



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 03, 2023

+ W.P.(C) 10589/2023, CM APPLs. 41138/2023 & 54549/2023

SADHANA SANDHU & ANR.

..... Petitioners

Through: Ms. Shashi Kiran, Ms. Kumud Lata Das, Mohd. Usman Siddiqui, Ms. Aisha Siddiqui, Mr. Harsh, Ms. Pooja and Mr. Pankaj, Advs. with Ms. Sadhana Sandhu, P-1 in person Mr. Deepak Tyagi, Adv. for P-2

versus

SUPREME COURT BAR ASSOCIATION
MULTI-STATE CO-OPERATIVE GROUP
HOUSING SOCIETY LTD. & ORS.

..... Respondents

Through: Mr. Shree Prakash Sinha, Mr. Rakesh Mishra, Mr. Parv Garg, Ms. Sheetam and Mr. Rishabh Kumar, Advs. for R1 Dr. Adish C. Aggarwala, Sr. Adv. with Mrs. Ygandhara Pawar Jha and Mr. Vibhu Shankar Mishra, Advs. For R-2/SCBA
Mr. Anurag Ahluwalia, CGSC with Ms. Avshreya Pratap Singh Rudy, Adv. for R-3/UOI
Mr. Vibhu Shanker Mishra, Adv./ Board of Directors



CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner No.1 with the following prayers:

“It is therefore, most respectfully, prayed that this Hon’ble Court may be pleased to:

a) Direct/Pass an order for the dissolution of the BOARD of the SCBA-MSGHCS (MULTISTATE) and direct the respondents as well as Central Registrar to organize fresh election to form new BOARD of the SCBA-MSGHCS(MULTISTATE).

b) Pass such other and further orders as this Hon’ble Court may deem fit and proper.”

2. The case of the petitioner No.1 is that she is an Advocate on Record of the Supreme Court of India and the member of Supreme Court Bar Association (‘SCBA’, for short)/respondent No.2. She is also the original member and resident of Supreme Towers Apartments Owners’ Association (‘Association’, for short), which is developed by the Supreme Court Bar Association Multi State Co-operative Group Housing Society Ltd. (‘SCBAMSCGHS’, for short)/respondent No.1.

3. The respondent No.1 was constituted by the SCBA/respondent No.2, in the year 2005 to provide residential accommodation to its members. Pursuant thereto efforts were made to develop a housing complex which was constructed on plot No. 4 & 5 of Sector 99, Noida to accommodate 684 members of SCBA. The said complex was named



as 'Supreme Towers'.

4. The respondent No.1 is registered under the Multi State Cooperative Society Act, 2002 ('Act of 2002', for short) and in the year 2016, the Association was formed. The respondent No.1 society is being run by an elected body. The last election was held on February 16, 2018 and the tenure of the office bearers of the respondent No.1 is five years, as a corollary, the next selection was supposed to be held on February 16, 2023.

5. The construction work of Supreme Towers was completed in 2015 and thereafter, flats were allotted to the members of SCBA in August, 2015, who took over the possession of their respective flats. All the allottees of the flats are members of respondent No.1 and they contributed for the construction of the Supreme Towers Housing Complex. The Association was formed as per the model bye laws of Uttar Pradesh Apartments Owners Act, 2010 and it got registered with the Registrar of Societies, Meerut, U.P. with the registration number being 1103.

6. The respondent No.1 society allotted 675 flats out of 684 flats to its members and 09 flats are yet to be allotted/sold. It is stated that the respondent No.1 was left with ₹6 crores after completion of the Supreme Towers in 2015. However, it has allegedly transferred ₹ 1 crore to the Association and kept the balance amount of ₹5 crores with itself.

7. It is stated that on August 08, 2018, some of the Directors of the Board of the respondent No.1 society were expelled by a resolution and as a result, their accounts were made inoperative. The respondent



No.1 society in its meeting with Association on June 29, 2020 entered into Memorandum of Understanding ('MoU', for short) with the Association and declared to refund the excess corpus which was collected from the original members of the Association, towards the construction, to its member on proportionate basis. It was also decided that the 9 unsold flats, will also be handed over to the Association for it to sell them on pro-rata basis amongst the members of the Association.

8. It is the case of the petitioner No.1 that the present Board of Management of respondent No.1 has neither circulated any audited balance sheet amongst its members nor presented it to AGM for its consideration or approval. Subsequently, this matter was reported to Central Registrar/ respondent No.3, for taking necessary corrective actions. However, as per the petitioner No.1, the Central Registrar / respondent No.3 has failed to take any action against the management of the respondent No.1 society.

9. It is further stated that the term of the present Board of Management of the respondent No.1 society got expired on February 16, 2023 and until today, no efforts have been made either by the respondent No.1 or respondent No.2, to conduct fresh elections in order to constitute new Board of Management of respondent No.1. It is also the case of petitioner No.1 that since the term of present Board of Management has expired, the fresh elections are required to be called to constitute the new Board of Management in order to get, the account of the respondent No.1 society audited and refund of the surplus money lying in the account of the respondent No.1 society to its members.

10. It is also stated that petitioner No.1 is the original member of



respondent No.1 society and deposited her hard earned money towards the construction of the Supreme Towers and the same is with the case of 684 other members. Therefore, it has been prayed before this Court that an order be passed for the dissolution of the present Board of Management of respondent No.1 and direct the respondents including Central Registrar, to conduct fresh elections to form new Board of the Management for respondent No.1 society.

