

(1991) 02 DEL CK 0088

In the Delhi High Court

Case No : Civil Writ Petition No. 2059 of 1985

B.N. Khanna

APPELLANT

Vs

Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 28-02-1991

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 60

Citation : (1991) 43 DLT 727

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : L.R. Gupta, Mahendra Rana, A.K. Sikri and Reva Khetrapal, for the Appellant;

Judgement

S.N. Sapra, J.

(1) By the present writ petition, filed under Articles 226 and 227 of the Constitution of India, Col. B.N. Khanna, petitioner herein, besides other reliefs, seeks to challenge the orders dated 16/04/1985, passed by the Lt. Governor of Delhi, respondent no. 4, in exercise of the jurisdiction u/s 80 of the Delhi Cooperative Societies Act, 1972, (hereinafter called the Act) and another order dated 15/07/1982, passed by him, and prays for quashing of the same. For better appreciation, of the various contentions, raised by the parties, and the issues, involved in this case, it will be useful, to refer to in brief, the facts and circumstances of the case, which are as under :-

(2) Diplomatic Enclave Extension Cooperative House Building Society, respondent no. 2 herein, hereinafter referred to as "the society", was formed with the objects to develop lands and allot the same to its members, so as to provide them the house building sites. Petitioner is a Founder Member of the Society and his seniority is at No. 2, in the list of members. Petitioner raised the Society, made it success and was its Secretary for four years, till December, 1960. In appreciation of the services, rendered by petitioner, the General Body and the Managing Committee of the Society, resolved to allot him a selected plot

of his choice, on 22/11/1959. According to petitioner, he and his family members ,also contributed extensive lands, i.e. about 15000 sq. yds. to strengthen the case of the Society, for acquisition of further land from Delhi Administration, for developing a residential colony.

(3) Though, petitioner could demand five plots of 1200 sq. yards each, as per the policy, but, he asked for one plot of 1200 sq. yds. Because of personal vendetta of some office bearers, petitioner was allotted a plot, measuring only 800 sq. yds. When, petitioner represented, against this allotment to the then Chief Commissioner of Delhi, and respondent No. 1, he was illegally removed from the membership of the Society, on the ground, that petitioner had refused to pay for 1200 sq. yds. and that he could not give an affidavit, as required by Delhi Administration, since he had owned a flat/house in defense Colony .

(4) Respondent no. 1 conducted a thorough enquiry into the matter. The then Chief Commissioner of Delhi, restored petitioner"s membership, by his order dated 27/04/1964. The review application, filed by the Society, was dismissed ,by the Chief Commissioner. With regard to the plot in defense Colony ,it is alleged by petitioner that, he had disposed off the same in the year 1960 itself, the same year in which, the plot was allotted to him, because he wanted to stay on in the society. There was no ban on the members, owing other lands in Delhi, at that time, as, the scheme of large scale acquisition development and disposal came into operation, with effect from 2/05/1961that no individual of a Cooperative Society could hold more than one plot.

(5) In spite of the orders of the Chief Commissioner, that equal size of plots be given, petitioner was again allotted, only a plot, measuring 800 sq. yds. instead of 1200 sq. yds. On his representation, against this allotment, the matter was referred to the arbitration, along with the case of one Shri B.M.Sharma. It appears, that the case went up to the High Court of Delhi. Thereafter ,the Society persuaded petitioner, to enter into an agreement on 4/05/1968 .providing, inter-alia, that plot No.A-27, measuring 1200 sq. yds. in respect of which, there was a dispute, pending in the High Court, would be allotted to petitioner, as and when, it became available to the Society, otherwise, another plot No. C-32 of 500 sq. yds., would be allotted to the nominee of the petitioner. In view of this agreement, petitioner withdrew all legal proceedings, then pending. This agreement is annexure P-3.

(6) Against the judgment of the learned Single Judge of this Court, given in the writ petition, filed by Mrs. Kitty Puri, relating to plot No. A-27 of 1200 sq. yds. Lt. Governor of Delhi, filed an appeal, before the Division Bench. While allowing the appeal, vide judgment dated 10/01/1972, the Division Bench held that Mrs. Kitty Puri was not eligible to be a member of the society, and thus, she was not entitled for a plot.

(7) As, the Society failed to allot the aforesaid plot. to petitioner, in terms of the agreement dated May 4,1968, Therefore, petitioner wrote to respondent no. 3,

for allotment. Respondent no. 3, vide its letter dated 22/03/1972, (annexure P. 4). directed the Society to allot plot No. A-27 to petitioner. In the meanwhile, Mrs. Kitty Puri filed SLP in the Supreme Court, in which stay was granted.

(8) Petitioner then approached respondent no. 3, for carving out a plot of 1200 sq. yds. to be allotted to him, as there was provision for carving out such plot, in accordance with the directions, issued by respondent no. 3. Respondent no. 3, vide its letter dated 20/05/1972, annexure P. 5, replied that it had no objection to the proposal, and that the Society should submit a revised plan to the Municipal Corporation of Delhi, for sanction, as the Corporation was the competent Authority in this regard.

