondent no.2 society was directed to pay the said amount at an interest of 12% p.a. w.e.f. the date it was received.
- (vii) Thereafter, on 11.03.1996, the aforesaid award dated 14.06.1995 was challenged in appeal before Delhi Cooperative Tribunal and the Delhi



Cooperative Tribunal remanded the case for redetermination by another arbitrator.

- (viii) That on 17.07.1998, the matter was reconsidered and decided by Sh. B.R. Rawal, the Sole Arbitrator in arbitration case no.109/JR-I/611/1993-94/1166. It was held that the letter dated 14.09.1990 addressed by the President of respondent no.2 society to respondent no.4 categorically informed respondent no.4 about confirmation of her membership at serial **no.143** and she was enrolled as a member of the society. The resolution dated 09.09.1990 bears the signature of the President of the then Managing Committee along with seven other members. **The ledger bearing page no.25** in respect of 'non-member' account was considered by the Ld. Arbitrator and it was observed that in the resolution dated 09.09.1990 it was alleged to be decided that the name of respondent no.4 be deleted from the membership register and her amount be returned simultaneously. In the said resolution, it was decided to enrol Sh. Hari Shankar Prasad Lakhotia, Vishnu Bhagwan Agarwal, Sudha Aggarwal, Arun Kumar Sharma, Poonam Aggarwal, Bajrang Lal Aggarwal, Sohan Lal Goel, and Sh. S.C. Gupta. The scrutiny of this account ledger revealed that out of eight members whose enrolment was approved by the managing committee in its resolution dated 09.09.1990, five members i.e. Sh. Hari Shankar Prasad Lakhotia, Sudha Aggarwal, Arun Kumar Sharma, Poonam Aggarwal, Sohan Lal Goel, belonged to the same category as Smt. Suman Pujari i.e. all were 'non-members' of the society and **all these five members are junior to respondent no.4** as far as deposit of non-membership fee is concerned. As per the Tribunal, it was not understood what was found wrong in the membership of respondent no.4 as respondent no.2



society enrolled five members on the same date who were junior to her. It was observed that the payment was made by respondent no.4 towards share money, membership fee and cost of construction and was accepted by respondent no.2 society and the said money was still lying with the respondent no.2 society. Respondent no.4 was found to be a bona fide member of respondent no.2 society and was held to be entitled to a flat.

- (ix) Thereafter, on 28.12.1998, respondent no.2 society preferred an appeal against the award dated 17.07.1998 before the Delhi Cooperative Tribunal which affirmed the award vide order dated 28.12.1998. It was observed that the Arbitrator rightly concluded that five people junior to respondent no.4 were enrolled by the society as members then why not respondent no.4. The plea of respondent no.2 society that the share money/ membership fee was taken as loan from 'non-members' was not found to be substantiated by any documentary proof.
- (x) Subsequently, on 30.07.2002, The aforesaid award dated 17.07.1998 and the order of the Delhi Cooperative Tribunal dated 28.12.1998 was further challenged by respondent no.2 society in C.W.P. no.7386/ 1999 before this Court which was finally disposed of vide order dated 30.07.2002. A division bench of the Court observed as under: -

"We have examined the enrolment register and have found that it contained R-2's name with all particular at serial no. 143. It stands scored of in the register now. There is also no dispute that R-2 had paid the share money and construction cost of Rs. 75,000/- to the society. We fail to appreciate how R-2's particulars could have been recorded in



the register in the absence of any application made by her, prescribed or otherwise. It is also not understandable why share money and part-construction cost should have been accepted from her. Mr. Chandra's explanation that she fell in the non-membership category wherefrom society was permitted to raise funds under the byelaws is neither here nor there. Even if this version was accepted, there was no reason for the society to accept her share money/ membership fee. The judgment cited by Mr. Chandra are also not relevant to the point in issue. No explanation is forth coming from the society as to how it had enrolled new members and struck off R-2 's name. It is not the case of the society that it had expelled or removed this respondent or had cancelled her membership by any resolution and on some reasons. In the circumstances, it had to be presumed that R-2 was made a member of the society and then her name was deleted perhaps to accommodate newly enrolled at her cost by the new managing committee.