SUBMISSIONS ON BEHALF OF PETITIONER NO.1

11. It is the case of Ms. Kumud Lata Das, learned counsel appearing on behalf of the petitioner No.1 that a complaint was made by the petitioner No.1, to the Central Registrar/respondent No. 3 on January 31, 2022 regarding malfunctioning and mismanagement by the expelled Chairman and Vice Chairman of respondent No.1 society, to which no reply has been given, despite the fact that, the parent body SCBA/respondent No. 2 has passed a resolution on August 02, 2023 to hold fresh elections of the respondent No.1 society.

12. She submits that, respondent No.2 had made a representation on August 10, 2023 to respondent No.3 / Central Registrar, for conducting the fresh elections, however, it is the stand of the respondent No. 3 that, after the amendment to the Act of 2002, dated August 03, 2023, viz. Multi-State Co-operative Societies (Amendment) Act, 2023 ('Amended Act', for short), the fresh elections can now only be conducted by the Authority, viz. Cooperative Election Authority ('CEA' for short), which shall be established by the Central Government in terms of Section 45 of the Amended Act notwithstanding, the fact that Article 243 ZL of the Constitution of



India, provides for 'Interim Management as well as for the supersession and suspension of the Board'.

13. She also submits that it is germane to refer to Section 45 (J) of the Amended Act, which stipulates guidelines for election of the members of a Board. As per her, a duty is cast upon the officiating members viz. Chairman and the Chief Executive of the Board under Clause 8 of Section 45 (J) to inform CEA, six months before the expiry of its term, to conduct the elections within time. She further submits that as per Section 123 of the Act of 2002, the Central Government may also supersede or suspend the Board of a multi-cooperative society.

14. It is her submission that the instant petition highlights a situation, which is of a stalemate, after the expiry of the term of the Board of the Directors ('BoD', for short) on February 15, 2023. She submits that BoD of the respondent No.1 society has become '*functuous officio*' but despite that, it is unauthorisedly and illegally, managing the affairs of the society. It is her submission that the malfunctioning of the respondent No.1 society, is primarily by a handful of Board members, viz. the Chairman, Neeraj Kumar Sharma, Vice Chairman, Umesh Babu Chaurasia and the illegally appointed Treasurer, Arun Kumar Mishra. She further submits that this impasse/stalemate, in respondent No.1 society, ought to come to an end and thus a direction be given under Article 243ZL of the Constitution of India, which provides eventualities under which board of a co-operative society can be superseded or kept under suspension.

15. She also submits that petitioner No.2, who is also the member the Association and resident of Supreme Towers, has also made



representations to Central Registrar/respondent No.3, on January 12, 2023, March 19, 2023 and June 30, 2023. One, Shashi Kiran, has also made representation on August 17, 2023. Even, respondent No. 2 i.e. SCBA, being the parent body, has passed the resolution on August 02, 2023 and also written a letter to Central Registrar/respondent No.3, on August 10, 2023 requesting them to conduct fresh election of the respondent No.1 society, as the tenure of existing BoD has expired on February 16, 2023.

16. It is her submission that the respondent No.1 has flagrantly violated Clause 36 sub-clause H of the bye laws of the respondent No.1 society, in their attempt to dispose of the immovable properties, which are 9 un-allotted flats in the Supreme Towers. The BoD in their 5 years term, have neither conducted any general body meeting nor were any accounts audited.

17. She submits that some of the BoD were even expelled by a resolution dated August 08, 2018 by the coordinate directors and consequently the Bank account of the respondent No.1, in UCO Bank, Supreme Court compound, was requested to be frozen and the same was made inoperative thereafter. In order to frustrate this resolution, Chairman ,Neeraj Kumar Sharma and one Arun Kumar Mishra broke open the lock of the society office and opened a new bank account with Canara Bank.

18. As a matter of fact, there has been siphoning of funds by the BoD by operating the bank account in Canara Bank and the Vice-Chairman viz. Umesh Babu Chaurasia has issued a circular during the pendency of this writ petition for the payment of ₹400 as subscription



money and also self appointed himself as the Returning Officer for conducting the fresh election of BOD.

19. She further submits that the respondent No.1 society, has agreed in its Counter Affidavit dated September 15, 2023 to conduct the fresh elections of BoD of the respondent No.1 society and it has suggested the name of a Id. Senior Advocate as the Returning Officer. However, it is her submission that either a Retired High Court or Supreme Court Judge should be appointed as the Returning Officer.

20. She further submits that even respondent No. 2/SCBA is also in agreement with the petitioner No.1 and SCBA has even passed a resolution on August 02, 2023 to hold the elections of respondent No.1 society, within a period of one month in the interest of the members of SCBA, who also happens to be the members of respondent No.1 society. More so, even, Secretary of the SCBA has made a representation to the Central Registrar / respondent No. 3 of the Cooperative Societies, whereby latter was apprised with the fact that as per the bye laws of the respondent No.1 society, the term of BoD got expired on February 16, 2023 and accordingly, requested respondent No. 3 to conduct fresh elections of the respondent No1. society within a period of one month.

