

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s) 1313 OF 2019
(Arising out of SLP(Civil) No(s). 8138 of 2013)

DELHI DAYALBAGH COOPERATIVE HOUSE
BUILDING SOCIETY LTD.Appellant(s)

VERSUS

REGISTRAR
COOPERATIVE SOCIETIES AND ORS.Respondent(s)

WITH

CIVIL APPEAL NO(s) 1314 OF 2019
(Arising out of SLP(Civil) No(s). 9015 of 2010)

CIVIL APPEAL NO(s) 1315 OF 2019
(Arising out of SLP(Civil) No(s). 26905 of 2010)

J U D G M E N T

Rastogi, J.

Civil Appeals arising out of SLP(Civil) No(s). 8138 of 2013,
SLP(Civil) No(s). 9015 of 2010,
SLP(Civil) No(s). 26905 of 2010

1. Leave granted.
2. The above noted appeals are directed against the orders separately passed by the High Court of Delhi in writ petitions filed at the instance of the present appellant Society which came

to be dismissed upholding the order of the Cooperative Tribunal setting aside the award passed by the Registrar Cooperative Societies holding that the Arbitrator had no jurisdiction to examine the validity and legality of the registered sale deed which can be questioned only by availing a remedy in the Civil Court holding jurisdiction. Orders were separately passed by the Tribunal in the cases of the individual members in whose favour sale deed was executed by the society, having been separately decided by the High Court, which has been challenged in these batch of appeals.

3. The facts that emerge from the multitude and collateral and exhaustive pleadings in brief are that the appellant is a house building Society originally registered with the Registrar, Cooperative Societies, Delhi ("hereinafter being referred to as "RCS") under the provisions of the Bombay Cooperative Societies Act, 1925. On enactment of the Delhi Cooperative Societies Act, 1972, the provisions of the Act, 1972 and the rules framed thereunder came to govern the field. However, the Act of 1972 came to be repealed by the Delhi Cooperative Societies Act, 2003(hereinafter being referred to as the "Act 2003") as amended

by the Delhi Cooperative Societies(Amendment Act), 2006 which now governs the field along with Delhi Cooperative Societies Rules, 2007 framed thereunder.

4. The Society framed its bye-laws, namely, Delhi Dayalbagh Cooperative House Building Society Ltd., Soami Nagar, New Delhi, with the primary object to acquire the land either through outright purchase or on lease for construction of houses for its members, either on rent or on hire purchase system or by outright sale with a stipulation that no member shall be permitted to transfer, sell or mortgage his house to any person other than the members of the society or the society itself as referred to under bye-law 51 and after the object being achieved for which the Society has been formed, the procedure may be followed for its liquidation as referred to under bye-law 65. Para 5, 51 and 65 of bye-laws which are relevant for the purpose are reproduced as under:-

"5. (i) Any person shall be eligible to be a member of the society provided:--

(a) he is a follower of Radha Soami faith and a member of Radha Soami Satsang affiliated to Radha Soami Sabha, Dayalbagh, Agra;

(b) He, at the time of enrolment as a member, is domiciled in the Union Territory of Delhi or has been resident in the Union Territory of Delhi for two years or more; provided that this condition shall not apply to members of All India Services and employees of the Central Government and the Delhi Administration.

(c) his written application for membership has been approved by a majority of the Managing Committee.

(d) his age is more than 18 years, except in the case of minor heir of a deceased member;

(e) he is not a member of any other house building society;

(f) he or his wife (she or her husband in case of a woman) or any of his/her dependents does not own a dwelling house or a plot for building a house in Delhi;

(g) directly or indirectly he does not deal in purchase or sale of house or land for construction of houses either himself or through any of his dependents.

(h) he has carried out the provisions of bye-law.

(ii) Every person seeking membership of the society shall sign a declaration to the effect that he or his wife (she or her husband) or any of his/her dependents does not own a dwelling house or plot in Delhi and that he/she is not a member of any other co-operative house building society.

(iii) Every member on admission shall pay Rs.10/- as admission fee which shall not be refunded in any case.

(iv) When a person's application has been accepted by the Committee and he has paid his admission fee and

first instalment of this shares, he shall be deemed to have acquired all the rights and incurred all the obligations and liabilities of a member of the society as laid down in the Co-operative Societies Act, the Rules made there under and these bye-laws.

(v) Application for admission as member and for allotment of shares shall be made to the Secretary in the form, if any, prescribed by the society for the purpose. Every such application shall be disposed off by the Managing Committee who shall have power to grant admission or to refuse it after recording reasons for such refusal, provided, however, that any person whose application has been refused by the Managing Committee may prefer an appeal within 30 days to the Assistant Registrar, Co-operative Societies(Housing). The decision of the Assistant Registrar shall be final.

51. No member shall be permitted to transfer, sell or mortgage his house to any person other than the members of the society or the society itself.

65. The society shall be wound up and dissolved only by order of the Registrar under Section 39, 40 or 42 of the Co-operative Societies Act.

After all the liabilities including the paid up share capital have been met, the surplus assets shall not be divided among the members, but shall be devoted to any object of public utility determined by the General Meeting of the society within three months of the date of final liquidation, and approved by the Registrar, or they may in consultation with them either be assigned by the Registrar in whole or in part to any or all of the following :-

- (a) an object of public utility of local interest ;
- (b) a charitable purpose as defined in section (2) of the Charitable Endowment Act ;
- (c) or may be placed on deposit with The Delhi State Co-operative Bank until such time as a new society with similar conditions is registered when, with the consent of the Registrar, such surplus may be credited to the Reserve Fund of such new society.”

5. To fulfil the object with which the society was formed, it was desirous of obtaining land for construction of dwelling units to be made available for its members. However, it did not go into the market to purchase land but approached the appropriate Government for its assistance with an application invoking Part VII of the Land Acquisition Act, 1894, to provide the land located in various Khasras admeasuring 137 bighas & 11 biswas situated at village Chirag Delhi for construction of dwelling houses for its members.