(9) Subsequently, Mrs. Kitty Puri withdrew her appeal and same was dismissed as withdrawn, by their Lordships of the Supreme Court. According to petitioner, after the dismissal of the appeal, by the Supreme Court, the judgment of the Division Bench became final and binding. In spite of this, and against the findings of the High Court, the Society allotted the same plot No. A-27, to Mrs. Kitty Puri. Upon this, petitioner protested and represented to respondent no. 4, and the Vice Chairman of respondent no. 3.

(10) It is alleged in the petition, that petitioner received a notice on 10/09/1972, from respondent no. 3 and the Society, to show cause, as to why, the sub-lease of plot No. B-7, of 800 sq. yds. which had been allotted to him, be not cancelled, for his not having constructed the house, within the prescribed period. The composition fee of Rs. 3,344.50, for extension of time, was also demanded. On this account, petitioner was under great pressure to construct on plot No. B-7, or suffer the consequences of the cancellation of sub .

(11) The case of petitioner is that, his and his family needs were such, that unless a big plot of 1200 sq. yds. had been allotted to him, he could not provide for himself and his family members. Under these circumstances, petitioner thought of providing for his daughter in the first instance. He, Therefore got the permission of the appropriate authority for a joint lease, in favor of his daughter and himself, which was executed by the Society and DDA. Mrs. Asha Ahuja, petitioner's married daughter became an independent member of the Society, because of the contribution of extensive lands, by the family. After discussions "with the representatives of the Society, and the Executive Officers of respondent no. 3, it was decided that in view of the fact, that petitioner and his family had contributed about 15000 sq. yds, of land, and that petitioner would be allotted the bigger plot of 1200 sq. yds., he, Therefore, should relinquish his right to a smaller plot, in favor of his daughter, to remove all technical objections. Upon this, petitioner sought permission to relinquish his rights in plot No. B-7, in favor of Mrs. Asha Ahuja, and he was permitted to do so, vide respondent No. 3's letter dated 26/08/1974, which is annexure P. 7.

(12) Being aggrieved by the allotment of plot No. A-27, by the Society and respondent No. 3, to Mrs. Kitty Puri, petitioner filed a writ petition, before the

High Court of Delhi in 1976, which was subsequently withdrawn with a view to file the arbitration proceedings, before respondent no. 1, under the Act. In exercise of his jurisdiction, u/s 61 of the Act, respondent no. 1 appointed his nominee as the sole arbitrator, to decide the disputes, as raised by petitioner .

(13) During the course of the arbitration proceedings, the office bearers of the Society, persuaded petitioner to relinquish his claim to plot No. A-27, and accept another plot of 400 sq. yds, to be carved out and allotted to him or his nominee. With a view to maintain the harmonious relations amongst the members ,petitioner agreed to the proposal of the Society, which was submitted before the arbitrator, on 9/06/1980, (annexure P. 8). The arbitrator gave his award accordingly on 30/06/1980 (annexure P. 9). Under the consent award, and in view of the petitioner having withdrawn his claim to Plot No. A-27, allotment of that plot, in favor of Mrs. Kitty Puri was affirmed. The award further provided that the Society would carve out a plot of 4010 sq. yds, and incorporate the same in the revised site plans of the colony, which would be submitted for approval to the concerned authority; the plot would be allotted to petitioner or his nominee. As, the Society failed to implement the award, in favor of petitioner ,in spite of repeated letters, so, he filed an application, u/s 71(b) of the Act, for execution of the award.

(14) Petitioner was again compelled to file a writ petition No. 87 of 1984, before this Court because, respondent no. 1 was not taking any steps to decide the application for execution of the award. After hearing all the parties, including respondents 1 to 3, the Court directed respondent no. 1, to dispose of the execution application, within 3 months. After hearing the representatives of all the parties concerned, respondent no. 1, vide his order dated 12/12/1984, held that the award, passed in favor of petitioner, was a valid award and the same was executable. The objections, raised by the Society, were not accepted .Accordingly, the Society was directed to honour the award dated 30/06/1980. Copy of the order is Annexure P. 12.

(15) In spite of honouring the award. Society filed a revision petition before the Lt. Governor, Delhi, u/s 80 of the Act, against the order of the Registrar. After hearing the parties, respondent no. 4, by the impugned order dated 16/04/1985, allowed the revision petition and set aside the order dated 12/12/1984, of the Registrar, inter-alia, on the grounds, that the award dated 30/06/1980, by its very term, was not the final award, as, it was subject to the approval of the concerned authorities ; that vide his order dated 15/07/1982, the then Lt. Governor, had not approved the award; that Mrs. Asha Ahuja, daughter of petitioner was in reality a joint member with her father ; that the membership of Mrs. Asha Ahuja, even if she was an independent, was not relevant to decide the issues, because once having relinquished his rights ,in plot No. B-7, in favor of his daughter, petitioner could not be allotted another plot, in view of the scheme of large scale acquisition, development and disposal .Copy of the impugned order is annexure P. 13. The impugned orders dated 16/04/1985 and 12/12/1984,

have been challenged on various grounds .