21. Mr. Deepak Tyagi/petitioner No.2, makes similar submissions as made by Ms. Das. He has highlighted the fact that he has made representation(s) to the Central Registrar for holding elections, but he has not acted on the same. He seeks the prayers, as made in the writ petition/application being CM Appl. 41138/2023, filed by the petitioner No.1.



SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

22. It is the case of the respondent No.1 and contended by Mr. Shree Prakash Sinha that the respondent No.1 society is in complete agreement with the petitioners, so far as, prayer in the writ petition is concerned with regard to conduct of elections.

23. It is his submission that on September 1, 2023, when this matter was heard before this Court, the respondent No.1 had pointed out that vide meeting dated August 31, 2023, Board of the society, has taken a decision to declare the elections and also decided to appoint a Id. Sr. Advocate, SCBA, who is also the member of the respondent No.1 society as Returning Officer for conducting the fresh elections, for the tenure of 2023-2028. It is his submission that in view of the aforesaid decision of the Board, the present writ petition has become infructuous and should be dismissed accordingly.

24. He submits that the apparent purpose of filing the writ petition is not to seek fresh elections of the Board but to thwart the efforts of the present Board to repair/retrofit the Supreme Towers. He also submits that as per the amended bye laws of respondent No.1 society, the total number of Directors are required to be 15 instead of 7 as originally envisaged.

25. He submits that as per proviso to Section 45 (5) of the Act of 2002, the elected members are required to continue to hold office till their successors are elected or nominated under the provisions of the Act of 2002, rules or bye laws and assume charge of their office. He points out that on September 1, 2023 Mr. Anurag Ahluwalia, learned



CGSC appearing on behalf of the respondent No.3 argued that Section 45 has been amended in terms of Section 17 of the Amended Act, which provides for establishment of CEA for the purpose of conducting elections of multi state cooperative societies and the respondent No.3 is in the process of establishing the said authority.

26. He submits that as far as issue of expulsion of Neeraj Sharma, Arun Kumar Mishra and S. Madhusudan Babu from their respective posts in the respondent No.1 society is concerned, the resolution dated August 8, 2018 is a fabricated document and has been brought on record to mislead this Court. He submits that even the dispute between the respondent No.1 and the builder viz. M/s Purvanchal Construction Works Pvt. Ltd. has been referred to Arbitration by a Former Judge of Supreme Court of India.

27. He further submits, as far as issue of refund of the excess corpus as collected from the original members of the respondent No.1 society, is concerned, the Board has passed the resolution dated April 5, 2019 to refund the excess corpus to its members. It is his submission that there is no doubt that the excess money deposited by the members qua the NOIDA project is required to be refunded to them and moreover, the members are also entitled to get proportionate amount from the remaining 9 unsold flats and as such the Board has no objection, if requisite order, in this regard is passed in the interest of the members of NOIDA project.

28. He submits as far as the issue of repair / retrofit of Supreme Towers is concerned, the existing Board has taken multiple efforts for the purpose of repair and retrofit of Supreme Towers and this issue is



also the subject matter of litigation pending before the Supreme Court of India, which has referred this dispute to one of the former Judge of this Court with a request to conduct a General Body Meeting ('GBM' for short) of the respondent No.1 society in order to ascertain as to whether GBM would accept repair/retrofit under the supervision of (a) Delhi Technical University or (b) IIT Delhi with WAPCOS Ltd. The members of the respondent No.1 society have voted for the supervision of IIT Delhi with WAPCOS Ltd. and accordingly, the report was submitted before Supreme Court, which considered the same vide order dated September 03, 2021. It is stated that earlier the Association was trying to opt for the services of IIT Delhi, however, the same was declined. The present Board with great efforts ultimately made IIT Delhi to agree with the task. The issue was ultimately settled by the Supreme Court vide order dated January 31, 2023. Pursuant thereto, an agreement dated February 06, 2023, was entered between the respondent No.1 society, the Association and the builder. He submits that the existing Board was too pre-occupied in coordinating between IIT Delhi, WAPCOS Ltd. and builder for the purpose of implementation of the said agreement and therefore, immediate measures to conduct fresh elections could not be taken.

29. It is also his case, that despite making the best efforts, certain quarters are putting hurdles in the repair work and even the Supreme Court is yet to pass an order on this issue. Therefore, the existing Board could not take the requisite measures for holding immediate election and decision regarding this was taken only on August 31, 2023. So, he prays that during the interregnum period such measures may be



directed which would protect the interest of the members and proper coordination with the agencies may continue to be done.

30. He further submits that vide order dated August 24, 2023 in *Writ-C No.711/2022* titled as *Supreme Tower Apartment Owner Association v. State of UP & Anr.*, the High Court of Allahabad has directed that the election of the Association, be held within four months and further set aside the order dated December 13, 2021 of the Deputy Registrar, Firms, Societies and Chits, Meerut vide which the election of the Association was conducted and the petitioner No.1 was elected as the president of the Association. It is his submission that the instant writ petition is not apparently filed seeking a direction to hold fresh elections of the Board of the respondent No.1 society (for which all the parties are agreeable) but to restrain the existing Board to repair/retrofit the Supreme Towers.

31. It is also his case that the respondent No.1 society has no objection for the conduct of fresh elections to form new BoD. It only has objection against the interim relief sought by the petitioner No.1, the object of which is to derail the repair/retrofit work.