6. Part VII of Land Acquisition Act, 1894 under the heading “Acquisition of Land for Companies” begins with Section 38 and runs upto Section 44 B. Section 38 was repealed by Section 68 of 1984 with effect from 24th September, 1984. The issue in the present case is pertaining to year 1955 when the acquisition proceedings were initiated. Section 38A was a part of the Statute at the relevant point of time when the acquisition proceedings were initiated by the appropriate Government in the year 1955.

7. Section 39 lays down that Sections 6 to 16 and Sections 18 to 37 (both inclusive) shall not be put in force in order to acquire

land on behalf of the company without previous consent of the Government unless the company(includes society) executes an agreement. In terms of Section 40, a consent is to be obtained after the appropriate Government record its satisfaction either on the report of the Collector under Section 5A or by the inquiry held as provided for the purpose of acquisition is to obtain land for erection of dwelling houses for workmen employed by the company or that such acquisition is needed for construction of building or work for the Company and that work is likely to be proved useful to the public.

8. The State Government thus proceeded under Part VII of the Land Acquisition Act and after holding preliminary enquiry as envisaged under Section 40 of the Land Acquisition Act, 1894 and after recording its satisfaction, executed an agreement laying down the terms & conditions with the appellant Society under Section 41 dated 12th April, 1955 which was published under notification dated 13th May, 1955 in the Official Gazette in terms of Section 42 of the Act, became the force of law and binding not only upon the parties to the agreement but also on the public at large. The terms & conditions indicated in the agreement dated

13th May, 1955 published in the Gazette and relevant for the present purpose are reproduced hereunder:-

“1. That the Society shall pay to the State Government or such person or persons as the State Government may appoint in this behalf before possession of the said land is given to the Society the compensation, if any, as settled by the Collector or if reference is made to the court by the final court or appeal and all compensation inclusive of all payments and allowances in respect thereof payable under the said Act and all Courts costs and pleaders fees etc. incurred by the State Government in defending the reference, if any, made to the court as aforesaid and on appeal or appeals filed in connection therewith and all compensation, pleaders fee etc. payable or paid by the State Government to the claimant in the said matters. The State Government shall not be bound to give possession of the land until all the said money have been paid, and may withdraw from the acquisition, and in case of withdrawal the Society shall be liable to indemnify the State Government against all expenses incurred and damage sustained as the result of anything done by them in the matter of acquisition till the date of withdrawal.

2. That upon such payment by the Society the Chief Commissioner covenants to convey and grant to the Society the said land described in the Schedule hereto, to held the same to the said Society for every subject to the conditions hereafter not forth, namely:-

(a) That the Society shall within 15 years of being put in possession of the said land utilise this land for the purpose it is acquired.

(b) That the Society its successors and assignees shall use the said land for aforesaid purposes and for no other purposes, whatsoever.

(c) That if the Society fails to carry out any of the terms of this agreement or if the said land no longer required by the said Society for the aforesaid purpose, then the Society

shall forthwith relinquish and restore the same in favour of the Chief Commissioner and land shall be liable to be resumed and taken by the State Government on payment to the Society of the amount of award as finally settled or the estimated market value of the land at the time of resumption, whichever, shall be less and if there are any buildings on the land the Chief Commissioner may at his option either purchase the buildings on payment of their estimated value at the time or direct the Society to remove the buildings at its own cost which such time as may be allowed by the State Government.

(d) That should any dispute or difference arise touching or concerning the subject matter of this agreement or any covenant or clause of thing contained therein, the same shall be referred to the Sole Arbitration of any person nominated by the Chief Commissioner of Delhi or in case his designation is changed or his office is abolished to the sole arbitration of any person nominated by the officer, who for the time being is entrusted, whether or not in addition to other functions with the functions of the Chief Commissioner of Delhi by whatever designation such officer may be called. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant that he had to deal with the matters to which this indenture relate and in the course of his duties as such Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final and binding on the parties.”

9. After acceptance of the terms & conditions of the agreement being deduced in writing, duly published in the Official Gazette under Section 42 of the Act, having the force of law, the State

Government proceeded to complete the acquisition proceedings and published the award under Section 11 of the Act dated 26th February 1957 and after taking possession free from encumbrances under Section 16 of the Land Acquisition Act, handed over possession to the society in terms of the agreement dated 13th May, 1955 on 11th June, 1957 and 30th July, 1957 respectively. It may be relevant to note that any agreement or Memorandum of Understanding, if any, executed while possession of the subject land was handed over to the society, has not been placed by the society on record and inference can be drawn that while handing over possession, the State Government intended to comply with the terms & conditions of the agreement dated 13th May, 1955 to be adhered to in its true spirit by the society and indisputedly breach, if any, of the conditions of the agreement has not been brought to the notice of the Court.

10. The appellant Society in fulfilment of its obligations and in terms of the agreement dated 13th May, 1955 allotted plots to its members within the stipulated period of 15 years by a separate registered sale deed executed on certain terms and conditions.

Since the terms and conditions of allotment as recited in the sale deed are common, we have noticed from the registered sale deed dated 30th December 1968 in reference to plot no. B-68 to its member Mr. Manocha, on acceptance of full consideration for the plot in question.

11. Coming to the facts of the Civil Appeal arising out of SLP(C) No. 8138 of 2013, Mr. K.L. Manocha, as a lead case, who was a member of the Society allotted a plot no. B-68, Soami Nagar and sale deed was executed in his favour on 30th December, 1968 in the same terms. It reveals that Mr. Manocha, had initially constructed a single storey house later intended to demolish and construct a multi storey structure for his own needs and requirements. The appellant came across with the advertisement in the magazine titled “Real Property Times” in June, 2005 for sale of a basement, four bedroom apartments on each of the upper four floors of the building constructed on the plot in question. This fact came to the notice of the society on 18th June, 2005. The society published a notice inviting the public in general that the residential plots in Soami Nagar cannot be sold to persons who are not the members and who are not eligible to be members of the society and violation of the society bye-laws

and the sale deed even if registered shall be at his own risk and peril.