- (xi) Thereafter, on 19.12.2002, respondent no.4 filed an application for execution of award dated 17.07.1998. The society was directed by Assistant Registrar (NW-II) to implement the said award and submit a compliance report.
- (xii) Subsequently, on 12.04.2005, the aforesaid order in execution was challenged by respondent no.2 society before Financial Commissioner which was upheld vide order dated 12.04.2005. the operative part of the said order reads as under: -

"That is true that order passed by the Hon'ble High Court of Delhi dated 30.07.2002 vide which the Petition of the Petitioner society was dismissed has



not been challenged. Hence, the logical course for the society should have been to hand over possession of the flat to respondent no.1 which they have not done so far on the plea that the records of the society were not handed over to them by the former managing committee. This is a lame excuse. Once the award is final what for is the record of the society needed? I get an impression that the society is unnecessarily harassing respondent no. 1 by not implementing the award. "

- (xiii) That on 27.10.2006, in compliance of execution of award, respondent no.2 society wrote a letter intimating that respondent no.4 has been enrolled as member of the society vide MS No.161 and nothing remains to be done on the part of the society.
- (xiv) Respondent no.4 filed a W.P.(C) No.2584/2010 on various grounds *inter-alia* stating that her membership no. was relegated to the position at serial no. **161** despite her membership at serial no. **143** and she was being discriminated against and members junior to her have been allotted flats. She further prayed for implementation of award dated 17.07.1998.
- (xv) Consequently, on 21.09.2010, this Court after hearing respondent no.2 and interveners namely Sh. Sant Lal Gupta and Sh. Tara Chand Dingliwal vide order dated 21.09.2010 directed Registrar of Cooperative Societies (respondent no.1) to carry out an exercise to determine the eligibility of **three other members** other than respondent no.4 **whose eligibility was not in doubt** i.e. Sant Lal Gupta, Tara Chand Dingliwal and Nishi Dingliwal and further directed the Registrar of Cooperative Societies to draw up a seniority list and forward the



names to DDA for holding draw of lots and also ordered that **none of the three flats would be allotted till this exercise is complete.**

- (xvi) In compliance of the said order, the seniority was determined as under: -

Sh. T.C. Dingliwal MS No.01, seniority-1
Sh. Sant Lai Gupta, MS No. 12, seniority-2
Mrs. Nishi Dingliwal, MS No. 120, seniority-3
Ms. Suman Pujari, MS No.161, seniority-4

- (xvii) That aggrieved with the aforesaid seniority as determined by the Registrar Co-operative Societies, Govt. of NCT of Delhi, respondent no. 4 preferred W.P.(C) No. 3971/2011, (one of the subject writ petition) vide order dated 01.06.2011, a Division Bench of this court ordered as follows:

*"The Registrar has carried out an exercise to verify the eligibility of membership of three (3) persons, **who were senior to the Petitioner.** There were three (3) flats available and three (3) persons have been found to be eligible. In so far as, the Petitioner's grievance qua determination of eligibility of the said three (3) members qua the three (3) flats in issue is concerned, she should have to seek recourse to arbitration U/s. 70 of the Delhi Cooperative Societies Act, 2003. However, even if it is assumed that the said three (3) members senior to the petitioner, are eligible for the said three (3) flats, **our other direction contained in the order dated 21.09.2010 would still remain unaddressed as there has been no determination by the Registrar of the Petitioner's claim to a flat based on her seniority.** As per the Petitioner, the Petitioner is stated to be at serial no. 143. **The result would be the junior-most person who has been allotted the flat would have***



to vacate for the Petitioner to occupy the flat. This exercise has not been completed by the Registrar, though we had observed so in the aforesaid order.