32. It is further the case of Mr. Sinha that the application seeking ad-interim direction to restrain the Board of respondent No.1 to function and operate the bank accounts of the respondent No.1 society and also the prayers (c) and (d) of the said application being reiteration of the prayers in the writ petition is required to be rejected outrightly.

33. He further submits that by way of additional affidavit, the petitioner No.1 has brought on record certain orders passed by the High Court of Allahabad, which includes rejection of her purported election



as President of the Association. In the additional affidavit, she has also brought on record two documents, referring them as representations made to the respondent No.3 to conduct fresh elections, whereas these documents indicate that they were in fact referred to the respondent No.1 society and not to respondent No.3. The alleged letters written to the respondent No.3 seeking fresh elections is dated June 30, 2023 which was sent by one Deepak Tyagi/ petitioner No.2 herein, and not by the petitioner No.1.

34. He also submits that the present Board of the respondent No.1 society was constituted with the intervention of the Supreme Court and 5 years tenure of the instant Board got completed on April 09, 2023 and not on February 15, 2023, as contended by the other parties.

35. It his submission that, so far as, the position in law before August 03, 2023 (before amendment) regarding the conduct of elections is concerned, the proviso to Section 45(5), Section 45(6) of the Act of 2002, Rules 19 and 20 of the Multi- State Co-operative Societies Rules, 2002 ('Rules of 2002, for short), squarely cover the issue in hand.

36. He submits that whatever be the date of completion of tenure of the present Board i.e. on February 15, 2023 or on April 09, 2023, the respondent No.1 could not take steps to conduct fresh election. Even, respondent No.3 / Central Registrar has not taken any steps to conduct fresh elections in terms of Section 45(6) of the Act of 2002. So, it is his submission that in the peculiar facts of the case, this Court in its writ jurisdiction can either approve the appointment of Returning Officer as suggested by respondent No.1 society for conduct of elections in terms



of agenda dated August 31, 2023 or appoint any other suitable person for the said purpose. However, with amendment in the Act of 2002, erstwhile Section 45 of the Act of 2002, is substituted and for the purpose of elections, CEA has been proposed to be established. Admittedly, such authority is yet to be appointed and therefore, Section 45 of the Amended Act, cannot be implemented as on date. Even, Section 122 and 123 of the un-amended/amended Act of 2002, is not applicable in the instant case.

37. Therefore, it is the submission of the Mr. Sinha that this Court should exercise its writ jurisdiction to direct the Central Government/Central Registrar/respondent No.3, to conduct fresh elections or approve the appointment of Returning Officer as recommended by the respondent No.1 society or nominate any other suitable person for the same purpose. He submits that in the peculiar facts of this case proviso to Section 45(5) of the un-amended Act of the 2002, is required to be given effect to and this flows from (a) doctrine of necessity, and (b) a law does not contemplate a vacuum.

38. He further submits that after end of the tenure of the existing Board of the respondent No.1 society, the same has not been de-registered in the absence of fresh elections. Admittedly, the affairs of respondent No.1 society is to be conducted by the Board. In the instant scenario, neither the Board and nor the Central Registrar could act within time period stipulated as per the un-amended Act for the purpose of holding the fresh elections. Further, fresh elections can also not be held under the Amended Act in near future in absence of establishment of CEA. Accordingly, the mechanism as prescribed in the un-amended



Act or Act of 2002 is required to be given effect to, as it is well settled that “*law does not contemplate a vacuum*”. [Reference, *Shiva Kanti Hazra v. Atal Behari Bajpaye, 1999 SCC OnLine Cal 413*].

39. So far as, doctrine of necessity is concerned, he refers to judgments of the Supreme Court, in the cases of *Election Commission of India v. Subramaniam Swamy (1996) 4 SCC 104* and *Lalit Kumar Modi v. Board of Control for Cricket in India & Ors. (2011) 10 SCC 106*.

40. Further, it is also his submission that Article 243 ZL of the Constitution of India, cannot be invoked in the present case, in view of the fact that such a provision is applicable only in a case of a co-operative society, where there is Government shareholding or financial assistance or loan or guarantee has been provided by the government. Besides, Article 243 ZL is directory and not mandatory in nature.

41. He submits that even in extreme situation, special GBM of the respondent No.1 (restricted to allottees of the Supreme Towers) as contemplated in Rule 29 of the Bye-laws, can be called for the purpose of interim arrangement, as those persons had also voted for selection of IIT-Delhi as technical advisor.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.2

42. It is the submission of Dr. Adish C. Aggarwala, learned Senior Counsel and Ms. Ygandhara Pawar Jha, Adv. appearing on behalf of the respondent No.2, that the SCBA after taking cognizance of the fact that the term of the existing BoD has expired, passed the resolution dated August 02, 2023 authorizing Hony. Secretary of SCBA to write a



letter to the Chief Executive Officer and all Directors of the respondent No.1 society to hold the fresh elections within one month in the interest of the members of the Bar. Pursuant to the said resolution, the Hony. Secretary vide letter dated August 10, 2023 had also written a letter to Central Registrar of Co- Operative Societies/respondent No.3, to conduct the elections of the respondent No.1 society.

43. They submit that as per the Section 45-I of the Amended Act, an authority established by the Central Government, i.e., CEA, can (i) conduct the elections of a multi-State co-operative society;(ii) supervise, direct and control the matters relating to preparation of electoral rolls; and (iii) perform such other functions as may be prescribed by the Amended Act. Further, as per Section 45K(1) of the Amended Act, only CEA is empowered to appoint a Returning Officer to conduct the elections of a multi-state co-operative society and he would discharge such functions, as may be directed by CEA.

