

C.W.P. No.7742 of 2007 and ~~12~~ other connected petitions.

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Present: Shri S.C.Nagpal, Advocate, Shri Arun Jain, Senior Advocate with Shri Amit Jain, Advocate, Shri S.C.Pathela, Advocate, Shri T.S.Chauhan, Advocate, Shri Arun Palli, Senior Advocate with Shri Jai Bhagwan, Advocate, Shri Ashok Sharma, Advocate Ms.Puneeta Sethi, Advocate, Ms.G.K.Hundal, Advocate and Shri Rajneesh Sharma, Advocates for the petitioners.
Shri B.B.S.Teji, Senior D.A.G., Punjab for official respondents.
Shrii Puneet Bali, Advocate, Shri Ashwani Prashar, Advocate and Shri Amit Joshi, Advocate for Shri Rupinder Khosla, Advocate for the Society and PUDA.

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I have heard the respective counsel for the parties.

The contours of the controversy were succinctly delineated in order dated 12.1.2010 passed by this Court. The relevant part of that order is extracted below:-

“VI. On road to a fresh agenda - the imperatives”

(a) Broad priorities set out

8. Addressing the grievance of the petitioners before the Court would be the prime objective. Preparation of a larger framework for a transparent conduct of the Committee shall be the next task so that future litigations could be quelled. It does not require long and tedious reasoning to come to a conclusion that is all is not well. If it were not so, there would have been no need for litigations and we would not have arrived to a situation that from the time when the society was framed in the year 1987 till date, the constructions have not been completed and distributed in the manner planned. We will, therefore, start only with a positive framework that the persons who were members of the society since the inception and who have parted with the sale considerations as and when amounts were demanded are

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assured an immediate allotment. The persons, who have been inducted as members subsequently, will rank next in the order of priority for allotment, even if it means in the process that their allotments already made shall be liable for cancellation. The third attempt shall be to freeze the scheme to some degree of finality so that the members know what falls for distribution amongst them and there are no longer whimsical inclusion of membership and arbitrary distribution of properties by way of allotments.

(b) The list of genuine members identified.

9. The last of the orders passed by the Deputy Registrar exercising the powers of the Registrar, Cooperative Societies, Punjab on 27.08.2007 addressed the grievances aired by the members and that could itself be the starting point for finding solution for the controversy. The order has come to be passed at the instance of the petition filed by the 14 members of the society principally challenging the resolutions made on 12.09.2004 and 16.02.2005 found to be irregular on account of the fact that the nominee of the Registrar had not notified all the meetings. However, in a General Body Meeting held on 09.04.2006 reviewed the decision and passed a fresh resolution on 09.04.2006 in supersession of the decision taken earlier. The order records the fact that after fresh resolution was made in the meeting held where many of the members, who have now filed the writ petitions were actually present and they have also

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been allotted the flats. This decision passed by the Deputy Registrar on 27.08.2007 itself had been challenged by means of writ petitions and some other petitioners admittedly have also approached the Government in revision for annulling the order made by the Deputy Registrar. The decision of the Deputy Registrar on 27.08.2007 is not, in any sense, conclusive, for the challenges to the sales have come through writ petitions and revisions pending before the Government. This order has come after many a tumble and the first order, which addressed the issue more comprehensively is the order of the Registrar of Cooperative Societies passed on 31.07.2004 passed under the directions of the Financial Commissioner on 08.08.2003 and subsequently on 20.11.2003 as per the directions of this Hon'ble Court in C.W.P. No.16577 of 2003. The said order records the fact that three-member committee had been constituted on 18.09.2003 consisting of Additional Registrar (Administration) and two Additional Registrars of the Cooperative Societies, who issued public notices on 28.10.2003 and on 09.11.2003 calling upon interested persons to file their claims and objections with respect to membership of the society within 15 days. A total 548 claims have been received by the Committee and it proceeded to examine the genuineness of the claims and put them to five categories. The first category consisted of 348 claimants, whose names figured in the list in Proforma A of the Committee report. The second category comprised of claimants