- (xviii) That on 01.10.2012, respondent no.4 filed a claim U/S.70 of Delhi Cooperative Societies Act, 2003 for determination of eligibility as against of eligibility of (i) Tarachand Dingliwala (ii) Ms. Nishi Aggarwala and (iii) Sh. Sant Lal Gupta. That vide order dt. 1st Oct.,2012, **all the said three persons were held to be senior to respondent no.4.** The Zonal Assistant Registrar was, however, directed to call for records of junior members in order to decide the case of respondent no.4 for allotment of a flat in the society in preference to other members who are junior to her.
- (xix) That on 13.02.2013, against the said order, the respondent No.4 preferred an appeal before Delhi Cooperative Tribunal. However, the same was withdrawn vide order dt. 13th Feb, 2013.
- (xx) Subsequently, on 10.12.2014, in compliance of order dated 01.06.2011 and 01.08.2014 passed by this Court, the Registrar of Cooperative Societies passed an order dated 10.12.2014, the relevant part of which is reproduced herein as under: -

"20. Whereas the membership of Dr. Suman Pujari was found to be bonafide vide award dated 17.07.1998 and the findings thereof remained undisturbed despite challenge to the same by the society at various forms as noted hereinabove."

"21. Whereas Dr. Suman Pujari who was initially assigned membership no. 143 and has been held a bonafide member since her acquisition of the said membership; should have been assigned her



*original seniority on account of her regaining the membership through a judicial order and the seniority of the other members below her should have been adjusted accordingly **and the membership of Dr. Suman Pujari is thus ordered to be placed SI No. 143.**"*

*"23. Whereas on account of placing Dr. Suman Pujari at membership no. 143 instead of her presently stated position at membership no. 161, the members holding position presently at no. 143 to 160 would be read as placed at membership no. 144 to 161 and it is so ordered accordingly. **Resultantly, Sh. Deepak Kumar mentioned at membership no. 160 earlier gets relegated to membership no.161.** Whereas the records reveal that Sh. Deepak Kumar was enrolled as member on 02.08.1998 against the vacancy created on account of resignation by Sh. Vinod Kr. Bhimrajka on 28.06.1998 approved by Managing Committee on 01.07.1998 and was further recommended for draw of lots on 08.12.1998."*

"24. Whereas the only membership recorded after grant of membership to Shri Deepak Kumar at S.No. 160 was that of Dr. Suman Pujari at S.No. 161 bearing remarks that the said share certificate was issued as per RCS letter No. F.47/330/Coop./CGHS/NW/5164. No further grant of membership has been reported thereafter thus making Shri Deepak Kumar membership no. 161 (earlier membership no. 160) to be the junior-most member. "

*"25. Whereas the name of Dr. Suman Pujari was not recommended forwarded by the then Managing Committee, **overlooking the award dated 17.07.98***



holding her to be a bonafide member and entitled to a flat."

"26. Therefore, the draw of lot held on 30.12.1998 to the extent of allotment of Flat No. B-29 to Shri Deepak Kumar being in violation of the provisions of law is void to that extent. Hence, I hold that the aforesaid Shri Deepak Kumar stands evicted from the same. He is directed to handover the physical possession of the said flat to the Administrator within the period of 06 weeks from the receipt of this order. The said flat, along with other remaining 3 flats, shall now be available for limited draw of lots to the 4 members namely Sh. T.C. Dingliwal, Sh. Sant Lai Gupta, Mrs. Nishi Dingliwal and Dr. Suman Pujari".

- (xxi) Consequently, on 16.12.2014, The aforesaid order passed by RCS was considered by the Hon'ble High Court in W.P.(C) No.3971/2011 which made the following observations

".....It is apparent from the combined reading of the previous orders of this Court dated 21.09.2010 (in W.P.(C)2584/2010, 01.06.2011 (in W.P.(C)3971/2011) and the previous orders made in the writ proceedings- which state that the rights of the present petitioner Dr. Suman Pujari have crystallized to an entitlement to the flat which is to be vacated by one Deepak Kumar, who was wrongly given an allotment...."