44. They further submit that on earlier occasions, this Court and the Supreme Court has appointed Retired High Court Judges or Supreme Court Judges or Senior Advocates or SCBA President as administrators, to manage affairs and supervise the elections of the BoD of respondent No.1 society.

45. It is also their submission that even for the elections held for the respondent No.1 society, the Supreme Court vide Order dated August 21, 2017, had appointed a Senior Counsel, as the Retuning Officer for conducting the elections with the assistance of the Registrar of Co-Operative Societies in a time bound manner.

46. They also submit, that various towers / buildings of the



Supreme Towers managed by the current management of the respondent No.1 society are in a dilapidated state, with roofs collapsing, breakage of floor, non-operational lifts etc. The living conditions are also becoming very unsafe by each passing day for families of the members. Therefore, there is an urgent need for proper administration of the affairs of the society to ensure safety of the members and their families.

47. It is their case that considering the fact that the term of the existing BoD has expired, there is an urgent need to conduct elections of the respondent No.1 society and pending establishment of CEA, this Court may appoint the Returning Officer to conduct the fresh elections.

48. It is further their case that pending investigation in the allegations of illegal and non-beneficial acts, unauthorized operation of the bank accounts of the respondent No.1 society and use of funds of the respondent No.1 society, committed by the current management of the respondent No.1 society, an administrator be appointed to manage its affairs.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3

49. Whereas, it is the case of Mr. Ahluwalia that respondent No. 03 is the Ministry of Cooperation, which was created by transferring the existing entries related to cooperation and cooperative in the business of erstwhile Ministry of Agriculture, Cooperation and Farmers. The respondent No. 03 is responsible for providing a separate administrative, legal and policy framework for strengthening the cooperative movement in the country.

50. He submits, that Co-operative Societies registered under the



provisions of Act of 2002, function as autonomous cooperative organizations and are accountable to their members. All Multi-State Cooperative Societies are required to function as per the provisions enshrined in the Act of 2002 and the rules made thereunder read with the approved by-laws of the respective societies which include the roles and powers of the members, Board, General Body of the society and Central Registrar of Cooperative Societies (CRCS).

51. He further submits that as per the provision of Section 49 of the Act of 2002, all business matters such as admittance of members, accepting deposits, investing the said deposits, inclusive of other business affairs of the society would fall within the ambit of the functions carried out by the Board of the society in terms of the powers conferred upon the Board and whereas day to day management of the business of a society is carried out by the Chief Executive of a society in terms of Section 52 of the Act of 2002.

52. He also submits that Section 123 (1) of the Act of 2002, as amended by Amended Act deals with the supersession of board of specified Multi-State Co-operative Society. It is his submission that Section 123 of the Act of 2002 as amended by Amendment Act is not applicable in the present case, on account of the fact that respondent No.1 is not a “*specified Multi-State Co-operative Society*” as per Explanation to Section 123 of the Act of 2002, inasmuch as, the Government does not have any shareholding in the respondent No.1 society, nor has it provided any loan or financial assistance or any guarantee to respondent No. 1 society. Therefore, Section 123(1) would not be applicable to present case in view of the Explanation provided to



Section 123.

53. He submits that the appointment of CEA is in progress. An advertisement has already been issued and names have been received in this regard. The process of establishing such an Authority would be completed shortly and the elections of the Multi-State Cooperative Society / respondent No.1 society would be conducted by CEA as per the provisions of Act of 2002 and the Rules framed there under.

ADDITIONAL SUBMISSIONS ON BEHALF OF PETITIONER NO.1

54. It has additionally been submitted by Ms. Das that ever since the inception of BoD in the office of respondent No.1 society, it has been engaged in the mismanagement and as such, has never called for the GBM. Apart from that, the BoD has never produced audits and accounts of the society in last five years and not only that, it is involved in various activities against the interest of its members. Moreover, the affairs of the respondent No.1 society are being managed by only 5 Directors, out of the 15 selected.

55. She submits that the current BoD has become *functus officio* and as such provision of Section 45(6) shall apply in the present case, which provides that on failure of the Board to conduct elections of the members of a Board, the Central Registrar shall have to hold the elections within a period of 90 days from the date when such elections become due.

56. She further submits that the name given/ suggested by respondent no.1 of a learned Senior Advocate of the Supreme Court for Returning Officer is not acceptable to petitioner No.1. So, it is her case



that a Retired Judge of this Court be appointed as Returning Officer as on earlier occasions also, this Court and Supreme Court have appointed Retired Judges, or Senior Advocates or SCBA President as administrators, to manage the affairs and supervise the elections for the BoD of the respondent No.1 society.

57. Even in the last election of the respondent No.1 society, the Supreme Court had appointed a Senior Counsel as the Retuning Officer to conduct the elections with the assistance of the Registrar of Co-Operative Societies in a time bound manner.

58. So, on the basis of above such submissions, she prays for the reliefs as mentioned in paragraph 1 above.

ANALYSIS

59. Having heard the learned counsel for the parties and perused the record, at the outset, it is stated, that the learned counsel for the petitioner No.1, petitioner No.2 and the respondent No.2, viz. Ms. Das, Mr. Tyagi and Dr. Aggarwala have pressed for the reliefs, as sought in this petition, specifically for dissolution of the BoD of the respondent No.1, as well as, for direction to the respondents including Central Registrar/respondent No.3, to conduct fresh elections to form new BoD, of the respondent No.1 society.