12. At this stage, a claim petition was filed at the instance of society under Section 70 of the Act, 2003 seeking declaration of the sale/transfer of the property in question by the allottee to a non-member without prior notice or permission, as illegal and void being in violation of clauses 2 & 3 of the sale deed and clause 51 of the bye-laws and it was prayed that the same may be cancelled and the property be referred back to the society.

13. The award was passed in favour of the appellant society and against the respondent no. 2 dated 1st December 2006 holding that sale/transfer was violative of clauses 2 & 3 of the sale deed and bye-law 51 directing the impleaded respondent(member of the society) to hand over the property within the stipulated time to the appellant society. But no order was passed against the transferees/purchasers including the respondents being non-members of the society. When the proceedings were initiated in execution of the award and property was stated to be attached at one stage on 28th November, 2007, the respondents who were stated to be the parties and claiming to be the purchasers and

occupants filed separate appeals against the award before the Cooperative Tribunal. At the same time, the appellant society also filed appeal assailing the award to the limited extent with regard to deletion of names of the impleaded respondent nos. 3 and 4 with a prayer for reinstatement. The appeals filed by the impleaded respondents and of the appellant society were heard by the Tribunal and disposed of by a common judgment dated 6th January, 2012. The appeal of the appellant society was allowed but the award passed by the Arbitrator dated 1st December, 2006 was set aside which was the subject matter of challenge before the Delhi High Court and after being affirmed on dismissal of the writ petition preferred by the appellant society, the matter is under challenge in the present batch of appeals.

14. Civil appeal arising out of SLP(Civil) No. 9015 of 2010 has been filed against the order dated 28th October, 2009. Although the question was the same with the additional factor raised that in terms of condition nos. 2 & 3 of the sale deed, notice was served on the society that was not responded failing which the member proceeded to sell the subject plot but service of notice was disputed by the appellant society and the Tribunal held that

the appeal of the society for cancellation of the legally executed registered sale deed is not a subject matter which is covered under the provisions of the Delhi Cooperative Societies Act and rules framed thereunder and such registered instrument, if at all one is aggrieved, could be challenged in a civil Court having jurisdiction and in the writ petition preferred by the society, the High Court while upholding the view of the Tribunal further observed that in the absence of the purchaser being impleaded as party to the proceedings, his rights indeed has been jeopardised who indisputedly was a necessary party to the proceedings and when the valid transaction is sought to be set aside by the Arbitrator under its impugned award, the purchaser was to be heard and was held against the appellant and on the twin ground the writ petition came to be dismissed is the subject matter of challenge.

15. In civil appeal arising out of SLP(C) No. 26905 of 2010, the order of the Tribunal which was on the same lines and placing reliance on the earlier order of the High Court dated 28th October 2009, the Writ Petition(C) no. 2136/2008 came to be dismissed with additional fact taken into consideration that Section 91 of

the Act, 2003 gives recognition to purchase through the registered agreement to sell or power of Attorney or a sale deed and on fulfilment of conditions, the applicant, if apply for membership by paying transfer fee, share money and admission fee etc. as per the provision of the bye-laws, the society and the committee has to grant membership to the applicant within 30 days of the submission of application and refusal by the Committee may give rise to appeal by the applicant to the Registrar of the Cooperative Societies.

16. Mr. Shekhar Naphade, learned senior counsel for the appellant submits that it is not in dispute that the land was acquired by the appropriate Government under Part VII of the Land Acquisition Act and for the aforesaid purpose, the appellant society and the Government entered into an agreement dated 13th May, 1955 under Section 41 of the Land Acquisition Act which came to be published in the official Gazette in compliance of Section 42 of the Act and has a force of law and learned senior counsel submits that in terms of the agreement, the Government has to execute a deed of conveyance and grant the said land to the society. Indisputedly, the Government has failed to execute

deed of conveyance or make the grant in favour of the society and further to support its title, the society filed a Writ Petition No. 6406 of 2001 and order came to be passed on 7th January, 2004 directing the Government by Writ of Mandamus to execute the deed of conveyance. Taking assistance thereof, learned senior counsel submits that in the absence of any agreement/deed of conveyance been executed by the Government, the appellant society itself does not hold a freehold title and is not a owner of the subject land in question and so long as the society is not the owner of the subject land, it could not transfer ownership rights to its members as the transferor cannot confer on the transferee a better right than what he himself possess and the purported sale deeds executed by the society in favour of its members even though indicated in the recital of the sale deed as owner of the subject plot but that may not transfer any ownership/freehold title on its members.

17. According to the learned senior counsel, the title of the parcel of land is still with the Government and the Government has not executed any deed of conveyance so far despite order of the Delhi High Court dated 7th January, 2004 and the agreement

dated 13th May, 1955 is nothing more than a promise to execute a deed of conveyance and the agreement may have a binding force in view of its publication in the Gazette under Section 42 of the Land Acquisition Act but cannot be construed as extending freehold title to the society.

18. Learned senior counsel further submits that Section 44 A of the Land Acquisition Act clearly provides that no company (which include society) for whom land is acquired under Part VII of the Act is entitled to transfer the land or any part thereof by sale, mortgage, gift or otherwise except with the previous sanction of the Government. According to learned senior counsel, the sale deeds executed after 1962, when Section 44 A came on the statute book w.e.f. 12th September, 1962 does not indicate that any previous sanction has been obtained from the Government and mere permission to use does not create any right or interest on the subject land in favour of the society. At least, in any case, no ownership of freehold right is created so far and Section 54 of the Transfer of Property Act, 1882 is merely a codification of the principle of common law which may not be of any assistance to the respondents as its defence.