"The proposal mooted by the order dated 10.12.2014 is in flagrant violation of the above order of the Court; the Court had on 01.06.2011 specifically directed that the flat to be vacated by Deepak Kumar be made available to the petitioner within a maximum period of two months. Consequently, there could have been no room for any doubt at all, and the proposal now made by the



*ROCS would now set the clock back, as it were, to the vagaries of the chance as to the entitlement of the petitioner itself. Having regard to these circumstances, learned senior counsel submits that **an appropriate affidavit would be filed ensuring that the fiat B-29 - presently said to be occupied by the transferee of Deepak Kumar, would be re-allotted after obtaining the approval of DDA in that regard, and after eviction, the petitioner would be handed over the said fiat.** The affidavit shall be filled within a week and an order correcting the order dated 10.12.2014 (of the Registrar, Cooperative Societies) shall be duly made within two weeks from today with copy to the petitioner. "*

- (xxii) Subsequently, on 23.12.2014, in compliance of the aforesaid order dt. 16.12.2014, the Registrar of Cooperative Societies amended para 26 of its order dt.10.12.2014 and issued a corrigendum to the following effect:-

*"Therefore, the draw of lot held on 30.12.1998 to the extent of allotment of flat No.B-29 to Shri Deepak Kumar being in violation of the provisions of law is void to that extent. Hence, I hold that the aforesaid Shri Deepak Kumar or his transferee or any occupant of flat No.B-29 in whatsoever manner and capacity stands **disentitled to hold the said flat No.29.** Consequently, **Shri Deepak Kumar or his transferee or any occupant of flat No.B-29 in whatsoever manner and capacity stands evicted from the flat No.B-29.** Accordingly, Shri Deepak Kumar or his transferee or any occupant in whatsoever manner and capacity who is in possession of the said flat No.B-29 is hereby directed to handover the vacant physical possession of said flat to the Administrator of the Society within a period of 06 weeks from the*



receipt of order dated 10th December, 2014. The Administrator is further directed to handover the possession of the said flat after getting it vacated, to the petitioner Dr. Suman Pujari in terms of the orders passed by the Hon 'ble High Court. It is further ordered that the Delhi Development Authority would amend its records accordingly. I order accordingly."

(xxiii) That on 09.02.2015, this Court after taking into consideration the aforesaid corrigendum passed by the Registrar of Cooperative Societies, listed the matter for a report on consequential steps pursuant to the previous orders of this Court.

(xxiv) *Thereafter, on 23.02.2015, Rajesh Sharma (petitioner in the present writ petition) files the present W.P.(C) 1647/2015. The following interim order from another Division Bench is passed:-*

"It is directed that there shall be a stay of the effect and operation of the order dated 10th December, 2014 as well as a corrigendum thereto dated 23th December, 2014 passed by the respondent No.1"

(xxv) Thereafter, on 23.03.2015, The aforesaid order was noticed by another Division Bench Court in W.P.(C) 3971/2011 (filed by the respondent No.4) which passed the following order:- *"Today it was pointed out that one Mr. Rajesh Sharma's petition- W.P.(C)No. 1647/2015 – was entertained and order was made on 23.02.2015 issuing notice. The next date of hearing in that writ petition is 20.04.2015. The order of 10.12.2014 and 23.12.2014 (made in compliance with this Court's order) has been stayed....."*



"It would appear that the Bench which made the order and stayed the said orders of 10.12.2014 and 23.12.2014 (which was in turn made in compliance of this Court's directions) was not made aware of these developments and curiously also kept in the dark that the matters were assigned to this Bench on account of order of recusal by the very Bench which entertained W.P.(C)1647/2015, and issued the above order. This has resulted prima facie in conflicting orders, which needs to be resolved properly. In the circumstances, the present writ petition is directed to be placed before Hon'ble the Chief Justice for appropriate orders on 8th April, 2015."

(xxvi) Subsequently, on 24.05.2016, This Court in W.P.(C) 3971/2011 (filed by respondent No.4 i.e. Dr. Suman Pujari) and W.P.(C) 1647/2015 (filed by Rajesh Sharma) passed the following order:-

- 1. During the course of the proceedings, Mr. Rajesh Sharma (the petitioner in W.P.(C) No. 1647/2015) had contended that Dr. Suman Pujari (petitioner in W.P. (C) No. 3971/2011), was not entitled to the property bearing address Flat no. B-29, Prem Kutir Co operative Group Housing Society Ltd. Learned counsel relied upon the previous order of the Court dated 16.12.2014 and submitted that the question of settling inter se right of the parties would arise only after due determination by the Registrar in appropriate proceedings. Learned counsel sought to urge that Dr. Suman Pujari was not even entitled to claim membership since she was allottee in respect of another flat and that there are documents to support this contention.***
- 2. This Court notices that the previous orders in W.P.(C)No. 3971/2011-notably the orders dated***



