

(1996) 08 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No's. 3377 and 3531 of 1991 and 4457 of 1994 and Contempt Civil Petition No. 165 of 1996

Chetan Dass

APPELLANT

Vs

Dera Ghazi Khan District Refugees House Building
Cooperative Society Ltd. and Others

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (1996) 4 AD 507 : (1997) 66 DLT 660 : (1996) 39 DRJ 609

Hon'ble Judges : S.N. Kapoor, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Anand Yadav, G.N. Aggarwal, S. Poddar, Usha Kumari and Malvika Kumar, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) Two Writ petition Nos. 4457/94 and 3531/91 have been filed to seek writs of Mandamus commanding the respondent-Society to allot a residential plot of requisite size to each of the petitioners and for ancillary reliefs. Ccp 165/92 has been filed due to non-compliance of directions issued in Cwp 3377/91 dated 26th February 1992 relating to allotment of plot to Shri Chetan Dass. All these matters, being inter-connected, are being disposed of by this common judgment.

(2) The three writ petitions relate to the question of allotment of residential plots in Dera Ghazi Khan District Refugees Cooperative House Building Society Ltd. (hereinafter called the Society). The notable and relevant facts are as under:
3.Registration of the Society at Delhi. A Co-operative Society under the name of Dera Ghazi Khan District Refugees Cooperative House Building Society Ltd. was registered on 28th April, 1948 at Faridabad, Tehsil Ballabhgarh, Distt. Gurgaon vide registration No. 132-B. On 11th Feb. 1971 an application was moved with the Registrar of Co-operative Societies for registration of the Society at Delhi. (vide annexure R-I at page 141) Ministry of Works and Housing, Govt. of India,

New Delhi issued a letter dt.13th May, 1971(vide annexure A at page 166 & annexure R1/1 at page 203.)relating to relaxation sought for allotment of land to the Society. On 3rd December, 1971, Lt. Governor, Delhi in exercise of his powers u/s 66 of Bombay Cooperative Societies act, 1925, as extended to the Union Territory of Delhi, granted exemption to the Society from the operation of provisions under Sections 7 and 9 of Bombay cooperative Society Act. (hereinafter called the Bombay Act) and Rule 2 of Delhi Co-operative Societies Act, 1950 by means of notification in Delhi Gazette. This notification reads as under:-

"DELHIADMINISTRATION, Delhi (Co-operative Department) Dt. the 3rd Dec, 1971. Notification No. F.220/Reg/H. In exercise of the powers conferred by Section 66 of the Bombay Cooperative Societies Act, 1925 as extended to the Union Territory of Delhi (hereinafter referred to as the Bombay Act), the Lt. Governor, Delhi is pleased to exempt from the operation of Section 7 and 9 of the said Act and rule 2 of the Delhi Co-operative Societies Rules, 1950, the Dera Ghazi Khan District Refugees Coop- erative House Building Society Ltd., Faridabad, Tehsil Ballabgarh, District Gurgaon which was registered on the 28th August, 1948 under the Act No. 2 of 1912 by the Deputy- Registrar, Cooperative Societies, Punjab and Delhi vide Registration No. 132-B and subsequently cancelled on the 17th July, 1967 on transfer of the said society to Delhi on the conditions hereinafter given:- 1. an application for registration duly supported by a resolution of the Managing Committee of .the said society shall be made to the Registrar, Delhi in the prescribed form. . 2. the application shall be signed by the Secretary or any other person authorised by the Managing Committee. 3. that the Managing Committee of the Society shall adopt the Model Bye-laws as framed by the Registrar Cooperative Societies, Delhi for the Housing Society and signed and authenticated by the Secretary or any other person authorised by the Managing committee. 4. the application for registration shall be accompanied by a,copy of the Bye-laws which may be adopted by the Managing Committee with such modification as the Registrar may propose. 5. the Society shall furnish to the Registrar such information as the Registrar may require. 6. no person, who is not the resident of Delhi and who was allottee plot -of land by the society or the Government in Faridabad or its suburbs shall be eligible to continue to the member of the Society when registered at Delhi. 7. the society shall after registration in Delhi under the Bombay Act shall get its accounts audited in accordance with the provisions of Section 22 of the Bombay Act after the period of which the accounts were last audited by the Registrar, Gurgaon. 8. when the Society is registered by the Registrar under the Bombay act the said Society shall be deemed to be the successor society of the above named society registered at Faridabad. 9. the terms and conditions of allotment of residential plots to cooperative House Building societies shall mutates mutants apply to the said Society. By order, sd/- (Madan Jha) Special Secretary (Co-operation) Delhi Administration, Delhi, No. 220/Reg."H/19372-74 dt. the 6th Dec., 1971."

(3) (II) On 7th December, 1971, respondent No. I passed, a Resolution in the

Managing Committee adopting notification dt. 3rd December, 1971.(vide annexure R-1/2 at page 204.) The resolution indicated that the Society took this notification to mean that "the society to have been taken on the role of the Delhi Administration as transferred from the role of Haryana Govt." It also authorised the President and Secretary to sign and move application to the Registrar Cooperative Societies for registration of the Society on the roll of the Delhi Administration. On 1st May, 1972, the Society shifted to Delhi and on 10th May, 1972, the Society was registered as No. 128-H. It is further notable that a list of 504 members was also sent by the Society and a copy of this list was forwarded by Assistant Registrar (Housing) to Assistant Housing Commissioner (vide Annexure "D" at p.191) after verification of affidavits filed till 24th January 1973.

