

(1988) 02 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No's. 5270, 5271 and 5272 of 1985

Atomica Co-operative Housing Society Ltd.

APPELLANT

Vs

B.R. Ballal and Others

RESPONDENT

Date of Decision : 09-02-1988

Acts Referred:

Citation : (1988) 2 BomCR 104

Hon'ble Judges : G.H.Guttal, J

Bench : Single Bench

Advocate : M.L. Dudhat and P.N. Joshi, Madhukar Soochak and N.D. Shetty, in W.P. 5339 and 5400/85, for the Appellant; M.L. Dudhat and P.N. Joshi, in W.P. 5399 and 5400/85, Madhukar Soochak and N.D. Shetty, for the Respondent

Judgement

G.H.Guttal, J.—In these five writ petitions under Article 227 of the Constitution of India, the orders of the Maharashtra State Co-operative Appellate Court are impugned.

(i) Writ Petition No. 5270 of 1985 is by the Atomica Co-operative Housing Society Ltd., Chembur, Bombay---71, hereinafter referred to as "the Society". It is against B. R. Ballal, a member of the Society. In this petition, the validity of the order dated October 14, 1985 made by the Maharashtra State Co-operative Appellate Court, Bombay in Appeal No. 390 of 1985 confirming the decision of the Co-operative Court No. 1 in Case No. ABN/632/1922 of 1980 dated 10th June, 1985 is challenged. By this order the Appellate Court confirmed the finding of the Co-operative Court in Case No. ABN/632/1922 of 1980 that the cancellation of the shares and allotment of the flat to Ballal, a member of the said society was illegal.

(ii) Writ Petition No. 5271/1985 is also by the Society. In this petition, the Society challenges the validity of the order dated October 14, 1985 made by the Maharashtra State Co-operative Appellate Court in Appeal No. 391/1985 confirming the decision of the Co-operative Court, whereby the latter held that the cancellation of the shares and the allotment of the flat to S.N. Misra, a

member of the society was illegal. That was in dispute No. ABN/635/1925 of 1980 decided on 10/6/1985.

(iii) Writ Petition No. 5272 of 1985 by the Society is against the order of the Maharashtra State Co-operative Appellate Court dated October 14th, 1985 in Appeal No. 392/1985 whereby it confirmed the decision of the Co-operative Court No. I in Case No. ABN/636/1926 of 1930, whereby Co-operative Court No. I had held that the Resolution cancelling shares of M.S. Bhatia and the allotment of flat was illegal.

The Judgment in Appeal Nos. 390, 391 and 392 was common

(iv) Write Petition No. 5399/1985 is by B.R. Ballal, Mishra and Bhatia in which they challenge the legality of the order of the Maharashtra State Co-operative Appellate Court dated September 16, 1985, in Appeal No. 393/1985 reversing the order of the Co-operative Court No. I in Case No. ABN/320/630 of 1980 dated 10/6/85 whereby the latter had set aside the Resolution dated 20/4/1980 revoking the earlier Resolution dated 25/1/1976. The Appellate Court confirmed the order of delivery of possession of flats to Ballal, Bhatia and Misra. While dismissing the appeal by the Society, the Appellate Court also set aside that part of the order by which the Co-operative Court had awarded compensation, mesne profits and refund of certain money to Ballal, Misra and Bhatia.

(v) Writ Petition No. 5400 of 1985 by B. R. Ballal, Mishra challenges the validity of the order of the Maharashtra State Co-operative Appellate Court, dated October 14, 1985 in Appeal Nos. 390, 391 and 392 of 1985 by which it set aside the order of the Co-operative Court No. I in so far as the grant of penalty, mesne profits and refund of money are concerned.

2. The facts out of which these petitions arise are few and mostly undisputed.

The Society was created by the employees of B.A.R.C. for housing themselves in the buildings proposed to be built by the Society. The project comprises of 51 flats in 7 buildings on a land admeasuring 6748.48 sq. metres at Chembur. There are three types of flats. Type A consists of 23 flats in three building each admeasuring 810 sq. ft. Type B flats are 8 in numbers, all in one building each flat admeasuring 610 sq. ft. Type C flats are 20 in numbers spread over in three buildings each flat admeasuring 510 sq. ft. The society was registered sometime in 1974. Ballal, Mishra and Bhatia are the three members of the Society whose names will appear in this judgement as the disputants. These disputants are the holders of "A" category of the flats.