21.09.2010, 01.06.2011 and 01.08.2014 had dealt with the controversy. Dr. Suman Pujari was continuously excluded from consideration in the draw-of-lots held by the society for allotment of flats. She became member of the Society on 14.09.1990 and was a senior member. She approached the Registrar complaining wrongful exclusion. The Society disputed her membership which led to the matter being referred to arbitration. In Arbitration proceedings, the final decision was in favour of Dr. Suman Pujari; she was held to be a member from the Society's inception i.e. in 1990, the date she claimed. The order of the Arbitrator was given on 17.07.1998. The Society's writ petition against this order was unsuccessful. **In the meanwhile, one Deepak Kumar was enrolled as a member on 06.08.1998.** The subject flat B-29, Prem Kutir Co operative Group Housing Society Ltd. was given to him by the society on 08.12.1998. **It is quite evident from this narrative itself that despite suffering an adverse order - which had the effect of deciding Dr. Suman Pujari's membership of the society-the latter flouted the decision and granted membership to one Deepak Kumar. These being the circumstances, Deepak Kumar's rights ought to be considered subject to the entitlement of Dr. Suman Pujari.**

3. The previous orders of this Court in W.P.(C) No. 3971/2011 clearly bring out the above facts. In these circumstances, the question of Sh. Rajesh Sharma, the subsequent transferee - claiming title through Deepak Kumar, possessing better and superior rights than Dr. Suman Pujari does not arise. The order of



01.06.2011 clearly directed the society to ensure that the allotment of the junior most member had to make way to accommodate Dr. Suman Pujari. All subsequent orders ought to give effect to this basic determination.

- 4. It is therefore clear that Dr. Suman Pujari is entitled to a flat - at least the one allotted to Deepak Kumar which was subsequently transferred by him in favour of Rajesh Kumar. The latter is clearly junior to Dr. Suman Pujari.*
- 5. This Court is not inclined to consider the allegations against Dr. Suman Pujari, relating to allotment of another house or her alleged ineligibility since there is no determination to that effect, in accordance with law of that especially when there is final determination of her membership and seniority in earlier proceedings. The documents placed now on the record have not been subjected to any scrutiny or proof and **it is not shown that Dr. Suman Pujari was in fact allotted the flat or had applied for a flat in the Society other than the one she claims in the Society.** This Court notices that in the course of these proceedings it was represented that the Municipal Corporation of Delhi was approached for sanction of additional flat in the light of the increased FAR. Learned counsel for the Society (which has now been taken over and is being managed by an Administrator) submits that the application is likely to be considered and an order shall be made in the near future.*
- 6. In the light of the above discussion, learned counsel for the parties - **on instructions from them (both Mr. Rajesh Sharma and Dr.***



Suman Pujari who are present in Court) agree that Dr. Suman Pujari shall be entitled to flat B-29, Prem Kutir Co-operative Group Housing Society Ltd. in view of the previous orders of the Court and also that she had paid full amount required by her from the Society.

- 7. Secondly, it is also agreed that cost of construction of the additional flat would be borne from the amounts collected by the Society from Dr. Suman Pujari. In case of any shortfall in construction cost, the same shall be borne by Mr. Rajesh Sharma.*
- 8. List the matter on 31.05.2016 to record the statement of the Society as to whether any other claim by any other individual with respect a flat or membership of flat in the Society, senior to Dr. Suman Pujari is pending.*
- 9. The Society shall also indicate the exact amount lying in its account towards the payment made by Dr. Suman Pujari."*

(xxvii) Thereafter, on 31.05.2016, a Division Bench of the Court modified para - 7 of the order dt.24.05.2016 in the following manner:-

"(1) Para 7 of the order of 24.05.2016 is hereby modified. The society states that money deposited by Dr. Suman Pujari has been utilized for the welfare of its members. In view of this the Society shall recover the amount actually paid by Dr. Suman Pujari from its members without any interest. The balance cost of construction shall be at the expenses of Mr. Rajesh Sharma.