(16) In their counter affidavits, filed separately, respondents have contested the writ petition, inter-alia, on the grounds that in view of the amended clause 8 (viii), of the bye-laws of the Society, petitioner ceased to be the member of the Society and, as such, he has no locus standi to file the writ petition ; the award dated 30/06/1980, was a nullity, as the same was in contravention of the Rules, Scheme of large scale acquisition and the bye-laws ; the award was not binding on the Delhi Development Authority, because neither it could be made a party before the arbitrator, nor it was a party to the compromise ; the writ petition is not maintainable, since, it has raised disputed questions of fact ;the Act gives finality to the orders, passed by the adjudicating authorities and, as such ,the order passed by the Lt. Governor, has become final.

(17) Before dealing with the various contentions, urged before me, by the petitioner and learned counsel for respondents, I would like to determine a point, which has a direct bearing, on the decision of the writ petition, as to whether ,petitioner was eligible and entitled to the allotment of a plot measuring 1200 sq.yds. This writ petition has a long drawn litigation behind it. A perusal of the facts and various documents, placed on record, do suggest, that the main cause of the various litigations, between the parties, was the grievance, on the part of the petitioner, that he had not been allotted a plot of 1200 sq.yds, /

p> (18) According to petitioner, which fact is not disputed, that he was one of the Founder members of the Society, and he and his family members contributed extensive lands, about 15,000 sq. yds., to strengthen the case of Society, for acquisition of further land from Delhi Administration. Vide letter dated 22/03/1972, (Annexure P. 4), respondent no. 3, called upon the Society to allot plot No .A-27, measuring 1200 sq. yds., to petitioner immediately. This letter was written, after the Division Bench of this Court accepted the appeal, filed by the Delhi Administration.

(19) The Society itself allotted a plot of 1200 sq. yd,. to petitioner, but the same was subsequently cancelled, on the ground, that he had failed to deposit the initial amount and furnish the required affidavit, with regard to his property in defense Colony. Petitioner was also removed from the membership of the Society .An enquiry was conducted, by the Registrar, in pursuance to the representation made by petitioner, and the report was approved by the then Chief Commissioner ,Delhi. The decision of the Society, in removing the petitioner from its membership, was set aside.

(20) There was an agreement between petitioner and the Society, on 4/05/1968, Annexure P. 3, to the effect that plot No. A-27 of 1200 sq. yds, would be allotted to petitioner, if and when, it became available to the Society." There are resolutions, passed by the General Body of the Society, as well as, the Managing Committee for allotment of bigger plot to petitioner. All these facts along with other documents, show that, not only, petitioner was eligible and entitled to the allotment of a plot of 1200 sq. yds, but his entitlement was recognised by the

Society, as well as, the authorities concerned.

(21) The first contention, urged before me, by Mr. L.R. Gupta, learned counsel for Society, was that the writ petition was liable to be dismissed on the short ground, as the petitioner has no locus standi because, he ceased to be a Member of the Society, in view of the amended bye-laws, provided in clause 8 (viii), which came into effect, from 10/09/1985. Mr. A.K. Sikri appearing for respondent no. 3, has also raised the identical objection, as to the locus standi of the petitioner, on the basis of the aforesaid amended clause.

(22) It appears, that the Society sought to amend clause 8 of its bye-laws, by adding sub-clause (viii). After amendment, clause 8 reads as under :

"CLAUSE 8 : A person ceases to be a member :-(i) on death ; or(ii) for lack of confirmation of membership as per bye-laws (5) (b): or(iii) when his resignation is accepted by the Managing Committee ;or(iv) on expulsion under bye-law 7 ; or(v) on withdrawal after 3 months notice in writing to society provided that the member withdrawing does owe anything to the Society and is not a surety for an unpaid debt. Withdrawal will take effect from the date of disposal of his shares as provided in these bye-laws;(vi) on ceasing to hold the minimum number of shares prescribed in these bye-laws; or(vii) on undertaking the business of purchase and sale of houses or land or for construction of houses either directly or on purchasing house or a plot or land for construction of houses either in his own name or in the name of any of his dependents through any other source and the member shall, within one month of his under taking the said business of purchase of a house or a plot of land -shall inform the society about this.(viii) on ceasing to own a plot allotted to him in the society area."

The amendment came into being with effect from 10/09/1985.

(23) It may be noticed that vide order dated 30/08/1985, in C.M.No. 2993 of 1985, it was directed that pending further orders, petitioner's membership of the Society would not be cancelled.

(24) Clause 8 (viii) cannot be given retrospective effect. Petitioner has filed the writ petition, thereby, challenging the impugned orders, passed by respondent no. 4, under the provisions of the Act. It cannot be said, that on coming into force of clause 8 (viii), petitioner ceased to be the member of the Society. Firstly ,there was a stay granted by this Court, prior to. the amendment and secondly ,petitioner has sought reliefs against the orders of respondent no. 4, and claimed the implementation of the award dated 30/06/1980.