60. It may be stated that the petitioners have also sought interim reliefs, as prayed in CM APPL. 41138/2023, *inter alia*, a direction to restrain the existing BoD to act further for the respondent No.1 society.

61. Therefore, the issue which arises for consideration is, in what manner the fresh elections need to be conducted and also as to what kind of interim order need to be passed. At the outset, we may state



here that the previous elections of the BoD of the respondent No.1 society were held in the year 2018, which was conducted by one of the senior counsel of the Supreme Court Bar Association / respondent No.2 appointed by the Supreme Court on August 21, 2017. The BoD consists of 15 Directors, who took over the charge of management, on February 16, 2018. Though, Mr. Sinha, appearing on behalf of the respondent No.1 society, would contend that the tenure of the BoD is effective from April, 2018, in any case, both, Mr. Sinha as well as Ms. Das, agree that the period of five years is inconsequential now, as the five years w.e.f. February 16, 2018, or for that matter April, 2018, have elapsed.

62. It may be relevant to state here, at this stage, that the elections of the existing BoD, which were conducted in 2018, was challenged by one of the elected Directors of the respondent No.1 society before the Registrar, Delhi Co-operative Society, which was referred to arbitration, wherein, an award dated October 18, 2018 was passed declaring the entire elections as null and void. Suffice to state, the respondent No.1 though initially challenged the said award of the Arbitrator before the Court of District Judge, whereby, stay was granted in favour of the respondent No.1, the said appeal was withdrawn in view of alternate remedy. Hence, an appeal was preferred before the Delhi Cooperative Tribunal ('DCT', for short), which, by an order dated February 25, 2022, granted stay in favour of the respondent No.1, which order reads as under:-

“The appeal challenges an award dt. 18.10.2018 whereby the election of the Managing Committee of the



Supreme Court Bar Association Multi-State Cooperative Group Housing Society was declared null & void.

Firstly the Ld. Counsel for the appellant has argued that the society being a Multi-State Society, the impugned award could not have been passed u/s 71 of the DCS Act. His further contention is that the award was earlier challenged u/s 34 of the Arbitration and Conciliation Act which is the remedy available according to the Section 84(5) of the Multi-State Society's Act. Vide an order dt. 20.11.2018, the Ld. Court of A.D.J. of Delhi stayed the operation of the award and the stay continued till 16.02.2022 where the Ld. A.D.J. permitted the petition u/s 34 of the Arbitration & Conciliation Act to be withdrawn for the appellants to pursue the remedy under the DCS Act.

Since the operation of the award has remained stayed since 2018 till 16.02.2022, we find it expedient to further stay the operation of the award till the next date.

Issue notice of the appeal as well as in the application for condonation of delay and application for stay to R2 to R 14 on filing of PF/RC returnable on 18.04.2022.

The notice be given dasti to the appellant alongwith a copy of this order to serve upon the respondents within 3 working days and thereafter, an affidavit of service be filed in the court within 2 week."

63. In any case, as per the provisions of bye laws, the tenure of the BoD, is five years from the date of elections [Reference:- bye law 35 of the respondent No.1 society]. More so, the stay is only of the award / order passed by the Arbitrator, whereby the elections held in 2018, have been declared null and void.

64. The relevant bye law of the respondent No.1 society which stipulates that the elected Directors can hold the office only for the period of five years from the date of election, is reproduced as under:-



“35. Constitution of the Board of Directors

(i) The affairs of the Society shall be managed by the board of Directors consisting of the following:-

(a) Seven Directors to be elected by the members in the general Body.

(b) The Chief Executive, who is the ex-officio member of the board of Directors.

(ii) All the Directors except the Chief Executive shall be elected by the members of the General Body Meeting.

*(iii) **the elected Directors shall hold office for a period of five years from the date of election.***

(emphasis supplied)

65. Moreover, the learned counsel for the petitioners as well as the respondent Nos.1 and 2 are at *ad idem* that the elections need to be held. If that be so, this Court is proceeding on the premise that the tenure of the existing BoD, having come to an end, fresh elections need to be held.

66. We may state here that it is relevant to reproduce hereinafter, some of the relevant provisions which have been relied upon by the counsel for the petitioners as well as respondents, for ready reference: -

Article 243ZL

“243ZL. Supersession and suspension of board and interim management.—(1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:

Provided that the board may be superseded or kept under suspension in a case—

(i) of its persistent default; or

(ii) of negligence in the performance of its duties; or

(iii) the board has committed any act prejudicial to the interests of the co-operative society or its members; or



(iv) there is stalemate in the constitution or functions of the board; or

(v) the authority or body as provided by the Legislature of a State, by law, under clause (2) of article 243ZK, has failed to conduct elections in accordance with the provisions of the State Act:

Provided further that the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided also that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply:

Provided also that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words “six months”, the words “one year” had been substituted.

(2) In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to the elected board.

(3) The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.”