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who submitted their claims after the submission of the first scrutiny report but before the submission of the supplementary report. The third category of five members comprised of the claimants, who submitted their claims after the submission of the supplementary report. The fourth category consisted of 100 claimants, whose names were not borne on the records of the society and compiled in Proforma 8 and the fifth category were the persons whose names were enrolled by the Society in the months between January to March, 2004 on the basis of the order passed by the Financial Commissioner that there could be no fetter of admission of persons as new members. The Committee found amongst first and third categories, 283 members to be genuine members. This list of 283 members as genuine has not been denied by any party and therefore, their entitlement to allotment cannot be impeached subject to fulfillment of the conditions regarding payments when the respective calls are made to them. From the second category, the Committee identified 2 members as genuine. The Committee also found that 102 members in the fourth category were not genuine members and as regards the claims in the fifth category of 109 claimants, whose names were received between January to March, 2004, it was observed that they had been made members only after the orders were passed by the Financial Commissioner, Cooperative, Punjab. The Registrar by its order observed that on the question of deciding

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genuineness of the newly enrolled members was beyond the scope of the scrutiny committee and he, therefore, refrained in passing the order in respect of those members, who claimed membership between January to March, 2004. Notwithstanding the decision of the Registrar, it is still contended by the petitioners that 109 members, who were subsequently inducted were found by the scrutiny committee to be persons, who had paid amounts ranging between Rs 1 lac to Rs.12 lacs for getting the flats and the Committee had observed that these newly inducted persons had paid huge sums to the present Secretary of the Society for obtaining their enrollment. In the appeals filed to the Financial Commissioner, Cooperative Societies against the decision of the Registrar, it passed an order after appraising the Scrutiny Committee's report affirming the decision of the Registrar with reference to 285 persons identified as genuine members and also upheld the claim of the newly enrolled 109 members as also genuine. This decision was taken by observing that there could be no fetter on enrollment of new members and the Scrutiny Committee itself had not specifically held anywhere that the persons were fictitious. If some of them had substituted the names of fictitious members and they had also paid substantial sums to become members, their induction ought not to be objected to. If newly inducted members have come through transfers, so long as the Managing Committee was competent to enroll new members, no mala fides could be

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attributed to such enrollment. This observation of the Secretary shall be subject to one more rider that the newly inducted members must fulfill the qualifications set out in the byelaws, which we have extracted above in para 2 above.

(c) Issue of allotment to 109 (or 104?) members, need for modification

10. All the writ petitioners are persons, who fall amongst the group of genuine members. Some of them have been allotted apartments and some have not been. Their grievance has been that persons, who are inducted as members subsequently have already secured their allotments. The petitioners cannot have an objection that no new member can be inducted. Their grievance will be legitimate only to the extent that persons, who came later have to wait till the petitioners obtained their allotments and if they have obtained any priority that would require to be annulled. Their contention is that there are about 264 allotments made so far, out of which only 106 are genuine and 158 allotments are not genuine allotments. It is also their grievance that 78 additional allotments have been made out of which only 20 are genuine and 58 are not genuine. The response to these contentions on behalf of the Society is that amongst the 109 members, who had been inducted between January and March 2004, allotments were immediately made only because they alone were responsible for redeeming the Society out of an imminent prospect of the resumption ordered

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by HUDA for non-payment of the consideration, which they had to pay before a particular date. Out of 109 members immediately after notices for making the payment, 62 appeared in person and made the payments upfront deserving to them an immediate allotment. Neither the membership of those persons nor the allotment could, therefore, be disputed. The further objection on behalf of the respondents was that all the 109 members have themselves been not impleaded and a challenge to their allotment cannot be made in their absence. The challenge to the resolutions dated 12.09.2004 and 06.02.2005 were themselves not tenable in view of the fact that the Competent Authority had already upheld the resolutions and the only remedy if at all was to file a revision against the same.

11. It is submitted on behalf of the society that there have been other problems compounding the immediate allotment of the flats to the members. Some criminal cases had been filed and they are still pending. As of now 338 flats are already made ready and the plan has been finalized to increase the number to 419 flats, which could still go up to 460 flats with the prospect of FAR being increased. Out of the total flats, which are constructed already as a first phase, allotments have been made to 104 persons, who have also occupied the construction as nearing completion and the Society will have no objection for allotment of the remaining flats to the members of Society in any manner as the Court to direct it.