19. Learned senior counsel appears to be very futuristic in his approach when submits that even if the Government decides at later stage to grant ownership to the society, such ownership would always be subject to Section 44A of the Land Acquisition Act and society cannot make any transfer in any form, without previous consent of the Government and the very concept of freehold means that the holder of the land has an absolute right to transfer and/or create any rights in the land without being required to take any permission or consent of any other authority or person and in this context, the finding which has been recorded converting freehold rights in favour of the members in respect of the plots allotted to them is erroneous and contrary to law which according to him is not sustainable.

20. According to learned senior counsel Mr. Shekhar Naphade, the purported sale deed executed by the society in favour of its members has no legal effect and even the terms on which the members of the society are occupying their respective plots or their houses confers no right in favour of the allottees. Thus, the transfer made by individual members to third parties/non-

members without previous sanction of the Government are *void ab initio* bad and such transfer without prior permission/consent of the society even by registered sale deed apart from being in violation of the provisions of the bye-laws are also hit by Section 44A of the Land Acquisition Act and no legitimate right can be conferred on the allottee or its transferee to whom rights have been transferred on the subject plot in question and placed reliance on the judgment of this Court reported in **Zoroastrian Cooperative Housing Society Ltd. and another Vs. District Registrar, Cooperative Societies(Urban) and Others** 2005(5) SCC 632.

21. Per contra, Mr. Ranjit Kumar, learned senior counsel for the respondents while supporting the judgment of the High Court submitted that the question which has been raised by the counsel for the appellant is beyond the pleadings and it was never the case of the society either before the Arbitrator or the Tribunal or the High Court or even in the pleadings in the civil appeal that in the absence of any deed of conveyance being executed in terms of clause 2 of the agreement dated 13th May,

1955, the society does not hold freehold title/rights over the subject land in question and what is being argued before this Court is beyond the pleadings and has been raised for the first time while making oral submissions and there is no factual foundation on record in support of what is being prayed and further submitted that the subject plots have been allotted to the members of the society as its owner free from encumbrances transferred by the Government, after being acquired at the behest of the society under the provisions of the Land Acquisition Act.

22. Learned senior counsel for the respondents further submits that after the agreement dated 12th April, 1955 been executed under Section 41 of the Land Acquisition Act, 1894 and published in the Gazette dated 13th May, 1955 become a force of law by virtue of Section 42 of the Act and the agreement dated 13th May, 1955 recites certain terms & conditions and on its satisfaction, the appropriate Government had proceeded to complete the acquisition proceedings and handed over possession of the subject land in question to the society free from encumbrances on 11th June, 1957 & 30th July, 1957 and after the possession was taken over by the society, the society

proceeded in making allotment to its members by a registered sale deed conferring rights and title in favour of the allottee.

23. Learned senior counsel for the respondents submits that a conjoint reading of clauses 2 & 3 of the sale deed (dated 30th December, 1968 in the instant case), the society reserves its pre-emptive rights over the subject plot in question and if the society fails to purchase within the stipulated period at the prevailing market price, the member will be at liberty to dispose of in the manner as he/she likes.

24. According to learned senior counsel, Section 91 of the Delhi Cooperative Societies Act, 2003 envisage that any member of the housing society who has sold his plot or flat on the registered Power of Attorney or agreement for sale or by sale deed ceases to be a member of the society and the transferee who has purchased the subject property on the registered Power of Attorney or agreement for sale or by sale deed on fulfilment of the conditions as stipulated on depositing the transfer fee and share money, if any, the Society and the Committee is under obligation to grant membership to the applicant within 30 days from the submission of application and in case of refusal, there is remedy

to the applicant to approach the Registrar of the Cooperative Societies for redressal of his/her grievance.

25. Learned senior counsel submits that there is no refusal ever made by the society to the transferees who had purchased the subject plot in question contemplated under Section 91 of Act, 2003 failing which the transferees, in their own capacity, be considered and deemed to be a member of the society in the absence of any order being passed by the society to the contrary.

26. Learned senior counsel for the respondents further submits that throughout even, from the correspondence evident from the letter dated 27th July, 1985 from the Secretary of the Society to Lt. Governor stated in para 2 that the “Delhi Administration acquired approx. 30 acres of land allotted to the society on 25th March, 1957 on freehold basis”. Later, in the letter dated 15th March, 1989 addressed to the authority from the Secretary of the Society, it was stated that “the status of the land is totally freehold and allotment of plots to the society’s members was also on the same basis.” That apart, the society, at one stage, approached the District Judge in RCA 95/82 titled as Delhi

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and after the matter was being heard, the learned trial Judge also recorded its finding that the subject land in dispute is being a freehold and there is no legal bar to the same being sold and the order passed by the learned trial Judge never came to be challenged by the society and accepted the nature of the land of which the possession was handed over by the appropriate Government on completion of acquisition proceedings initiated at the instance of the society vested free from encumbrances.

27. Learned senior counsel further submits that Section 70 of the Act have a limited jurisdiction to examine the dispute touching the constitution, management or the business of the cooperative society to arbitration and the prayers made are in the nature of declaration that the registered sale deed in favour of the non-members be held to be null and void is indisputedly beyond its scope and jurisdiction and has been rightly interfered by the Tribunal and confirmed by the High Court on dismissal of the writ petition preferred at the instance of the society and placed reliance on the judgment of this Court in **Usha Ranjan**

Bhattacharjee and Others Vs. Abinash Chandra Chakaborty and Ors. reported in 1997(10) SCC 344.

28. Learned senior counsel submits that after the enactment of the Delhi Cooperative Societies Act, 1972 or 2003, the bye-laws of the societies have to be in conformity with the provisions of the Act. There is a restrictive clause if inconsistent with the provisions of the Act, 2003 may not have any enforceability under the law and further submits that the possession free from encumbrances was handed over by the appropriate Government to the society after passing of the award in June/July 1957 and it may not be open for the appellant to take a summersault and raise a question which was never agitated. In last 60 years, much water has flown in the Ganges, conferring rights over the subject property and at this belated stage when number of sale deeds have been executed at various point of time by the society with its members which has been further transferred to non-members by registered power of attorney or agreement to sell or sale deed and their rights are protected under Section 91 of Act, 2003 and at such belated stage when there is no residential plot available with the society at its disposal, question of deed of

conveyance not executed may not arise for consideration and it appears that this plea has been raised to nullify the winding up proceedings which is adversely affecting the rights of the society.