Section 45 of un-amended Act of 2002

45. Elections of members of board

- (1) The conduct of elections to the board of a multi-state cooperative society shall be the responsibility of the existing board.*
- (2) The election of members of board shall be held by secret ballot in the manner as may be prescribed.*
- (3) The election of the members of the board shall be held in the general meeting of the members of the multi-state cooperative society.*
- (4) The elected members of the board shall, if the bye-*



laws of such society permit, be eligible for re-election.

(5) The term of office of the elected members of the board shall be such, not exceeding five years from the date of elections, as may be specified in the bye-laws of a multi-state cooperative society:

Provided that elected members shall continue to hold office till their successors are elected or nominated under the provisions of this Act or the rules or bye-laws and assume charge of their office.

(6) Where the board fails to conduct election of the members of board, the Central Registrar shall hold the election within a period of ninety days from the date when such election became due.

(7) No person shall be eligible to be elected as a member of the board of a multi-state cooperative society unless he is a member of the general body of that society.

(8) The expenses for holding election by the Central Registrar shall be borne by the multi-state cooperative society.

(9) The Central Government may make rules generally to provide for or to regulate matters in respect of election of members of the board.

(emphasis supplied)

Section 45 of the Amended Act

Establishment of Cooperative Election Authority

“45. (1) The Central Government shall, by notification, establish an Authority to be known as the Co-operative Election Authority which shall consist of a Chairperson, a Vice-Chairperson and Members not exceeding three to be appointed by the Central Government on the recommendation of the Selection Committee consisting of such persons as may be prescribed.

(2) The head office of the Authority shall be at such place



as may be notified by the Central Government.

- (3) A person shall not be qualified for appointment as a,—
- (i) Chairperson of the Authority unless he held the post of Additional Secretary to the Government of India or equivalent rank;
 - (ii) Vice-Chairperson of the Authority unless he held the post of Joint Secretary to the Government of India or equivalent rank; and
 - (iii) Member unless he fulfils such qualification and experience as may be prescribed.

(4) The Chairperson, Vice-Chairperson or Member of the Authority shall hold office for a period of three years from the date on which they enter upon their office or until they attain the age of sixty-five years, whichever is earlier and they shall be eligible for re-appointment:

Provided that in case of appointment of a Government servant as a Chairperson, Vice-Chairperson or a Member, he shall be treated as an ex officio Member and he shall continue so long as he holds the office by virtue of which he is a Chairperson, Vice-Chairperson or Member.

(5) The salaries and allowances payable to, and the other terms and conditions of service of the Chairperson, Vice-Chairperson and Members of the Authority, other than the ex officio Member, shall be such as may be prescribed.”

67. It is the submission of Ms. Das, that as per Section 45(6) of the Act of 2002 (pre amendment), as the tenure of the BoD has come to an end, it was incumbent upon the Central Registrar to hold the fresh elections. Additionally, she has submitted that this Court may also appoint any Retired Judge of this Court to conduct the fresh elections and pending constitution of new BoD, this Court may or the Central



Registrar may appoint an Administrator to look after the day to day functioning of respondent No.1 society.

68. Suffice to state, Mr. Sinha is also agreeable for conduct of fresh elections in terms of Section 45(6) of the Act of 2002 by appointing a Senior Counsel named by him as Returning Officer or by appointing a suitable person by this Court.

69. However, his only submission is that the intent behind the interim relief sought by the petitioner No.1 is to derail the repair/retrofit work being carried out in the Supreme Towers pursuant to the orders of the Supreme Court.

70. Even, Dr. Aggarwala is also in favour of the conduct of the fresh elections as it is his submission that a senior counsel of the respondent No.2 / SCBA may be appointed to conduct the fresh elections.

71. Whereas, the case of Mr. Ahluwalia, appearing for respondent No.3, is that, in view of the Amendment Act, it is the CEA, which need to be established as per Section 45 of the Amended Act and which shall, on establishment, conduct the fresh elections of the respondent No.1 society. He further stated that the process of establishing CEA has already been undertaken by the respondent No.3, and would be completed shortly, though he is unable to give a timeline for the same.

72. So, from the above, it is clear that the parties being at *ad idem*, that the tenure of the BoD has already expired and the fresh elections need to be held, the only issue which needs to be decided is, whether in view of the provisions of Amended Act, specifically, Section 45 of the Amended Act, can this Court give a direction, *de hors* the provisions of



the Amended Act, for the conduct of the fresh elections.

73. It is the conceded case of Mr. Sinha that because of the pre-occupation of the BoD, the fresh elections could not be held in time. It is noted that in view of the provisions as existing, at the time when the fresh elections became due, specifically, in terms of Section 45(6) of the Act of 2002, it was incumbent upon the Central Registrar, to hold the fresh elections within a period of 90 days from the date when such elections became due.

74. It is also clear that in view of the Amendment Act, the elections need to be held by CEA, which is to be established by the Central Government.

75. At the same time, it is also a settled law that there cannot be a vacuum in law. In other words, the process of election cannot be stalled specially, when a provision exists, whereby, fresh election has to be conducted in a particular manner.

76. Mr. Sinha has relied upon the judgment in the case of *Shiv Kanti (supra)* to contend that the law does not contemplate a vacuum. He has also relied upon the judgment of the Supreme Court in *Lalit Kumar Modi (supra)* on the doctrine of necessity. The relevant paragraph of the judgment in *Lalit Kumar Modi (supra)* is reproduced as under:-

38. The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over. Otherwise, as proposed by Shri Jethmalani one will have to wait for one more year for a new President to be elected, which submission cannot be



accepted.