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12. The process should proceed not in a contentious fashion but it should begin on the basis of trust from the stage where the petitioners are assured of the status as members, who are entitled to the respective allotments. There ought to be certainty regarding the genuineness of the membership of 109 members whom the Financial Commissioner has by his order already approved. If the allotments have already been made to 104 members without addressing the claims of 285 genuine members including the petitioner, their grievance is legitimate. The allotment made already by the Society to 104 persons when the proceedings were still pending and when the members have been clamouring for immediate allotments do not appear to be justified. Still, if there are adequate flats available for the genuine members, the wrong allotment need not be disturbed. This is not perhaps an ideal situation but what is exigent and practical. The allotments already made and where 104 members are reported to have occupied in the first phase shall not be required to be set aside but would require to be ratified if they fall within certain parameters hereinafter outlined. I am alive to the situation that illegal allotments or out of turn allotments cannot obtain any legitimacy, for gravest situations have come by Courts when entire edifice of construction made was also directed to be demolished and the property vacated by a builder in the decision of the Hon'ble Supreme Court in M.L. Builders Private Limited Vs. Radheshyam Sahu 1999 (6) SCC 464. In that case the Hon'ble

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Supreme Court was dealing with an allotment made by resolution of the Municipal Committee when the builder had excavated large portions of land in a public park and had completed the construction close to 80% for what was to accommodate air-conditioned shops. The constructions were made with the aid of an interim order from the Hon'ble Supreme Court. When the ultimate dispensation by the Hon'ble Supreme Court was that the initial sanction for construction had been wrongly made, it did not allow the arguments of equities to come in the way and directed the demolition of the entire structure worth several crores of rupees. In the decision that I have taken, no demolition is ordered. It is only to set the equity in place that the persons, who become members later but who have been allotted the apartments and reported to have made the improvements need not be asked to surrender possession, provided they are not otherwise disqualified to be members and actually taken possession and effected improvements. It has been held by the Hon'ble Supreme Court in *I.L. Dhingra v State of U.P. (1987) 2 SCC 533*, that allotments made in respect of buildings should not be disturbed on the applications of persons who have approached the court after a long delay. In this case, there is perhaps no delay, but there is no dearth of flats for allotment. Some of them have been observed by the Secretary in the impugned order have come to the succor of the society at the time when it faced with resumption action by PUDA for non-payment of the

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consideration. That should settle one bit of equity in their favour.

VII. Present Disposition

(a) To be carried out through an Administrator

13. (i) The full consideration for the property payable to PUDA shall first be paid from the existing funds of the society. If the funds are not sufficient, the amount that remains due shall be reckoned per capita from among the 285 genuine members already elicited by the scrutiny committee, provided however the amount payable, including the amount already paid to the society by each of the members, shall be uniform.

(ii) The property would require to be personally visited to ascertain the actual number of flats that are fully ready, both masonry and as regards amenities of plumbing, electricity, water supply and sewerage. If they are not fully ready, the stage of construction shall be ascertained with the building contractor who has been entrusted with the job of construction.

(iii) If there is a full-fledged sanctioned plan for 338 flats, which are already complete, the allotment shall proceed first by issuing notices to the persons identified as genuine members giving them a schedule of payment indicating the specific dates before when the amounts shall be paid and indicating a time line before when the property shall be delivered.

(iv) The completed constructions other than the flats reported to have been delivered to 104 new members have to be allotted in the order of seniority from among the 285 members identified as

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genuine and who have already paid the full price for the flats.

(v) From among the 109 members shall be the next in priority of persons who have paid the amount partially and who make the payments for the whole of the consideration within a period of 15 days from the date when the notice is sent to each of the members found eligible for allotment.

(vi) If the flats available for allotment fall short of completed construction, the consideration proportionate to the percentage of completed construction shall be collected and of the remaining portion, when it is made ready for delivery.

(vii) Any delay in making the payment within the time stipulated shall result in reassigning the seniority and slide to the lowest entry in the list of allottees, with the corresponding loss of expressing preference in the choice of flats.

(viii) The genuineness of 109 new members will be ascertained with reference to the membership eligibility criteria specified in the bye-laws and after hearing objections, if any, from the genuine members within a period of 15 days from the date when notice is given to prove the genuine membership.

(ix) If, from among the 109 members, the members are identified as genuine and have been already allotted the flats with possession already given, they shall be allowed to retain the flats.

(x) If, from among the 109, membership as regarding eligibility is not established, but they have obtained allotment and possession, they shall forfeit their right of possession and flats

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that are so vacated shall be reckoned as available in the pool of flats fit for allotment. If there is any obstruction caused to the re-delivery of possession, it shall be taken through this court with the help of bailiff and the costs of taking possession will be recovered by the person causing obstruction.

(xi) If, from among the 109 persons, membership is proved but not delivered possession of any flat, they shall rank below the 285 members in the order in which they were inducted into membership.