29. We have heard learned senior counsel for the parties at length and with their assistance perused the records.

30. Before advertizing further, we will discuss some material facts and the relevant provisions of the Delhi Cooperative Societies Act and the bye-laws of the society which may have a direct bearing on the issue under consideration.

31. After the action been initiated by the society for providing land in fulfilment of the public purpose in providing plots to its members, the appropriate Government issued a notification under Section 4 dated 19th March, 1955 and after holding a preliminary inquiry, as contemplated under Chapter 40 of Part VII of the Act, 1894, and on its satisfaction, the appropriate Government executed an agreement dated 12th April, 1955 with the society under Section 41 in fulfilment of the necessary requirements, namely, payment to the Government of the cost of

acquisition, the transfer of land to the society on such payment prescribing the terms on which the land shall be provided to the society and where the acquisition is for the purpose of erecting dwelling houses, all the provisions of Act connected therewith, time and the manner in which the dwelling houses have to be erected, on the terms & conditions came to be published in the Gazette under Section 42 of the Act on 13th May, 1955 which became the law and binding on the parties and the public at large. The appropriate Government thereafter proceeded in making declaration under Section 6 of the Act. Consequent thereto, award came to be passed under Section 11 on 11th February, 1957 and the appropriate Government took possession of the subject land in question, free from all encumbrances, under Section 16 of the Land Acquisition Act and it has come on record that possession was transferred to the society for whom the acquisition proceedings were initiated at its instance on 11th June, 1957 and 30th July, 1957 respectively free from encumbrances and, therefore, the title in transferring the land to the society in terms of the agreement dated 13th May, 1955 created a statutory genesis. It is not the case of either party that there was any breach or violation of the terms and conditions

which has been referred to under the agreement dated 13th May, 1955 either by the society or its members or the purchasers or the successors in interest.

32. The emphasis of learned senior counsel for the appellant that the title of the land in question never stood transferred to the society in the absence of the deed of conveyance been executed, is without substance for the reason that the title at the first place in favour of the society was not created by any of the modes ascribable to the Transfer of Property Act and once the acquisition proceedings have been initiated by the Government, on fulfilment of the conditions referred to under Section 41 of Land Acquisition Act on being published in the Gazette dated 13th May 1955 under Section 42 of the Act which became the law, there appears no further statutory requirement to register any deed of conveyance under the Transfer of Property Act. Besides it, the consideration amount was paid by the society as demanded by the competent authority and physical and actual possession, free from encumbrances, was delivered to the appellant society and the land stood conveyed and granted in terms of clause 2 of the agreement. At the same time, no party in

the instant proceedings ever raised any objection/dispute on the issue of physical possession of the land in question being delivered to the appellant society and/or the same being passed on to the person who have purchased plots/flats therein subsequently. In the given facts and circumstances, it can legitimately be observed that the marketable title in transferring respective plots to its members has created a statutory genesis.

33. It is also not the case of the appellant society that at any later stage, after the appropriate Government handed over possession, free from encumbrances, of the subject land in question to the society, it ever raised objection in reference to the breach of the terms & conditions of the agreement dated 13th May, 1955 to resume the subject land or for taking legal recourse in reference to the title of the subject land in question. In the given facts and circumstances, a legal presumption can be drawn that after the peaceful possession free from encumbrances, was handed over by the State Government to the society, all rights of the said land stood vested with the society free from encumbrances and transferred to its members on the terms as indicated in the registered sale deed executed by the society.

34. The sale deed dated 30th December, 1968 was executed in favour of one of the applicant Shri Manocha, member of the society to whom plot no. B-68 was allotted by registered sale deed on certain terms & conditions on depositing the cost of the land, the physical possession of the subject land/plot was passed on to the member of the society. The extract clause of the sale deed dated 30th December, 1968 which are standardised conditions in all the sale deeds relevant for the purpose is reproduced as under:-

“This Sale Deed is made on this 30th day of December 1968 by the Delhi Dayalbagh Co-operative House Building Society Ltd. Delhi, in favour of Shri/Smt. K.L. Manocha, son of Shri M.R. Manocha, resident of Delhi, a member of the Society,

WHEREAS the Chief Commissioner, Delhi vide notification No. F-15 (147/34-LSG dated 17.3.55 and notification No. F-15(147)/54-LSG dated 13.6.56 and Awards in pursuance thereof acquired land for the colony of the Society now known as “SOAMI NAGAR COLONY” and whereas the society is the owner of the plot No. B-68 measuring 488 Sq. yds. forming part of the SOAMI NAGAR COLONY and whereas the member Shri K.L. Manocha has paid to the Society all the dues in respect of the share money, the cost of the land, and development charges.

AND WHEREAS the said plot No. B-68 situated in the said colony of the Society has been hereunder sold to Shri K.L. Manocha for a sum of Rs.1952/- (Rupees One Thousand Nine Hundred Fifty Two only) being the cost of land, which amount has been paid by the member to the society.

AND WHEREAS the purchaser member has agreed that he/she shall pay to the vendor Society or to whom it directs, the amount which may be found by the Vendor Society to be due from him/her in future in respect of the aforesaid plot and in case of failure to pay such dues which shall always be deemed as a debt due to the Vendor Society, which dues shall be first charge on the said plot and the building constructed thereon.

AND WHEREAS the member Shri K.L. Manocha has agreed to always abide by the Rules and Bye-laws of the Society in force time to time.

AND WHEREAS the purchaser member agreed that he/she shall construct a house on the said plot sold to him/her within two years after the sale deed by the vendor society is registered.