(2) The MCD is hereby directed to speed up the process and decide expeditiously, the application



for sanction of additional flat in Prem Kutir Co-operative Group Housing Society Ltd at its earliest and in any case within a month from today. Parties are directed to cooperate with the Administrator in this regard.

(3) Additional flat to be hereafter constructed in accordance with the directions of the court shall be in no way different and quality shall be identical to the other flats especially B-29, Prem Kutir Co-operative Group Housing Society Ltd.

(4) It is open to Dr. Suman Pujari to make suggestions with respect to the quality of construction to the Administrator who shall take notice of the same. "

(xxviii) On 28.11.2016, a Division Bench of this Court passed the following order in W.P.(C) No.3971/2011:-

"In these circumstances, Mr. Sanjay Arora, Planning Assistant will visit the office of the Registrar, Cooperative Societies on 8th December, 2016 at 3.30 p.m., when the administrator and the concerned officers would be present and they shall have necessary discussion. Based upon the decision taken, the revised sanctioned plan will be submitted. The petitioner Suman Pujari will be also present at that time. "

(xxix) On 26.04.2017, in W.P.(C) No.3971/2011 a Division Bench of this Court passed the following order:-

"5. Having regard to the peculiar facts and circumstances of the present case, it is deemed



appropriate to direct the Chief Town Planner, NrDMC to extend necessary assistance to the respondents for purpose of sanctioning the revised layout plans to enable the respondent No.2 to build as many dwelling units in one tower, as may be permissible in law, given the additional FAR. The Administrator of the respondent No.2/Society shall take immediate steps to prepare fresh layout plans in consultation with an Architect and submit it to the NrDMC within two weeks from today. The said plans shall be examined by the Chief Town Planner who shall give necessary guidance for expediting the entire matter, so that a new tower of dwelling units can be raised in the open space available in the Society complex, subject to the additional FAR available as per the new norms."

(xxx) On 09.10.2017, respondent no.4 preferred an SLP against the aforesaid order, dated 26.04.2017 passed by this Court which was dismissed as withdrawn.

4. From the above factual narration, it is apparent that the issue involved in the present writ petitions had already been resolved by a Division Bench of this Court vide order dated 24.05.2016, in the presence of petitioner as well as respondent no.4, who were present in person before this Court at the time of passing of the aforesaid order. However, this Court, on 28.03.2019, noted that the presence of Mr. Rajat Joseph, Advocate, in the order dated 24.05.2016, was marked on behalf of both the petitioner and respondent no.4, even though the interest of the two were not common. This Court vide order dated 28.03.2019 directed respondent no.4 to file a counter affidavit. The said counter affidavit was filed by respondent no.4,



wherein the aforesaid factual matrix had been narrated.

5. A rejoinder affidavit on behalf of the petitioner, Mr. Rajesh Sharma, to the counter affidavit by respondent no.4 was filed and it is pertinent to note that in the rejoinder affidavit, there is no plea taken by him that the order dated 24.05.2016 was passed without his presence or without his instructions.

6. We have heard the learned counsels appearing for the parties in both the aforesaid writ petitions. Learned counsel appearing on behalf of the petitioner, Mr. Rajesh Sharma, in W.P.(C) 1647/2015, has argued on the lines of his petition and rejoinder affidavit filed on his behalf to the counter affidavit filed by respondent no.4 i.e. Dr. Suman Pujari. It has been submitted by the learned counsel for the petitioner that respondent no.4 has concealed the material facts from this Court and that the entire litigation at the instance of Dr. Suman Pujari was behind the back of the petitioner, Mr. Rajesh Sharma. On a specific query by this Court, with respect to the order dated 24.05.2016, the counsel for the petitioner stated that the said order stood modified in view of an order dated 26.04.2017 passed by this Court. It was further submitted that the order dated 24.05.2016 could not be relied upon by respondent no.4, in view of the fact that an SLP filed by respondent no.4 against the order dated 26.04.2017 was dismissed as withdrawn.