(25) In my view, there is no substance in the arguments of learned counsel turn respondents, to the effect that plaintiff has no locus standi to file the present writ petition or that petitioner ceased to be the member of the Society.

(26) In the next place, Mr. L.R. Gupta, has urged that though, the compromise ,on the basis of which award dated 30/06/1980, was passed, was in direct contravention of the bye-laws of the Society, which provided that no

member of the Society, would be entitled to more than one plot, still. Society's obligation was only to recommend for carving out an additional plot of 400 sq.yds, to the Delhi Development Authority, for approval. This obligation was discharged ,because the Society did write to the Delhi Development Authority, for approval. Vide communication dated 31/07/1982, the Society was informed that Lt. Governor, by his order dated 15/07/1982, had rejected there commendation ,sent vide its letter dated 16/10/1980. Under these circumstances. no further direction could be given to the Society, in this regard, as the award was conditional and contingent.

(27) As stated above, petitioner was allotted plot No. B-7, measuring 800 sq. yds, by the Society. With the permission of appropriate authority, Smt. Asha Ahuja became the joint lessee with petitioner, in respect of plot No. B-7, situated in West End Colony, New Delhi. Petitioner, vide his letter dated 6/04/1974, sought the permission of respondent no. 3 to relinquish his leasehold rights ,in plot No. B-7, West End Colony, in favor of his daughter, namely Smt. Asha Ahuja, who was a co sub-lessee. Respondent no. 3, gave the permission, vide its letter dated 26/08/1974, annexure P. 7, to petitioner, to relinquish his rights, in favor of his daughter. Thereafter, petitioner did relinquish his rights, in favor of his daughter.

(28) Subsequently, aggrieved by the allotment of plot No. A-27, by the Society and Delhi Development Authority, to Mrs. Kitty Puri, petitioner filed arbitration proceedings before respondent No. 1. The Society, Mrs. Kitty Puri and petitioner wanted to put an end to the long drawn litigation, for which various efforts had been made. Ultimately, the following submissions were made by the Society, before the Arbitrator, in its letter dated 9/06/1980, annexure P. 8:.

"THE DIPLOMATIC Enclave Extension co operative House Building Society LTD. COLONY'S Name "WEST END". WEST Endrao Tulla Ram MARG NEW DELHI-110021: 9/06/1980. The Arbitrator. Sh. Surinder Gandotra, 115, Palika Bazar, Connaught Place, New Delhi-1 sub : Arbitration case No. AC/4/H/79-8 of Col. B.N. Khanna Dear Sir, Our Society wished to make the following submissions to you in the matter of the arbitration case between Col. B.N. Khanna and the Society and others, at present pending with you. These submissions of the Society are based on a Resolution passed by the Managing Committee of the Society in the meeting held on 7.6.1980. The Society has been feeling very concerned about this longstanding dispute. Various efforts have been made by the Society to solve the problem forming the subject of the dispute. We are most keen that a reasonable solution should be sought for finding an amiable settlement of this problem. It is in this spirit that the matter has been considered by the Society and the submissions are being made to you ." Following are the submissions of the Society : (a) that taking into consideration of the fact that on a previous occasion the Dda and the Town Planner and the Municipal Corporation of Delhi had indicated their concurrence to the carving out of an additional plot, the same being in conformity with the permissible density and other related factor affecting this colony, the Society agrees to request the Arbitrator to give

an award for carving out an additional plot of 400 square yards in the West End Colony.(b) that with the carving out of the said additional plot of 400sq. yds, the Society would desire that it may be allotted to Col. B.N. Khanna or his nominee and that the Arbitrator may be kind enough to give the award accordingly." In taking the decision to make these submissions to you, the Society has kept in view the undertaking given by Col. B.N. Khanna that on the transmission of this compromise formula by the Society to the Arbitrator, all his disputes against the parties involved in the matter ,now before the Arbitrator, will stand fully resolved. It may kindly be noted that the Society does not assume any financial obligation in regard to the allotment of this additional plot. We earnestly hope that these requests will be acceptable to you. Yours faithfully sd/- H.D. Shorie Vice President."

(29) On the basis of the compromise, the arbitrator, as nominee of respondent no. 1, made his award on 30/06/1980. The relevant portion of the award ,is reproduced below :

"THE parties to the dispute have compromised among themselves. The Secretary of defendant no. 2, Cooperative House Building Society have filed certified copy of Managing Committee resolution dated 7/06/1980, and certified copies of Col. B.N. Khanna letters dated 3 1/05/1980 (two no. addressed to defendant no. 2), which have been placed on record. It is very clear from these two letters of Col. B.N.Khanna that he has finally and completely closed all cases/disputes with the society and other parties to the arbitration proceedings and Col. Khanna has further taken solemn promise that he will not file any other legal proceedings in any court of law against the parties to the committee of Diplomatic Enclave Extension, Cooperative housebuilding society. New Delhi, passed a resolution on 7/06/1980, recommending for carving out an additional plot of 400 sq. yards and then allotting the same to Col. B.N. Khanna defendant no. 2 or his nominee. Since claimant Col. Khanna, defendant no. 2 have mutually agreed in this case and accordingly defendant no. 2. The Diplomatic Enclave Extension, Cooperative House Building Society, West End Colony, New Delhi, hereby ordered to carve out an additional plot of 400 sq. yards and allot the same to Col. Khanna or his nominee ,subject to approval of concerned authorities in the matter. It may be interesting to mention here that contention of Mrs. Kitty Puri, defendant no. 1, in the light of Delhi High Court judgment in the case of Chander Nagar Co-operative House Building Society Ltd. and Another Vs. Ashok Ohri, is quite convincing and cannot be brushed aside and hence allotment of 1200 sq. yds, plot of land by Lt,Governor, Delhi to Mrs. Kitty Puri, is in order."