NOW THIS DEED OF SALE WITNESSETH AS UNDER:-

1. That subject to conditions stated in this sale deed and in consideration of Rs. 1952/- (Rupees One Thousand Nine Hundred Fifty Two only) as the cost of the land paid by the member to the said society, it hereby transfers, and conveys to the member Shri K.L. Manocha his/her heirs and assignees all rights in the plot of land no. B-68 as delineated on the plan annexed to this Sale Deed, to hold the same to the member on the plan annexed to this Sale Deed, to held the same to the member for ever.
2. The purchaser member will continue to be the member of the vendor society, if the purchasing member proposes to sell or transfer his house or plot, he/she undertakes to sell or transfer it to or through the society. If the society does not purchase the house within six months at the prevailing market price, the member will be at liberty to dispose it off as he/she likes.
3. The successor will have also to be a member of the vendor Society. If he/she does not become a member of the society, he/she shall sell the house of plot to or through the Society at the prevailing market price, if the Society does not purchase the house within six months, the successor will be at liberty to own it as any other member or dispose it off as he/she likes.

4. That the purchaser member agrees to construct and build house on the plot in accordance with the rules and bye-laws of the Municipal Corporation and will not do anything to violate the said rules and bye-laws of the Corporation or of the Government which may bring about or shift any liability on his/her account to the Society and if he/she does anything which on his/her account the vendor society is made liable, he/she shall compensate the vendor Society and if/she does not pay the vendor Society the said dues, the Vendor Society liability on him/her will/be the first charge on the plot and/or the house constructed by him/her.
5. Expenses in connection with the registration and stamp will be borne by the vendor/society.”

35. Prior to the enactment of the Act 2003, the Delhi Cooperative Societies Act, 1972 was in force, but by passage of time, it revealed that the Act of 1972 fails to fulfil the object and rule of cooperative societies which had undergone a sea change. In order to gear up the cooperative societies to meet the challenge posed due to economic liberalisation and superfast growth in the field of Information Technology and to protect the interests of the members of the cooperative societies as financial stakes had become high, the Government of the National Capital Territory of Delhi earlier appointed a Committee in 1995 to prepare a new cooperative law and after a detailed discussion, Committee submitted a report on 31st August, 1998 which was further

reviewed by the Review Committee and after the report being submitted, the Delhi Cooperative Societies Act, 2003 came into force on its publication in the Gazette of 3rd March, 2004. Certain amendments were made vide the Cooperative Societies Amendment Act, 2004 and 2006 respectively and in exercise of power under Section 137, the Delhi Cooperative Societies Rules, 2007 were framed to achieve the object of the provisions of the Delhi Cooperative Societies Act, 2003.

36. Apart from the provisions in reference to the settlement of disputes as referred to under Chapter VIII, a separate Chapter IX was introduced incorporating the special provisions for Cooperative Housing societies. The Chapter applies to all cooperative housing societies including housing financial society. Section 74(a) defines allottee a member of the cooperative society to whom plot or land or site or flat could be allotted by the cooperative society and the principal object of the cooperative housing society is defined in Section 74(e) and (f) of Section 74 deals with dwelling unit which includes a house, flat or apartment for the purpose of dwelling and sub-section (k) defines the occupancy rights of an allottee to possess and use the plot or

the land. The limitation of membership has been provided under Section 75 and the rights and privileges of members on allotment of plot or dwelling unit in a cooperative housing society has been defined under Section 76. It further takes note of not only allotment but has a provision for nomination and restriction on transfer of share or interest of a member. Permission to transfer the occupancy right is not to be ordinarily refused is explained under Section 80 with a special provision providing for settlement of disputes and Section 91 introduces a special provision for regularisation of occupancy rights of persons who have acquired rights through the instrument on registered Power of Attorney or agreement for sale or registered sale deed to become a member of the society on depositing the requisite transfer fee, admission fee, etc. Section 74(e), (f), (k), Section 80 and Section 91 which are relevant for the purpose are reproduced as under:-

74(e) "co-operative housing society" means a co-operative society-

- (i) registered or deemed to be registered as a co-operative housing society under this Act;
- (ii) the principal object of which is to provide its members open plots under plot housing, dwelling units or flats (whether in a multi-storeyed building or otherwise) in a complex under group housing and in case where open plots or dwelling units or flats are already acquired to provide its members

common amenities and services including services relating to the arrangement of finances for facilitating construction of dwelling units in order to solve their needs of dwelling units through mutual-aid in accordance with the co-operative principles, and includes a house building, co-partnership, co-ownership housing society, co-operative housing maintenance society, multipurpose co-operative housing society and any other co-operative society of like nature and purpose;

- (iii) "co-operative housing maintenance society" means a co-operative society formed by the owners of dwelling units in a building for the purpose of maintenance of the building and provisions of common amenities, services, etc;
- (iv) "co-ownership co-operative housing society" means a co-operative society known as "house building" or plotted society in which the land is held either on lease-hold or free-hold basis by the co-operative society and the houses constructed on it are owned or to be owned by its members;
- (v) "co-partnership co-operative housing society" known as group housing means a co-operative society in which land and buildings are held by the co-operative society on lease-hold or free hold basis and members are allotted flats or such other premises in such buildings with a right to occupy the same in accordance with terms of lease, Government's guidelines and the bye-laws of such group housing;
- (vi) "multi-purpose co-operative housing society" means a society formed with the object of undertaking multifarious activities for the economic and social development of its members, particularly of slum dwellers and economically weaker sections of the people, in addition to providing better housing accommodation and better environment to improve their quality of life;

(f) "**dwelling unit**" includes a house, flat and apartment for the purpose of dwelling;

(k) "**occupancy right**" means the right of an allottee to possess and use the plot of land, site or dwelling unit or flat allotted to him with power to give it on hire or on lease and licence or to mortgage it or to donate or to gift or to transmit it by will or by inheritance or to transfer it after paying the transfer fee;

80. Permission for transfer of occupancy right not to be ordinarily refused and provision for appeal-

(1) No co-operative housing society shall ordinarily refuse to grant to its member permission for transfer of his occupancy right in the property of the co-operative housing society unless the transferee is otherwise not qualified to be a member:

Provided that nothing contained in any agreement, contract or the bye-laws regarding eligibility for membership stipulated therein shall apply to a nominee, heir or legal representative of the deceased member for his admission to membership of the co-operative housing society:

Provided further that aforesaid transfer in case of lease hold land shall be governed by the provisions of the perpetual lease of land.