3. The Society has been classified as a Housing Society. Its object is to provide houses to its members. The members needed loans for the purpose of commencing the work of construction. This called for determination of the basis on which the costs of construction should be estimated and the amounts of the loan claimed.

4. At its General Body meeting held on 25/1/1976 the Society resolved that the

costs of Construction should be calculated for "each group of class of flats", irrespective of the building in which such flats were situated. Differential rates of costs of construction for each type of buildings was provided for. The costs of the common amenities were to be shared equally. Eventually on the basis of this decision, the loans were obtained by the members of the Society.

5. The construction commenced in 1978. Meanwhile, the Society made various calls on its members requiring them to contribute money to meet the costs of construction. The first call was made on 31-12-1977. During this time, the disputants were in the Managing Committee. The present Managing Committee took over sometime in Feb. 1979 when fourteen calls for the contributions were already made. These calls were made on ad hoc basis and not on the basis of estimates founded on the Resolution dated 25-1-76. The Managing Committee received a representation from 34 members on 5-8-1979, who sought revocation of the Resolution dated 25-1-1976. Therefore, a Special General Body meeting was held on 20-4-1976. The meeting revoked the Resolution dated 25-1-1976 and by another resolution dated 8-7-1981 laid down a slightly different principle for charging costs to the members. The substance of this resolution is that the members should be charged for costs of construction on the basis of carpet area with the flat as a unit. Thus, it is only on 8-7-1981 that a new basis consequent upon the revocation of the Resolution dated 25-1-1976 came into affect. In other words, until 8-7-1981 the calls continued to be made on ad hoc basis as was being done before the revocation of the Resolution dated 25-1-1976.

6. The members continued to be called upon to pay the charges. The disputants were the only persons who declined to pay. They contended that the Resolution dated 20-4-1980 whereby earlier resolution dated 25-1-1976 was revoked was illegal. They Insisted that the payment should be recovered according to the Resolution dated 25-1-1976. However, they continued to comply with their demands upto the 16th call which was made on 3-3-1979. Thereafter, they stopped payment.

7. On 13-2-1980 the Society by a written notice called upon the disputants to pay all the arrears of their contributions within seven days. The demands were again on ad hoc basis. None of the disputants paid.

8. On 23-4-1980 Ballal and five others field dispute No. ABN/630 before the Co-operative Court No. 1 and urged that the Resolution dated 25-1-1976 was a concluded contract. They sought interim relief restraining the Society from recovering in excess of what was decided on 25-1-1976. The Society was restrained by an injunction on 16-5-1980. But on 17-7-1980 injunction was vacated thereby upholding the validity of the recovery under the Resolution dated 20-4-1980.

After the order dated 17-7-1980 whereby injunction was vacated, the Society by notice dated 1-8-1980 demanded payment of all the arrears from the disputants within seven days and in default threatened to cancel their shares and also the

allotment of the flats. None of the disputants complied with this notice.

9. Since the disputants failed to pay the charges, the Managing Committee met on 13-9-1980 and decided to cancel the shares of the disputants and also the allotment of the flats to them. The Society resolved to place the matter before the General Body. The General Body met on 30-9-1980 to consider the recommendation of the Managing Committee that the shares and the allotment of the flats to the disputants be cancelled. The Resolution of the Managing Committee was affirmed. The General Body resolved to cancel the shares of the disputants and also the allotment of the flats to them.

10. There were seven members whose shares and allotment of flats were cancelled. In October 1980 they filed separate disputes. Four of them withdrew the disputes. Only three disputes were pending. They were ABN/632/1980, ABN/635/1980 and ABN/636/1980 filed respectively by Ballal, Misra and Bhatia. They claimed that the cancellation of the share and allotment of the flats was illegal and sought injunction to restrain the Society from allotting the flats to others. An ex-parte injunction was granted in each of these cases on 22-10-1980 which was vacated on 25-2-1981. In the appeals against the orders vacating the injunction the disputants expressed willingness to pay the entire amount of arrears without prejudice to their rights and contentions. On 15-9-1981 the Court ordered them to pay Rs. 30,000/- each and further amounts as and when they fell due. The disputants paid various amounts as ordered by the Appellate Court. The amounts were withdrawn immediately by the Society.

11. The Co-operative Court proceeded to hear the different disputes filed before it. On 10-6-1985 the first decision was pronounced in Case No. ABN/630/1980 filed by Ballal. It was held that the Resolution dated 20-4-1980 revoking the Resolution dated 25-1-1976 was illegal. The Society preferred an Appeal No. 393 of 1985 which was disposed of by the Appellate Court on 16-9-1985. The Appellate Court allowed the appeal and held that the Resolution dated 20-4-1980 revoking the Resolution dated 25-1-76 was valid.