(30) The Society wrote a letter dated 16/10/1980, annexure P. 24,to respondent no. 3, for approval, in term of the aforesaid award. It will be useful to reproduce the letter, which is as under :

16/10/1980.The Delhi Development Authority Vikas Minar, New Delhi. Sub : Arbitration case Col. B.N. Khanna v. Diplo Enclave Extension Cooperative House Building Society Ltd. and others. Dear Sir,A copy of the award given by the

arbitrator, nominee of the Registrar Cooperative Societies (Arb) Delhi, is enclosed. It will be seen from the award that the arbitrator has asked the Society to carve out an additional plot of 400 sq. yds, in the Green Belt for allotment to Col. B.N. Khanna. Col. B.N. Khanna is already the registered owner of a 800 sq.yds, plot (B-7) in the Colony. Your approval is requested to the carving out of the additional plot of 400 sq. yds, to be allotted on Col. B.N. Khanna. It will be also seen that the Arbitrator has also upheld the allotment of 1200 sq. yds, plot (A-27) by the Lt. Governor to Mrs. Kitty Puri. Thanking you, Yours faithfully, sd/- (H.S. Bhagat) Brig. Hony. Secretary.

(31) In the letter of the Society, the reference to the petitioner, being already the registered owner of 800 sq. yds, of plot, i.e. B-7, West End Colony, New Delhi was factually incorrect, because, he had already relinquished his rights, in favor of his daughter, in the year 1974, with the permission of respondent no. 3.

(32) The submissions, made by the Society on June 9, 1980, before the arbitrator, for making the award, clearly stated that on previous occasions, Delhi Development Authority, Town Planner and Municipal Corporation of Delhi had indicated their concurrence, to the carving out of additional plots, the same being in conformity with the permissible density and other related factors affecting that colony. As far as, the Society was concerned, by giving consent to the, it was deemed that the Society accepted the position" that Mrs. Asha Ahuja was an independent member of the Society and after relinquishment by petitioner, of all his rights, she was the only registered owner. All these and other disputes, which arose between petitioner and the Society, prior to the award, were, under law, deemed to have been resolved.

(33) By the award, the Society was ordered to carve out an additional plot of 400 sq. yds, and allot the same to petitioner, or his nominee, subject to the approval of the concerned authorities. By merely writing the letter dated 16/10/1980, to respondent no. 3, it cannot be said that the Society discharged its obligation under the award, and more so, when in the letter itself, it was alleged that petitioner was already the registered owner of 800 sq. yds, of plot, in the colony. This was a factually incorrect statement, which the Society made in the letter. The right course for the Society, was to prepare a revised lay-out plan, thereby carving out an additional plot of 400 sq. yds, for allotment of the same to petitioner or his nominee, then seek the approval of the concerned authorities. That authority in this regard, may be the Municipal Corporation of Delhi or Delhi Development Authority. The documents suggest that on previous occasions, this is also admitted in the submissions, made by the Society on 9/06/1980, before the arbitrator, that the permission had been granted by the Town Planner / M.C.D. /D.D.A., for carving out additional plots. Instead of doing so, a letter was written, thereby, stating that petitioner was already the registered owner of another plot. This request was bound to be rejected and so the same was rejected. Thus, in my view, the Society, did not discharge its obligation, under the award.

(34) LT. Governor, rejected the proposal of the Society, on 15/07/1982, which was communicated to the Society, vide letter dated 31/07/1982 on the ground that no individual could hold more than one plot, in Delhi, the award was not in consonance with the relevant rules, so the implementation of the award, relating to carving out an additional plot of 400 sq. yds, could not be permitted. This order cannot be sustained, inter-alia, for two reasons. Firstly ,petitioner ceased to be the owner of the plot, or joint lessee, of the plotB-7, West End Colony. New Delhi, after the year 1974, and that too with the permission of respondent no. 3, as such, at the time of writing the letter dated October 16, 1980, he was not the registered owner; secondly petitioner was not given any opportunity of being heard, before passing an adverse order against him .In other words, the relevant material and correct facts, were not placed before the Lt. Governor, including the fact that Mrs. Asha Abuja was the independent member of the Society, holding a separate share certificate and was the only registered owner, at the time of passing of the order. This order is liable to be quashed.