(xii) In the order of seniority, if members have been inducted on the same date, the older age of the member as established by birth certificate, school certificate, entry in passport or service records shall determine the seniority and if date of birth are also same, the seniority shall be determined by draw of lots.

(xiii) No fresh membership will be enlisted without fully exhausting the allotments to all the existing members.

(xiv) For giving effect to the scheme of allotment envisaged in this order, Sh. Girish Agnihotri, Sr. Advocate is appointed as the Administrator and Ms. Dinay Jeet Sheron, Advocate, Chandigarh is appointed as his Assistant.

(xv) The remuneration for Sh. Girish Agnihotri, Sr. Advocate shall be Rs.50,000/- and for Ms. Dinay Jeet Sheron, Advocate shall be Rs.25,000/- which shall be paid out of the funds of the Society to be taxed equally among the members who obtain allotment of the flats.

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(xvi) The entrustment of the work to the Administrator shall be deemed to be complete if allotments are made to all the genuine members and future allotments for members that may be enlisted shall be through the lawfully elected office bearers of the society

(b) Non-genuine members, but allotted with flats shall surrender possession without claiming compensation

14. For any improvements or alterations, which have been made by members but which are cancelled, the persons whose allotments have been cancelled shall not be entitled to any compensation, for they have come by allotment, which is irregular and which is being set aside. The persons, who have secured out of turn allotments and who are ineligible to be members are entitled to no equity and they cannot also complain that they were not impleaded as parties. In order, however, that the flats allotted to these members are resumed and handed over to the members in order of seniority, the Administrator shall serve notices to them giving them a time not less than one month for vacating the premises. Requirements of natural justice are flexible as the Hon'ble Supreme Court held in Shiv Sagar Tewari Vs. Union of India 1997 1 SCC 414 and a collective personal hearing that the Committee offered ought to be treated as sufficient. 'Natural justice is not after all an unruly horse and no lurking landmine.' Its unnatural expansion without reference to these reliefs can be exasperating as held by the Hon'ble Supreme Court in Shiv Sagar Tewari's case. It has been held by the

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Hon'ble Supreme Court in Chaman Lal Singal Vs. HUDA 2009 (4) SCC 369 that cancellation without even notice will be justified if there is a non-compliance of conditions of allotment or relating to payment. It was also found as justified in Meerut Development Authority Vs. Association of Management Studies 2009 (6) SCC 171."

As is evident from the perusal of the above reproduced extract of the order dated 12.1.2010, an Administrator was appointed to look into the various aspects of the matter detailed therein, but despite the best efforts put in by the Administrator, the controversy could not be resolved.

Prima facie, I am of the opinion that efforts of the Administrator have been frustrated by the issues raised in the din raised by the affected parties to the controversy. It also appears that the management of the Cooperative Society is unable to handle its affairs, but in order to be fair to all the parties, it is deemed appropriate to grant one opportunity to sort out the entire contentious issues which plague the Society.

The parties through their respective counsels have agreed unequivocally before this Court that a Committee may be appointed to make last attempt to resolve the issues. They have submitted the names of the proposed members of the Committee, but have ultimately left it to the discretion of the Court. They have also stated that they will furnish affidavits of the parties undertaking that the findings of the Committee shall be binding upon them and that they will not try to subvert such findings.

Accordingly, a Committee with Shri K.S.Garewal, a retired Judge of this Court as its Chairman and Shri K.R.Lakhanpal, Retired Chief

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Secretary, Punjab, R/O House No.38, Sector 16, Chandigarh as its member, is appointed to look into the matters, which have already been referred to in order dated 12.1.2010 and have also been extracted herein above.

The respective parties shall submit their affidavits to the effect that the findings of the Committee shall be acceptable to them.

The remuneration payable to the chairman and the member shall be Rs.1,25,000/- and Rs.1,00,000/- respectively. This amount shall be paid from the funds of the respondent-society which shall be shared equally amongst the allottees of flats.

In case, the Committee feels the need of the assistance of a person well-versed with the affairs of Co-operation Department, then, Shri Virender Singh, Inspector, Cooperative Societies, Punjab be co-opted and in such an eventuality, he shall be paid a sum of Rs 40,000/- as remuneration in lieu of his services. This amount shall also be paid from the funds of the respondent-society which again shall be shared equally amongst the allottees of the flats.

The Committee shall be required to submit its report on or before 15.10.2010. *Copy of this order should be sent to the members of the committee constituted. 12.1.2010*
Put up on 26.10.2010 for further proceedings. *My*

August 10,2010