12. On 10-6-1985 the Co-operative Court decided the disputes Nos. ABN/632, ABN/635 and ABN/636 against the Society. It held that the cancellation of shares and the allotment of flats to the members was illegal. The Society, preferred Nos. 390, 391, 392/1985. The Co-operative Appellate Court dismissed these appeals on 14-10-1985. But while doing so, it modified the orders of the trial Court. Reliefs granted by the trial Court awarding compensation, means profits and refund of money were refused in appeals. As already stated, the disputants have filed Writ Petition No. 5400/1985 against that part of the order of the Co-operative Appellate Court by which mesne profits, compensation and refund of certain amounts were refused to them.

13. The principal question, is whether the cancellation of shares and the allotment of flats to the disputants is valid. The General Body of the members of the Society, as indeed of any corporation, is the repository of the final authority

(Section 72---"Subject to the provisions in this Act and the rules, the final authority of every society shall vest in the general body of members in general meeting, summoned in such a manner as may be specified in the by-laws. Where the by-laws of a society so provide, the general meeting shall be attended by delegates appointed by the members, and such meeting shall be deemed to be the meeting of the general body, for the purpose of exercising all the powers of the general body"). On the basis of this principle, the cancellation of the allotment of the flats to member who commit default was within the "authority" of the Society. But this authority is "subject to the provisions in this Act and the rules (Section 72--). Therefore, the exercise of the authority by the General Body of members is subject to the restraints imposed by the Act and the Rules. The General Body has done two acts apparently distinct, yet connected with each other; the cancellation of shares and the cancellation of allotment of flats. The nexus between these two needs to be understood.

14. "Member" means "a person joining in a application for the registration of a Co-operative Society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal, associates or sympathiser member (Definition.---Section 2(19)(a) "Member means" a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal, associate or sympathiser member"). The Registrar is required to classify all societies into one or other classes of the society and also into sub-classes as may be prescribed (Section 12(1) "The Registrar shall classify all societies into one or other of the classes of societies defined in section 2 and also into such sub-classes thereof, as may be prescribed by rules" (2) X X X X (3) X X X X). Under the Maharashtra Co-operative Societies Rules, hereinafter referred to as "Rules", the classes and sub-classes of the Society have been prescribed (Rule 10). Accordingly, the petitioner's society has been classified as a Housing Society. While, the purchase of shares of the society has not been laid down as a necessary condition for admission to membership. Rule 19 precludes the society from admitting as member any person unless he fulfils conditions (i) to (iv) laid down in it. Condition No. (iii) requires that the applicant to a membership has to fulfill "all other conditions laid down in the Act, Rules and Bye-Laws (Rule 19. "Conditions to be complied with for admission for membership, etc.--- No person shall be admitted as a member of a society unless.---(i) X X X X (ii) X X X X (iii) he has fulfilled all other conditions laid down in the Act, the rules and the bye-laws; (iv) X X X X). Rules and the Act do not lay down that a member must hold a certain number of shares, but Bye-Laws require that every person on applying for membership shall deposit "the value of at least five shares (Bye-Laws No. 6 "----- Every person on applying for membership shall deposit Re. 1/- as entrance fee and the value of at least five shares for which he shall receive a copy of the Bye-Laws.). It is mandatory that "every member must hold at-least five shares in the Society (Bye-Law No. 9---"Every

member must hold at least five shares in the Society"). A person all of whose shares "have been transferred, repaid, forfeited or cancelled" shall cease to be a member (Bye-Law No. 11 "A person all of whose shares have been transferred, repaid, forfeited or cancelled shall cease to be a member").

15. It is, thus, clear that upon forfeiture or cancellation of shares, a member ceases to be a member. Thus, if the disputants are deprived of their shares, either by transfer, forfeiture or cancellation, their membership comes to an end and with it ends their right to participate in the affairs of the Society. The nexus between the, membership and the allotment of flats is clearly established in the bye-laws 6(2) which enjoins the General Body not to admit members exceeding the number of tenements or flats (Bye-Law No. 6(2)--"The General Body shall not admit members exceeding the number of tenements or plots available for allotment"). In other words if there are 51 flats in the Building, there shall only be 51 members. Thus, there is clear nexus between membership and the flat allotted to a member. It follows, therefore that a member shall hold one flat and if he ceases to be a member, he shall ceases to hold that flat. This is a Housing Society whose object is to provide houses to its members. Every member has only one connection with the Society, viz., the house or the flat. For the purpose of fulfilling this objective, the members enter into an association of corporate life which goes by the name Co-operative Society. Therefore, membership and the right to seek a house as a member are inseparable incidents of a Co-operative Housing Society. One does not become a member without the intention to acquire a house. Therefore, when a person ceases to be a member, his right to live in the house comes to an end. Similarly, when the house allotted to a member is taken away by the Society, what remains is the empty shell of membership stripped off the very reason for the membership. I cannot conceive of membership of a housing society without the right to acquire a house attached to it.