(35) Now, I come to the impugned order dated 16/04/1985, passed by respondent no. 4. Mr. Gupta submitted that the order, passed by the Lt.Governor, was, very much within his jurisdiction, and, as such, could not be challenged in the writ jurisdiction. According to him, the award dated 30/06/1980, was not the final one, from any sense, whatsoever, as the same was subject to the approval of Delhi Development Authority, who had got the final word in this regard.

(36) Mr. Gupta further contended that there was no occasion for the Society to file an appeal, but, the Society was within its right to challenge the same in the execution proceedings, on the ground, that the award was not executable. Mrs. Asha Ahuja, was not an independent member of the Society, but being the co sub-lessee of plot, was taken as Member of the Society. The reasons, given by Lt. Governor, in .support of his order, are justified, because otherwise, every person would transfer his plot to any person, who was not a member of the Society, and then, claim allotment of another plot. In other words, the award ,given by the arbitrator, was against the bye-laws and the rules, thus it was a nullity.

(37) Mr. Sikri urged that the arbitrator bad no jurisdiction to give the award ,relating to petitioner, as such, the same was a nullity. Further, Delhi Development Authority could not be made a party, in the arbitration proceedings, and respondent no. 3 was not a party to the compromise. In fact, Lt.Governor, vide order dated 15/07/1982, had rejected the request of the Society ,for carving out an additional plot, on the ground, that no individual, could bold more than one plot in Delhi.

(38) One of the main questions, arising for determination, is whether, the award dated 30/06/1980, was in contravention of any rules or bye-laws, and, as such, the same was a nullity and consequently, the award not executable, as held by respondent no. 4.

(39) To find, answer to this question some of the relevant considerations, are the background of the case, nature of the disputes, referred to the arbitrator for adjudication u/s 61 of the Act; the objects behind the compromise, which was submitted by the Society, vide letter dated 9/06/1980, the type of compromise; nature of the directions given in the award etc.

(40) As already observed above, petitioner was entitled, as a matter of right, to the allotment of a plot of 1200 sq. yds. As, petitioner was not given the plot to which he was entitled, this led to prolonged litigations. Petitioner, no-doubt, was allotted a plot No. B-7, measuring 800 sq. yds, but, he was not satisfied and had been agitating the matter, with a view to get a plot, measuring 1200 sq. yds. This is admitted fact that petitioner, with the consent of respondent no. 3 and the Society, made his married daughter, a co-lessee with him, in respect of said plot. Mrs. Asha Ahuja, was an independent member, and was issued a separate share certificate. After discussion with the representatives of respondent no. 3, and with their consent and with an object of removing a technical objection in his way, for getting a bigger plot, petitioner relinquished his rights, as co-lessee, in favor of his daughter. This was done with the written permission of respondent no. 3. After this relinquishment, in the year 1974, Mrs. Asha Ahuja became the absolute owner of the plot and continued to be an independent member of the Society. Petitioner also continued to be an independent member of the Society. This follows that Mrs. Asha Ahuja, was having the said plot in her independent right, and this could not create any impediment in the way of the petitioner, for allotment of a plot, as petitioner did not ask for allotment of two plots.

(41) It may be pointed out that there were one or two precedents, identical to that of petitioner in the Society.

(42) Being aggrieved by the allotment of plot no. A-27, to Mrs. Kitty Petitioner again filed a writ petition in the High Court of Delhi, in the year 1976, which was ultimately withdrawn, with a view to file arbitration proceedings.

(43) Petitioner, being a member of the Society, referred the disputes, with regard to plot No. A-27, under Sections 60 and 61 of the Arbitration Act, to respondent no. 1, thereby, making a claim that allotment of plot No. A-27, to Mrs. Kitty Puri, was illegal and that, the same be allotted to him.

(44) Thus, the disputes before the arbitrator, were in respect of plot No. A-27. With a view to resolve the disputes, the Society, entered into compromise, which was incorporated in the letter dated 9/06/1980, which is annexure P.8. Petitioner agreed to forego his claim to plot No. A-27, in view of the Society agreeing to carve out an additional plot of 400 sq. yds, and that the same would be either allotted to petitioner or his nominee. This agreement, in no way, contravened any provision of any of the bye-laws or the Rules. In fact, the disputes stood settled between the parties.

(45) There is another aspect of the matter. If, the part of the award, relating to petitioner, was/is not executable, then, it means, that petitioner had relinquished

his claim, in respect of plot No. A-27, in favor of Mrs. Kitty Puri, in exchange for unexecutable award. Before the arbitrator, petitioner challenged the allotment of plot No. A-27, in favor of Mrs. Kitty Puri, on the ground, that the allotment was in violation of the judgment of the Division Bench of this Court and, as well as, the stand taken by the Administration, before the Court in appeal, filed by it. It cannot be said, that there was no substance in the allegations, made by petitioner before the arbitrator. This is another matter, the petitioner would have ultimately succeeded or not.