(2) The decision of the co-operative housing society on an application for permission to such transfer shall be communicated to the applicant within thirty days from the date of receipt of the application.

(3) Any person aggrieved by the decision of the co-operative housing society refusing permission for such transfer may within thirty days from the date on which the refusal of permission is communicated to him appeal to the Registrar.

(4) The Registrar shall dispose of the appeal within a period of one hundred and twenty five days whose decision shall be final.

91. A member of a housing society who has sold his plot or flat on the power of attorney or agreement for sale or by sale deed, shall cease to be a member of that society from the date of the sale of plot or flat:

Provided that the purchaser having registered power of attorney or registered agreement for sale or registered sale deed, as the case may be, in

respect of such plot or flat, may apply for membership by paying transfer fee of five hundred rupees and share money and admission fee as per the provisions of the bye-laws of the society and the committee shall grant membership to the applicant within thirty days after the submission of his application. In case of refusal by the committee, the applicant may appeal to the Registrar within thirty days and the decision of the Registrar shall be final:

Provided further that no purchaser shall be entitled for more than one membership in a housing society.

37. It may be further noticed that Section 131, save the existing cooperative societies, registered either under the Act of 1904 or under the Act of 1912 or under the Bombay Cooperative Societies Act 1925 which was in force in Delhi or the Delhi Cooperative Societies Act, 1972, shall be deemed to be registered under the corresponding provisions of this Act (Act of 2003) and rules framed thereunder with the further legislative mandate that bye-laws thereof shall, so far as the same are not inconsistent with the express provisions of this Act, continue to be in force until altered or rescinded. Section 140 overrides other law, notwithstanding anything inconsistent with the provisions of this Act. Section 141 being repeal and savings stipulates that the day on which the Delhi Cooperative Societies Act, 2003 comes into force, the Delhi Cooperative Societies Act, 1972 which was in

force in the National Capital Territory of Delhi shall stand repealed preserving the actions under the Repeal Act.

38. The Scheme of Act 2003, on its very inception, was introduced with the object to meet the challenge posed due to economic liberalisation and superfast growth and to protect the interests of the members of the societies as financial stakes had become high which made the Government and the National Capital Territory of Delhi conscious by replacing the Act to subserve the purpose in protecting the interest of the members and of the society which have been created for the welfare of its members. The principal object of the cooperative housing societies as referred to under Section 74(e), shall not be ordinarily refused for transfer of occupancy rights, as referred to under Section 80 and Section 91 mandates that if a member of the housing society has sold his plot or flat on the Power of Attorney or agreement for sale or sale deed, shall cease to be a member of the society from the date of the sale of the plot of land and the purchaser will enter into his shoes having registered power of Attorney or registered sale deed, as the case may be, in respect of the plot or a flat on depositing the transfer fee, share money and admission fee as per the provisions of the bye-laws.

The society and the committee are under obligation to grant membership to the applicant within a period of 30 days and if the society have assigned reasons to refuse, the remedy lies with the applicant to file appeal to the Registrar. What is borne out from the scheme of Act, 2003 that the purchaser having registered Power of Attorney or agreement for sale or sale deed on fulfilment of certain basic requirements on deposit the member fee, transfer fee, share money and admission fee, etc. as per the provisions of the bye-laws of the society is entitled ordinarily to become the member of the society. Section 91 read with Section 131 of the Act provides that any bye-laws if inconsistent or any other enactment which is not in conformity with the provisions of Act of 2003, is ultimately the substantive law that has to prevail upon.

Section 131 & 141 of the Act, 2003 are reproduced below:-

131. Saving of existing co-operative societies- (1)

Every existing co-operative society which had been registered under the Co-operative Credit Societies Act, 1904 or under the Co-operative Societies Act, 1912, or under the Bombay Co-operative Societies Act, 1925, as was in force in Delhi, or the Delhi Co-operative Societies Act, 1972 shall be deemed to be registered under the corresponding provisions of this Act and rules framed thereunder and bye-laws thereof shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other

proceedings instituted under the said Acts shall, so far as they are consistent with the provisions of this Act, be deemed to have been respectively made, issued and instituted under this Act, save that an order made cancelling registration of a co-operative society shall be deemed, unless the co-operative society has already been finally liquidated, as an order issued under section 95 or section 96 or section 97 for its being wound up.

141. Repeal and savings – On the day on which the Delhi Co-operative Societies Act, 2003 comes into force, the Delhi Co-operative Societies Act, 1972 (35 of 1972) in force in the National Capital Territory of Delhi shall stand repealed:

Provided that the repeal shall not affect-

- (a) The previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) Any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or
- (c) Any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or
- (d) Any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.”

39. For saving the existing cooperative societies registered either under the Act of 1904, 1912 or under the Act of 1925 which was in force in Delhi at one stage or the Act of 1972, such existing cooperative societies were deemed to be registered under the

corresponding provisions of the Act 2003 and the rules framed thereunder and its bye-laws thereof, so far as the same are not inconsistent with the express provisions of the Act, 2003, continue to be in force until altered or rescinded. It goes without saying that bye-laws of the existing cooperative societies have to be in conformity with the express provisions of the Act of 2003 and all previous actions stood saved by virtue of Section 141 of the Act.