16. An incidental question is, whether even after taking away the right to occupy the flat on account of default in payment of the call money, the rights as a member survive. The rights which a member exercises, such as the right to vote at a meeting right to frame policy, right to contest election, and generally govern the affairs of the society are intended to subserve the primary object which, in the context of this case is providing and securing house through membership. To suggest that a member whose flat has been taken away may still function as a member by participating in the meeting and managing the affairs of the society is to ignore the realities of life. Membership of a Co-operative Society is not acquired for the purpose of exercising the empty right to vote at meeting but for the purpose of acquiring and living in a house. A situation in which a member deprived of his house continues to be a member of a Housing Society is inconceivable. It is opposed to the very object, purpose and reason which lead to the formation of a Co-operative Housing Society. The nexus between the allotment of the flats, the right to occupy the flats and the membership is so close and inseparable that one cannot exist without the other.

17. The next question is:---the cancellation of shares valid? The Resolution dated 13th September, 1980 resolved to cancel the share certificates and also the allotment of the flats of the defaulting members. Consider the effect of cancellation of the shares. Is it just a part of the routine management of the Society or does it have the effect of taking away the membership itself? As already stated, without the minimum number of five shares, a person cannot become a member. (Bye-law Nos. 6 and 9). When he ceases to hold the shares he ceases to be a member. It follows that upon the cancellation of the shares the member ceases to be the owner of the shares resulting in the cessation of his membership (There are five modes laid down by section 25:---(a) Resignation from the membership and its acceptance. (b) The transfer of the whole of his share or interest in the society to another member. (c) His death. (d) Removal or expulsion from the society. (e) In case of firm, company or other corporate body, on its dissolution or ceasing to exist). In other words, what the society did by cancellation of the shares was to take away the membership of the disputants. The result is removal or expulsion of the members. A person may be deprived of his membership by an act of the society, but the law lays down a procedure for doing so.

18. Section 25 of the Act lays down the manner in which a person may cease to be a member of the Society. In the present case, the Society has chosen none of these modes, but it has, by its resolution "cancelled" the shares. The cancellation means doing away with, destroying, deleting or removing. It has, thus, by cancellation of the shares removed the disputants as members. This is well within the authority of the Society and it can be done any time when the Society finds that certain members are not fit to continue as members. But the procedure prescribed by Law has to be followed. The procedure has been laid down by the Rules which require a notice of one month to the member concerned requiring him to show cause against the proposed expulsion and consideration of his representation. Then, it requires the approval of the Registrar (Rule 29 Procedure for Expulsion of members). This procedure has not been followed. The Society has, thus, by indirect method without using the word "expulsion" actually expelled the disputants in violation of the Act and the Rules. The cancellation of the share certificates is, thus illegal.

19. As I have already stated, the nexus between the membership and the cancellation of the flats is so close and inseparable that one cannot exist without the other in a Housing Society. The cancellation of the allotment of the flats is the negation of the right to the fruits of membership.

20. Learned Counsel for the Society relied upon the "Doctrine of Severability." Briefly stated, the Doctrine quoted from Anson's Law of Contract means this---

"A contract may contain both legal and illegal part of a term which raises a question, whether the illegal parts of the contract may be disregarded and the contract may be enforced so far as lawful part of the contract is concerned (Anson's Law of Contract, 26th Edition, Pages 353-354).