(46) It follows that a part of the award could not be held, to be unexecutable, when the basis of the compromise was the relinquishment by petitioner of his claim, in respect of plot No. A-27, in favor of Mrs. Kitty Puri, in exchange, for the Society agreeing to carve out an additional plot of 400 sq.yds, for allotment to petitioner. Though, the carving out of additional plot, was subject to the approval of the appropriate authorities. The Society was fully aware, before entering into the compromise, with regard to the disputes, then pending before the arbitrator, the relinquishment of petitioner's right, in favor of his daughter, in plot No. B-7.

(47) Now, I come to the next point, i.e., what is the nature of the award .

(48) Before doing so, it will be appropriate to state the provisions, as contained in Sections 61, 71(b), 76 (l) (i) & 80, of the Act as under :

"61. Reference of disputes to arbitration (1) The Registrar may, on receipt of the reference of dispute u/s 60(a) decide the dispute himself, or (b) transfer it for disposal to any person who has been invested by the Lieutenant Governor with powers in that behalf or (e) refer it for disposal to one arbitrator. (2) The Registrar may withdraw any reference transferred under clause (b) of sub-Section (1) or referred under clause (e) of that sub-section and decide it himself or refer the same to another arbitrator for decision. (3) The Registrar or any other person to whom a dispute is referred for decision under this Section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice. 71. Execution of orders etc.-Every decision, award or order duly passed by the Registrar or arbitrator or Tribunal u/s 29, Section 30, Section 59, Section 61, Section 70, Section 76, Section 78 or Section 79 shall, if not carried out-(b) in any other case be executed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf, in the same manner as is provided in the case of a civil Court by the CPC 1908 (5 of 1908). 76. Appeals-(1) Subject to the provisions of Section 77, an appeal shall lie under this Section against (i) any decision or award made u/s 61, 80. Revision-Subject to the provisions of Section 77, the Lieutenant Governor may, suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal lies to the Lieutenant-Governor u/s 76 (not being any proceedings in which an appeal lies to the Tribunal) for the purpose of satisfying himself as to the legality and propriety of any decision or order passed and if in any case it shall appear to him that any such decision or order should be modified, annulled or revised, he may pass such

order thereon as he may deem fit."

(49) The parties before the arbitrator were, the present petitioner, Mrs. Kitty Puri, the Society and the Delhi Development Authority. Respondent no. 3 was not a party to the compromise. In spite of service, Delhi Development Authority, did not put up appearance. The other three parties, settled their disputes and on the basis of the compromise, the arbitrator made his award on 30/06/1980. Under the award, the Society was ordered to carve out an additional plot of 400 sq. yds, and allot the same to petitioner, or his nominee, subject to the approval of concerned authorities, in the matter. In other words the directions were issued only to the Society. It may be observed that, in the past, Town Planners, Municipal Corporation of Delhi and Delhi Development Authority, had been giving approvals for carving out additional plots, measuring about 800 to 1200 sq. yds, This direction, in no way, contravenes any bye-laws or the Rules. There was no direction, issued to respondent no. 3.

(50) There is another aspect of the matter. The award was given by the arbitrator, under the provisions of the Act and the appeal lies against the award, u/s 76 of the Act. It is misconception to allege that the award was not final one or it was subject to the approval of the Delhi Development Authority. It is nowhere stated in the award. What was subject to the approval of the concerned authorities, was not the award, but the carving out an additional plot of 400 sq. yds, That could be done, only by submitting a revised layout plan to the concerned authority. Under law, the award could not be subject to the concerned authority, as, it was the final adjudication under the Act, between the parties concerned. The only remedy was by way of appeal.

(51) For the reasons stated above, I hold ..that the award dated 30/06/1980, was not in contravention of any of the bye-laws or the Rules and, as such, same was/is perfectly valid and legal, as well as, final one.

(52) As already stated above, petitioner filed an application, u/s 71(b) of the Act, before respondent no. 1, for the execution of the award, in August, 1982. Because, no decision was being taken on the application, petitioner filed a writ petition, being C.W.No-87 of 1984, thereby, seeking various directions. Vide order dated 13/09/1984, after hearing counsel for the parties, the Division Bench of this Court held that the application, for execution be disposed off within 3 months.

(53) The Registrar, respondent no. 1 herein, vide order dated 12/12/1984, allowed the application of petitioner.

(54) Before respondent no. 1, the stand of the Society was, that the award was not executable as, the same was illegal. The Society was a party to the compromise and consent award. I have already held that the award is perfectly legal, so, the Society could not challenge the award, before respondent No.1. If, the award was nullity, then certainly, same could be challenged in the execution proceedings. After hearing the parties, and considering various

questions ,respondent no. 1 directed the Society to honour the award dated 30/06/1980. The relevant portion of the order reads as under :

"THE contention of the society that she is a joint member with Col.Khanna, does not bear out after examining the records and the membership register of the society. The fact that Col. Khanna has, after taking due permission, got his name deleted from the joint sublease with Smt. Asha Ahuja of plot B-7 and he remains independent member of the society confirms that he is an independent member. Col. Khanna is, Therefore, still an independent member and, is entitled to a plot. It may be pointed out that if the intention of the society was to make Smt. Asha Ahuja a joint member, she should not have been enrolled as an individual member with a separate share certificate ,share money and membership number".