40. The contention of the learned senior counsel for the appellant that the sale/transfer of the plot in question by the member of the society being in violation of condition nos. 2 and 3 of the registered sale deed or clause 51 of the bye-laws which put restriction on the member to transfer or a sale or otherwise to a non-member of the society, without permission of the society in our opinion, deserves to be negated for the reason that there is no restriction/prohibition under the provisions of the Act, 2003 which has been discussed in detail earlier and to be noticed that if the bye-laws to the extent are inconsistent to the provisions of Act 2003, it is the statute which will prevail and it is not the case of the appellant that the transaction of sale/transfer of the plot in

question by the member of the society by registered sale deed or registered instrument is in violation of the provisions of the mandate of Act 2003 or rules 2007 framed thereafter.

41. To the contrary, it appears to be the duty of the Registrar cooperative societies including the registered housing cooperative society to scrutinise the bye-laws of the society and to the extent they are inconsistent with the provisions of Act 2003 or of Rule 2007 framed therein, to ask them to make appropriate corrections and to amend it to make it in conformity with the Act, 2003. It is needless to say that it is the onerous duty of the competent authority to ensure that it performs the statutory task in this behalf but if the task has not been performed as yet, at least no provision in the bye-laws inconsistent with the provisions of the Act, 2003 can have a force of law.

42. As regards clauses 2 & 3 of the original sale deed executed between the member of the society at the time of initial allotment is concerned, the society reserves its pre-emptive rights to have a cooling period of six months before the member may have an opportunity to transfer the subject plot in the manner he or she likes at least there was no absolute bar or restrain under clause

2 or 3 of the original sale deed, of which reference has been made, to transfer the land or is otherwise impermissible to a non-member under any other laws. But it was possible with prior notice to the society and the cooling period of six months which may enable the society to purchase the plot on the market value and if it is unable to purchase, the member reserves the right to transfer or sell out the plot in a manner he or she likes reserving the pre-emptive rights of the society. In the given circumstances, transfer by a registered instrument cannot be held void unless it is in contravention of any law, which is not the case of the appellant society.

43. It reveals that what transpired before the Tribunal or the High Court was whether the transfer of title by a registered instrument as alleged was open for scrutiny within the scope of Section 70 of Act, 2003. Although it was never the case of the appellant society that alleged registered sale deed was *void ab initio*, bad or obtained by fraud or malpractices and it was also not the case of the appellant society that the member of the society in transferring the rights over the property by a registered

sale deed, is in violation of any of the provisions of the Act of 2003, or the rules of 2007 framed thereunder.

44. It is gainful to add that the possession was handed over to the society on fulfilment of the conditions of the agreement dated 13th May, 1955, published in the Gazette under Section 42 of the Land Acquisition Act, and became the law as observed, that at the time when the possession was handed over to the society by the State Government, no further deed or MOU was executed restricting the rights of the society for fulfilment of its obligation of its plots to its members, that persuades to infer that the possession was handed over to the society of the subject land in question by the Government free from encumbrances with unrestrictive rights to execute the sale deed/allot the plots to its members obviously as per its bye-laws keeping in view of the mandate of the statutory provisions of the Act, 1973 or Act, 2003 which has later on taken over the field in protecting the interests of the members of the cooperative societies including the cooperative housing society as in the instant case.

45. It may be relevant to note that the subject land was throughout exhibited by the society as freehold land having ownership rights and allotments were made by the society to its

members by the registered sale deed at the time of allotment of plots. It is to be noticed that a letter dated 27th July, 1985 was written by the Secretary of the society to the Lt. Governor and it was mentioned in paragraph 2 of the letter that “Delhi Administration acquired 30 acres of land allotted to the society on 25th March, 1957 on freehold basis.” Later, in the letter dated 15th March, 1989 issued to the Secretary of the Society it was certified that the status of the land is totally freehold and allotment of the plots to the society members was also on the basis of it and the society at one stage approached to the civil Court in RCA No. 95/82 titled Delhi Dayalbagh Cooperative House Building Society Ltd. Vs. Arjun Das and it was observed by the learned trial Judge that “the land in dispute is freehold one and there is no legal bar to the same being sold.” In the given facts and circumstances, if the allotment has been made by the society as a freehold land to its members who have further transferred/sold the subject land/plot by registered sale deed to its successors/purchasers, their rights to become member of the society are indeed saved under Section 91 of the Act, 2003 that in no manner could be eluded by the bye-laws and that apart if anyone has any objection regarding the registered

instrument(sale deed) pursuant to which right has been created, at least it is not open to examine its validity within the domain and ambit of Section 70 of the cooperative societies Act and any person, if felt aggrieved, the remedy lies only before the civil Court having jurisdiction questioning the registered instrument within the parameters available under the law.

46. The appellant society at one stage in their counter affidavit has stated that the subject land is a grant under the Government Grants Act. It was nowhere the case ever set up and it was raised just to denude the rights of the parties which deserves outright rejection for the additional reason that the subject land was acquired by the Government under Part VII of the Land Acquisition Act and transferred to the society free from encumbrances, there is no applicability to the Government Grants Act. The judgment on which reliance was placed by the learned senior counsel for the appellant in **Mohsin Ali and Others Vs. State of Madhya Pradesh** 1975(2) SCC 122 may not be of any assistance.

47. As regards submission made in respect to Section 44A of the Act is concerned, it may not have any application, since the rights of the parties are governed after the land stood vested with the society free from encumbrances and regulated under the special enactment of the Act 2003 and Rules 2007 framed thereunder.

48. In conclusion, we find no substance in either of the submissions made by the appellant to interfere with the judgment impugned before us. The appeals, being devoid of merit, are accordingly dismissed.

49. In terms of the dismissal of the appeals, application(s) for impleadment, does not survive and are accordingly disposed of.

50. Pending application(s), if any, shall also stand disposed of.

.....J.
(A.M. KHANWILKAR)

.....J.
(AJAY RASTOGI)

New Delhi
January 30, 2019