Alternatively the question would be whether the whole contract is bad. "The general rule is that where you cannot sever the illegal from the legal part of a covenant the contract is altogether void, but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good (Anson's Law of Contract, 26th Edition, Pages 353-354). It is urged on the basis of this doctrine that if cancellation of the shares which results in expulsion of the member is held to be illegal, the cancellation of the allotment of the flats is perfectly legal and should be severed and enforced. But, as I have stated, securing of a flat in a Housing Society is the most immediate and necessary incident inseparable from membership. It is futile to attempt any severance between them. The acquisition of the shares is the vehicle leading to the status of membership. The status of membership provides the requisite legal capacity to acquire and hold a flat in the building of the society. The acquisition of a house in a Housing Society is the very substance of Co-operative Housing without which the shares and membership lose their meaning and purpose. When the housing part is separated what remains is the Co-operative Society without "Housing". The membership is the medium through which the main purpose of securing a house and continue to live in it, is realised. The two cannot be separated.

21. The reliance on the doctrine of severability is also misconceived. There is no question of enforcing a contract between the Society and the members. Counsel drew my attention to the fact that the every member applied for membership in writing and agreed to abide by the decision of the Managing Committee and the General Body. This, according to him, forms a contract between the Society and the individual applicants. This superficial proposition ignores that this contract is antecedent to the registration of the Society. The registration of the Society immediately incorporated the individual applicants into a different kind of corporate relationship. Upon their admission to membership, the individual members ceased to be private contracting parties. They became members of the corporate body known as the Co-operative Housing Society. This immediately subjected them to the operation of the Act, Rules and Bye-laws. The supervening provisions of the Act. Rules and the Bye-laws assimilated and thereby ended the individual existence of the initial agreement by which the members joined into the Society. After registration of the society and its incorporation, the relationship evidenced by the application for membership ceased. There is only one relationship which is, now governed by the statute, rules and bye-laws. The analogy of the contract and the reliance upon the Doctrine of Severability is, thus, misconceived and inapplicable.

22. The disputants seek restoration of the order of the trial Court, the Co-operative Court No. 1, by which the Society was ordered to :---

(i) hand over possession of the flats IF3, IF4 and IF5 within three days and in default pay the penalty of Rs. 100/- per day.

(ii) The disputants were allowed to complete the work and recover costs from the

Society.

(iii) The Society shall pay to each disputant mesne profits of Rs. 100/- p.m. from 1-4-1982 till delivery of possession.

(iv) The Society shall refund to each disputant the amount at the rate of Rs. 4/- p. sq. ft. and interest thereon. This amount represents excess payment made by the disputants.

(v) The Society shall refund Rs. 6200/- to each disputant paid by him in excess.

The Appellate Court had disallowed this claim.

23. There cannot be any dispute about the liability of the Society to hand over possession of the flats. The disputants have each paid Rs. 50,925/- pursuant to the Appellate Courts' order which together with previously paid contribution comes to Rs. 1,10,665/-. Between Oct. 1981 when the disputants paid the amounts and now, the cost of construction has risen. The Society has not completed the work though they received the amount according to the statement furnished by their Advocate. The Society took the step of cancelling the shares and flats thereby giving rise to the disputes. While the Society was within its rights in taking these decision, in the process, it committed the grave error of cancelling the shares and the allotment of flats. To this extent the Society is responsible for the ultimate result. The conduct of the disputants, on the other hand, does not reveal any sense of responsibility. While legal rights can be agitated in the forum provided by law, a litigious approach demanding satisfaction of every susceptibility is hardly conducive to co-operative living. I am constrained to hold that the disputants while within their legal rights in raising the disputes adopted the unreasonable position of refusing to make any payments. The demands made by the society may be erroneous, but that was the decision of the General Body. A reasonable member would have paid the amount under protest and then proceeded to litigate his cause. Had this been done, the situation in which the three flats remained incomplete would not have arisen. Therefore, the three disputants must share the responsibility. Their share of blameworthiness is much greater than that of the Society.

While correcting the error committed by the Society in depriving the disputants of their flats it has become necessary to adjust the equities between the parties.

24. The Society who had not received the contribution from the disputants was rightly aggrieved by the consequences of the failure to contribute towards the costs of construction. The work of construction was held up. The disputants, on the other hand, urged that they have been agitating the question of contributions right from the beginning and their dispute was bona fide. The 16th call was made on 7-4-1979. Thereafter, they have not paid at all. The Society relied upon cancellation of the resolution of 25-1-1976 and 20-4-1980 and urged that the disputants did not pay even after 20-4-1980. The disputants rejoined that the basis for making demand pursuant to the Resolution dated 20-4-1980 was not