7. The relevant portion of order dated 26.04.2017 in W.P.(C) No.3971/2011 passed by this Court is as under:-

"5. Having regard to the peculiar facts and circumstances of the present case, it is deemed



appropriate to direct the Chief Town Planner, NrDMC to extend necessary assistance to the respondents for purpose of sanctioning the revised layout plans to enable the respondent No.2 to build as many dwelling units in one tower, as may be permissible in law, given the additional FAR. The Administrator of respondent No.2/Society shall take immediate steps to prepare fresh layout plans in consultation with an Architect and submit it to the NrDMC within two weeks from today. The said plans shall be examined by the Chief Town Planner who shall give necessary guidance for expediting the entire matter, so that a new tower of dwelling units can be raised in the open space available in the Society complex, subject to the additional FAR available as per the new norms. "

8. After perusing the aforesaid order, we are unable to appreciate the submission of learned counsel for the petitioner, to the extent that the said order modifies the order dated 24.05.2016 in any manner. Perusal of orders passed by this Court from time to time, in the aforesaid writ petitions and more specifically in paras 4 and 6 of the order dated 24.05.2016, crystalises the position that respondent no.4 is entitled to flat allotted to Mr. Deepak Kumar, who had subsequently transferred the said flat to the present petitioner in W.P.(C) 1647/2015 i.e. Mr. Rajesh Sharma. The relevant paras of the said order 24.05.2016 are:-

"4. It is therefore clear that Dr. SumanPujari is entitled to a flat – at least the one allotted to Deepak Kumar which was subsequently transferred by him in favour of Rajesh Kumar. The latter is clearly junior to Dr. Suman Pujari.



6. In the light of the above discussion, learned counsel for the parties - on instructions from them (both Mr. Rajesh Sharma and Dr. Suman Pujari who are present in Court) agree that Dr. Suman Pujari shall be entitled to flat B-29, Prem Kutir Co-operative Group Housing Society Ltd. in view of the previous orders of the Court and also that she had paid full amount required by her from the Society.”

The aforesaid order was a culmination of series of orders passed by this Court as well as respondent no.1, Delhi Cooperative Tribunal and Arbitrator.

9. It is further observed that the Registrar of Cooperative Societies (respondent no.1) vide order 10.12.2014, categorically held that the draw of lot held on 30.12.1998, whereby Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd., was allotted to Sh. Deepak Kumar was void. The Registrar of Cooperative Societies (respondent no.1) was of the view that despite there being an award dated 17.07.1998, holding respondent no.4 i.e. Dr. Suman Pujari to be *bona fide* member and entitled to a flat, the then Managing Committee overlooking the award dated 17.07.1998 went ahead and allotted the said flat to Sh. Deepak Kumar on 30.12.1998. The draw of lot held on 30.12.1998 to the extent of allotment of Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd., was held to be in violation of provision of law and thus void.

10. Learned counsel for the petitioner in W.P.(C) 3971/2011, who is respondent no.4 in W.P.(C) 1647/2015, has submitted that



apart from the fact that the dispute/issue between the parties was settled vide order dated 24.05.2016 passed by this Court, the principle of *lis pendens* was also applicable to the present lis.

11. Learned counsel relied upon ***Usha Sinha Vs. Dina Ram and Others, (2008) 7 Supreme Court Cases 144***, wherein, at para 17, it has been observed as under:-

“17. Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of lis pendens recognised by Section 52 of the Transfer of Property Act, 1882, Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, equitable or undeserved protection is afforded to a transferee pendent lite, a decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.”

12. Reliance is also placed on ***Rajender Singh and Others Vs. Santa Singh and Others, (1973) 2 Supreme Court Cases 705***, wherein, at para 15, it has been observed as under:-

“15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the



subject-matter of litigation from the ambit of the Court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated."

13. It is an admitted fact that the allotment of Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd., to Sh. Deepak Kumar, who was the predecessor in interest of Sh. Rajesh Sharma, the petitioner in W.P.(C) 1647/2015 was and has been held to be void by the Registrar of Cooperative Societies (respondent no.1) vide order dated 10.12.2014, and the same was given approval by a Division Bench of this Court in W.P.(C) 3971/2011 vide order dated 16.12.2014. Subsequently on 23.12.2014, the Registrar of Cooperative Societies (respondent no.1), vide corrigendum dated 23.12.2014, thereby directed the administrator to handover the possession of Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd., after getting it vacated, to Dr. Suman Pujari.