(emphasis supplied)

77. It is also necessary to state here that the counsels appearing for the parties have submitted that that though amendments have been brought into the Act of 2002, specifically to Section 45, which stipulates that CEA be established to conduct the elections, nothing precludes this Court, in exercise of its power under Article 226 of the Constitution of India to appoint a Returning Officer, for conducting the elections *de hors* the provisions of the Amendment Act.

78. We are of the view, that the only way forward is, that CEA is established by the Central Government, in view of statutory provision, within three weeks from today (i.e. on or before November 24, 2023), then it shall hold the elections of the respondent No.1 society within a period of four weeks from the date of its establishment. This we say so, as the elections were to be conducted somewhere in the months of February-April, 2023 and more than six months have elapsed from that date.

79. If in the eventuality, CEA is not established within three weeks from today, then this Court appoints Justice S.N. Dhingra, a Former Judge of this Court, as the Returning Officer to conduct the elections of the BoD of the respondent No.1's Society. It is clarified, Justice S.N. Dhingra (Retd.) shall have the mandate, only if, CEA is not established within three weeks from today. Suffice to state, if the CEA is established within a period of three weeks, a communication shall be sent by the Central Registrar to Justice S.N. Dhingra (Retd.) (on his mobile number) about the same and in such an eventuality Justice S.N.



Dhingra (Retd.), shall not act as a Returning Officer, and if no such communication is sent to him, within three weeks from today, then the mandate of his appointment as Returning Officer shall come into effect and he shall proceed to act as a Returning Officer and hold the elections of the respondent No.1 society, with the assistance of Central Registrar, and complete the process within four weeks thereafter. The Central Registrar shall render all assistance to Justice S. N. Dhingra (Retd.).

80. The Secretary of the respondent No.1 society shall handover all the relevant records pertaining to respondent No.1 society to Justice S.N. Dhingra (Retd.)/Central Registrar, for the smooth conduct of the elections. Justice S.N. Dhingra (Retd.) shall be paid an amount of ₹2 lacs, for conducting the elections, by respondent No.1. Any expenses, incurred by Justice S.N. Dhingra (Retd.) for the conduct of the elections, shall be borne by respondent No.1, as per actuals.

81. The appointment of Justice S.N. Dhingra (Retd.) as Returning Officer is without doubting the competency and impartiality of the senior counsel whose name was suggested during the hearing.

82. Now coming to the prayers made in the application being CM No.41138/2023, the same are the following:-

“a) Ad-Interim order/direction be given restraining the Board Of Directors of the SCBA-MSCGHS to act further,

b) to restrain the Board of Directors to operate the bank Accounts maintained with Canara Bank, 6, Bhagwan Das Road, New Delhi and UCO Bank, Supreme Court Compound, at New Delhi.

c) An order be passed for the dissolution of the BOARD of the SCBA-MSCGHS(MULTISTATE) and



d) An order be passed directing the Central Registrar to organize fresh election to form new BOARD of the SCBA-MSCGHS (MULTISTATE), and

e) Pass any other Order as this Hon'ble Court as it may deem fit in the facts and circumstances of the case in the interest of justice.”

83. Suffice to state, the prayers *inter alia* are for a restraint order against the BoD to act further and appointment of an Administrator, pending conduct of the fresh elections. We are of the view that, as we have already given directions in the aforesaid paragraphs for the conduct of the elections and are clear that the process of elections shall be completed within seven weeks as an outer limit, and it goes without saying, that the existing BoD is required to maintain proper accounts with regard to receipts and expenditure of the respondent No.1 society and which in any case is subject to audit, no restraint order or order with regard to appointment of the Administrator need to be passed. This conclusion of ours shall also answer a similar plea of Dr. Aggarwala.

84. Insofar as, the application being CM APPL. 54549/2023, filed by the respondent No.1 is concerned, the same has been filed with the following prayers:

“Under the facts and circumstances of the case it is most respectfully submitted that this Hon'ble Court may graciously be pleased to;

A. Direct the respondent No.2 SCBA to pay the invoice of M/s. Shriram Institute for Industrial Research for testing as directed by IIT, Delhi in compliance of orders of Hon'ble Supreme Court with right to recover from the



contractor, and

B. In the alternative direct the petitioner/intervener to pay the above referred invoice of M/s. Shriram Institute for Industrial Research for the requisite testing to safeguard the life and property of the residents of Supreme Towers with right to recover from the contractor, and/or

B. Pass such other further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

85. We are of the view that the prayers made in this application are relatable to the issues decided by the Supreme Court vide order dated January 31, 2023, in **Contempt Petition (C) No. 80/2022** in **Civil Appeal No. 2818/2020** titled as **Supreme Court Bar Association Multi-State Co-operative Group Housing Society Limited v. Aftab Alam and Another**, and as such, cannot be considered by this Court. The application is closed.

86. It is also stated that the directions as passed above, shall not affect the compliances to be made of the orders of the Supreme Court and Allahabad High Court.

87. On the above terms, the present writ petition and application being CM Appl.41138/2023 are disposed of accordingly. No cost.

88. Let a copy of this order be sent to Justice S.N. Dhingra (Retd.) on his email shivnarayan.dhingra@gmail.com and through whatsapp on his mobile number 9871300027.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 03, 2023/ds