laid until 8-7-1981. Therefore, they urged that until 8-7-1981 the Society was not within their right in demanding payments on the basis of new resolution. The Managing Committee and the General Body represent the interests of the Society. They have thought fit to make calls on ad hoc basis, proceed to collect the amount and construct the building expeditiously. It cannot be said that the Society exceeded its right though however technical points, such as the actual basis for determining costs of construction for the purpose of making calls may be made by the disputants. The disputants have behaved unreasonably in refusing to make any payment at all. They have not set out the actual difference between the costs calculated according to the Resolution dated 25-1-1976 and the Resolution dated 8-7-1981. Had they done so, it would have been possible to judge as to how substantial the grievance is. They have relied upon the technicality and their right to quarrel. In this process the interests of the Society, viz., majority of the members, has immensely suffered. The disputants urged, not without justification that even before the Resolution dated 8-7-1981 was passed by the General Body, the share certificate and the allotments of the flats to the disputants were cancelled by the Resolution dated 13-9-1980 leaving them no alternative, but to raise disputes. In the view which I have taken about the validity of the cancellation of the shares and the allotment of flats this point is of academic importance. The fact remains that the disputants were defaulters. It was possible for them to pay the amounts for building their own flats under protest and then raise the disputes about the reasonableness of the demands. Instead, they have chosen to withhold the payments absolutely, thereby, obstructing the business of the Society. These facts are important for the purpose of considering the question of adjustment of equities. The claim for compensation, mesne profit and refund of excessive amount made by the disputants is nothing but a claim for adjustment of equities.

25. In order to consider the adjustment of equities, on my directions, the disputants and the society have made affidavits dated 2-2-1988 and 20-1-1988 respectively.

In his affidavit V.R. Bhat, the Honorary Secretary of the Society states that three other defaulting members, paid additional sum of Rs. 31,500 each in 1983. Their flats are completely built. Having regard to the increased costs of construction I consider that this amount represents the reasonable costs of construction for a single flat. The disputant Ballal in his affidavit has generally reiterated his case in the dispute. But the amount required now for completing the work and making the flats ready for occupation has not been set out.

Between 1983 when the additional costs of construction per flat was Rs. 31,500/- and 1988, the costs of construction has further increased. I consider, it fair that the disputants should each deposit Rs. 31,500/- with the Society to complete the work. The Society should accept this amount towards the full costs of construction and complete the work within four months from the date the amounts are deposited. If the costs have increased since 1983 as indeed they

have-the burden of this increase shall be borne by the Society. Unfortunately, the members will be required to contribute additional amounts. But this is the inevitable result of the litigation for which they too, are partly responsible.

25. I, therefore, make the following order:---

ORDER

(i) Writ Petition No. 5270 of 1985 by the Atomica Co-operative Housing Society Ltd., Chembur, Bombay-71 is dismissed. The order of the Maharashtra State Co-operative Appellate Court, Bombay, in Appeal No. 390/1985 whereby it confirmed the decision of the Co-operative Court No. 1 that the cancellation of the shares and the allotment of flats to Ballal and the other disputants is invalid and illegal.

(ii) Writ Petition No. 5271/1985 by the Atomica Co-operative Housing Society Ltd., against the decision of the Maharashtra State Co-operative Appellate Court in Appeal No. 391/1985 whereby it confirmed the decision of the Co-operative Court setting aside the cancellation of shared and the allotment of flat to S.N. Misra, is dismissed.

(iii) Writ Petition No. 5272/1985 by the Atomica Co-operative Housing Society Ltd., against the order of the Maharashtra State Co-operative Appellate Court in Appeal No. 392/1985 whereby the latter had held that the Resolution cancelling the allotment and shares of M.S. Bhatia was illegal is dismissed.

(iv) Writ Petition No. 5399/1985 by B.R. Ballal against the decision of the Maharashtra State Co-operative Appellate Court upholding the validity of the Resolution dated 20-4-1980 is also dismissed.

(v) Writ Petition No. 5400 of 1985 by Ballal, Misra and Bhatia, whereby they challenge the validity of the order of the Maharashtra State Co-operative Appellate Court in Appeal No. 390, 391 and 392 by which the Appellate Court set aside the order of the Co-operative Court No. 1 in so far as the grant of penalty, mesne profits and refund of money are concerned is also dismissed, subject however to the order at (vi) below which shall be a common order in all these petitions.

(vi) The disputants, Balla, Bhatia and Misra shall each deposit Rs. 31,500/- with the Society within four weeks from today, or within such extended time as may be granted by this Court. The Society shall complete the remaining work in the flats allotted to the disputants within four months from the date on which the disputants deposit the amounts pursuant to this order. The additional amounts, if any, required for completing the work of construction shall be spent by the society.