(55) Against this order, the Society filed revision petition, u/s 80 of the Act.

(56) Relying upon the order dated 15/07/1982, passed by the previous Lt.Governor, Shri S.L.Khurana, respondent no. 4, held that in view of the rejection of the award, earlier by the then Lt. Governor, the question of its implementation could not arise. It was further held that the award, by its very term, was not a final one, as it was subject to the approval of the concerned authorities It was also observed that the Registrar had gravely erred in ignoring that vital fact, i.e., order dated 15/07/1982. It was also observed that even if, Mrs. Asha Ahuja, was treated as an independent member, same was not relevant, to decide the issue before him, because, the question was, whether, Col Khanna (petitioner), was entitled to another plot, after having relinquished his interest in the plot, that had been earlier allotted to him by the Society. In short, the result of the order was that the award dated 30/06/1980, was held to be unexecutable and in other words, it amounted to the setting aside of the award.

(57) The question, which arises for consideration, is whether, the award could be impliedly set aside, by exercise of the power, u/s 80 of the Act .in my view, it cannot be done.

(58) The Act provides elaborate provisions for reference of disputes, their settlement by award, by the Registrar or his nominee, the appeals against such award before the Tribunal. Section 80 of the Act provides that, Lt.Governor has no power to call for and examine the record of any award or order .against which the appeal is provided for, under the Act. This positions accepted even in the impugned order. I have already held that the award as within the jurisdiction of the. arbitrator and the same was not contrary to any provisions, contained in any bye-laws or the Rules. The impugned order, in effect amounts to setting aside of the award. Thi.s, in my view, could not be done, by exercise of power of revision u/s 80 of the Act.

(59) I have already held that the award was final and the same was not subject to the approval of any authority, whatsoever. What was subject to the approval was the carving out of the additional plot in the revised lay-out plan. Mrs. Asha

Ahuja was a full fledged independent member and this was relevant consideration .

(60) It appears that respondent no. 4 has relied upon the order, dated 15/07/1982, passed by the then Lt. Governor, Delhi, whereby, it was held that the award could not be implemented. I have already observed above, that the order dated 15/07/1982, was liable to be quashed, for the reasons given above .Moreover, it is not known, as to under which provision of law, the order dated 15/07/1982, could be passed by the then Lt. Governor, there by rejecting the award or its implementation. The order, passed by respondent No. 1, in execution of the award, was perfectly legal, because it directed the society to implement the award. After examining the record, he rightly held that Mrs. Asha Ahuja was an independent and full fledged member of the Society in her own right. For this reason also, the order could not be interfered into, by the Lt. Governor in exercise of his revisional power u/s 80 of the Act.

(61) For the reasons stated above, the Rule is made absolute and writ petition is allowed as under :

(62) The orders dated 15/07/1982, passed by the then Lt. Governor, Delhi and the order dated 16/04/1985, passed by respondent no. 4, are hereby quashed. The order dated 12/07/1984, passed by respondent no.1is upheld. Writ of mandamus is also issued, whereby the society, respondent No. 2 herein, is directed to implement the award, by submitting a revised layout plan, thereby, carving out an additional plot of 400 sq. yds, for allotment to petitioner, and submit the same to the concerned authority or authorities, for its or their approval. It is further directed that the revised lay-out plan, in term of the award, shall be submitted within 2 months from today, by the Society ,to the concerned authorities. In case, the concerned authority is the Municipal Corporation of Delhi, then, it is hoped that the Municipal Corporation of Delhi shall take the decision, with regard to the approval, within 2months from the date of receipt of the revised lay-out plan, from the Society. If ,respondent no. 3 is the concerned authority, then, it is directed that respondent no. 3 shall take decision, with regard to the approval, within 2 months from the date of receipt of the revised plan, from the Society. By the writ of mandamus ,respondent no. 1, i.e. Registrar of Cooperative Societies, is directed to take steps for execution of the award dated 30/06/1980. Crl. M 168 of 1987 in C.W. No. 2059 of 1985

(63) Parties are left to bear their own costs.

(64) The present application, being Crl. M. 168/87, has been filed by Shri H.D. Shourie, u/s 195 Cr. P.C., for prosecuting Col. B.N. Khanna, petitions in the writ petition, for offences, allegedly committed by him u/s 193 of the Indian Penal Code, for giving false evidence, as defined u/s 191 of Indian Penal Code.

(65) The Division Bench of this Court, directed that the application be listed along with Civil Writ No. 2059 of 1985. The applicant, namely ShriH.D. Shourie, was given an opportunity to argue the matter.

(66) It is alleged that the statements and averments, made by Col B.N.Khanna, in relation to the writ petition No. 2059 of 1985, in his rejoinder affidavit ,dated 1/10/1986 and affidavit dated 17/06/1985 were/are false and Col. B.N. Khanna knew the same, to be false.

(67) I have already allowed the writ petition, vide my judgment passed today .

(68) In my view, no case has been made out for prosecuting Col. B.N.Khanna.

(69) Dismissed in liming.