14. As observed earlier, the aforesaid two orders dated 10.12.2014 & 23.12.2014 of respondent no.1 which were challenged by the petitioner i.e. Mr. Rajesh Sharma in W.P.(C) 1647/2015 were merged in the order dated 24.05.2016 passed by



this Court. In our considered opinion, the order dated 24.05.2016 had in principle put a quietus to the dispute raised in the aforesaid writ petitions. Mr. Rajesh Sharma, petitioner in W.P.(C) 1647/2015 cannot be permitted to circumvent the said order by raising frivolous pleas.

15. Since, the final determination of the present writ petitions should be in terms of the order dated 24.05.2016, the respective prayers in the said writ petitions need to be examined.

16. The prayers in W.P.(C) 3971/2011 filed by Dr. Suman Pujari are as follows:-

“a) pass a writ in the nature of Certiorari or other writ, order or direction, thereby quashing/setting aside the determination of seniority vide Affidavit-II filed in CCP No. 859/2010, and/ or;

b) pass a Writ in the nature of mandamus or other writ, order or direction, thereby directing the respondent/s to recommend to the Delhi Development Authority the petitioner for allotment of flat, and/or;

c) pass a Writ in the nature of mandamus or other Writ, Order or Direction, thereby, directing Respondent No.2 to compensate through interest @ 24% on the amounts deposited by the petitioner w.e.f. the respective dates of deposit till date of allotment of flat, and / or;

d) pass such other Writ, Order or Direction as this Hon’ble Court deems fit and proper in the facts and circumstances of the case.”



17. The prayers in W.P.(C) 1647/2015 filed by Mr. Rajesh Sharma are as follows:-

1. grant a writ in the nature of Mandamus/Certiorari or any other appropriate writ directing respondent no.1/ Registrar of Co-operative Societies to withdraw its Order dated 10.12.2014 alongwith its corrigendum dated 23.12.2014 qua the Flat of the petitioner or in alternative ordering of the setting aside/quashing of the said Order (along with its said corrigendum), being ultra-virus and against the principles of natural justice.

2. issue such order or any further direction as this Hon'ble Court may kindly deem fit and proper in the facts and circumstances of the present case.

18. After perusing the aforesaid prayers in light of the order dated 24.05.2016 (as modified vide order dated 31.05.2016) passed by Division Bench of this Court in the present writ petitions, we are of the considered opinion that prayers (a) & (b) in W.P.(C) 3971/2011 stand satisfied vide order dated 24.05.2016, wherein it had been observed that Dr. Suman Pujari is entitled to Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd. As far as prayer (c) and (d) are concerned, no further directions are called for. In so far as the prayers in W.P.(C) 1647/2015 filed by Mr. Rajesh Sharma is concerned, prayer '1' with respect to challenging order dated 10.12.2014 and its corrigendum dated 23.12.2014 passed by respondent no.1 does not survive in view of the order dated 24.05.2016 passed by Division Bench of this Court and also on account of the fact that the aforesaid orders were passed by



respondent no.1 in compliance of orders dated 01.06.2011, 01.08.2014 and 16.12.2014 passed by Division Bench of this Court.

19. In view of the above, parties to the writ petitions are directed to abide by the following directions:

a) Since the entitlement of Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd. to Dr. Suman Pujari has been crystallized, the same should be handed over to Dr. Suman Pujari, after taking necessary steps, by respondent no.2 Society forthwith.

b) The respondent no.2 is further directed to provide an alternate flat, similar to Flat No. B-29, Prem Kutir Cooperative Group Housing Society Ltd. to Mr. Rajesh Sharma. The cost of construction of said flat would be borne from the amounts collected by society from Dr. Suman Pujari. In case of any shortfall in construction cost, the same shall be borne by Mr. Rajesh Sharma.

20. Both the aforesaid petitions are disposed of as directed.

21. All pending applications also stands disposed of.

**AMIT SHARMA
JUDGE**

**SIDDHARTH MRIDUL
JUDGE**

AUGUST 01, 2022/ab