(4) Case of Sh. Chetan Dass om Ccp 165/92 read with W.P.No. 3377/91). According to the case of petitioner Sh. Chetan Dass, he was enrolled as member of the Society in the year 1959. The Society issued share certificate No. 489 from book No. 5 in favor of petitioner Sh. Chetan Dass. The respondent Society cancelled the membership of the petitioner Sh. Chetan Dass vide letter dt. 28th July, 1985.

"(II)On 15th January 1986, Sh. Chetan Dass filed a petition u/s 60 of the Delhi Cooperative Societies Act for reference of disputes to arbitration. On 1st February 1988, award was made in favor of the petitioner directing the Society to restore the membership of the petitioner, Sh. Chetan Dass. The Society filed an appeal. But it was dismissed vide order dt. 4th May, 1988 (annexure C). On the directions of the office of the Registrar in execution of the award dt. 19.7.1988 (annexure D) and 22.8.88 (annexure E). On 6th June 1989, the respondent-society informed that the Managing Committee of the Society had restored his membership in its meeting dt. 4th June, 1989 (Annexure H) and raised demand for a sum of Rs. 20567.00 on 10th July, 1989 (annexure F). The petitioner deposited the amount by Bank Draft, 11th January 1990. On 18th April, 1990, the Managing Committee of the Society was superceded and an Administrator was appointed in view of complaints of illegalities in allotting plots to relatives of the Managing Committee Members and to those who were not entitled. Repeated representations did not bring any fruitful results. On 21.10.91, the petitioner apprehending that respondent society was changing the seniority of the members in regard to remaining plots, while his seniority was at No. 1 (annexure L) filed this civil writ petition No. 3377/91 .against respondent society. Registrar Cooperative Societies and DDA. (iii) On 31st October, 1991 a plot was ordered to be reserved for the petitioner. (iv) On 26th February 1992 on the basis of agreement between the parties, a Division Bench of this Court passed an order that the name of petitioner Chetan Das was at Seriall No. 1 in seniority and the authorities were directed to give formal clearance within 2 months and draw of lots be held within one month and allotment be made. (v) On 20.4.92, respondent society forwarded the documents to the Registrar Cooperative Societies for clearing the name of petitioner Sh. Chetan Dass for allotment of the plot in terms of directions of this Court. (vi) Since the directions issued on 26th

February 1992 were not complied by the Registrar of Cooperative Societies, Ccp 165/92 was filed.

(5) Case of Sh. Anil Bangia (CWP No. 4457/94). One Sh. Kulwant Rai Bangia s/o Smt. Gango Devi became the member of the earst while society on 28th December, 1960. On 4th May, 1969 Sh. Kulwant Rai Bangia due to death of his father in token of natural love and affection, transferred his shares and rights in the society if avour of his mother Smt. Gango Devi and moved and application to the Society on 27th May, 1969 accordingly. Despite assurance given to transfer the membership in the name of Smt.Gango Devi, the then honorary Secretary instead of transferring his share in favor of Smt. Gango Devi and enrolling her as member sent a cheque of Rs.5783.00 vide letter dt. 20th August, 1985 as refund of deposits in the Society on account of non-payment of Rs. 17.00 as balance of share value as per demand letter. Such a demand letter was never received by Sh. Kulwant Rai Bangia or Smt. Gango Devi. Sh. Kulwant Rai Bangia and Smt. Gango Devi filed an arbitration case u/s 60 of Delhi Cooperative Societies Act, 1972. On 21st August, 1986, the arbitrator gave an award and held that expulsion of Sh. Kulwant Rai Bangia from the membership of society was void and illegal and Smt. Gango Devi was entitled to get the membership of the society w.e.f. 27th May, 1969 (vide annexure-1 at page 18). The society filed an appeal. The same was dismissed by Delhi Cooperative Tribunal vide its order dt. 23rd July, 1987(annexure-2 at page 29). Thereafter, the society filed a civil writ No. 3243/87 and the same was dismissed on 3rd Feb., 1988. The Society was directed to implement the award but with malafide intention, the society tried to harass Smt. Gango Devi for one reason or the other. Smt. Gango Devi vide her letter dt. 2nd Feb., 1989 nominated the petitioner as her nominee. By a letter dt. 15th June, 1989, the then Secretary of the Society informed that in Managing Committee meeting held on 4th June, 1989 membership of Sh. Kulwant Rai Bangia had been restored instead of restoring the membership of Smt. Gango Devi in terms of award and after losing the writ petition in the High Court. The society demanded Rs. 20917.00 vide letter dt. 10th July, 1989 (annexure-3). The letter was duly replied by Sh. Ramesh Chand, Advocate on behalf of Kulwant Rai Bangia by a notice dt. 22 July, 1989 and Along with it a draft of Rs. 20,917 was also sent (annexure- 4). The Society informed through a letter dt. 16th Feb., 1989 that the shares of Sh. Kulwant Rai Bangia in the society were transferred in the name of Smt. Gango Devi as decided by the, Managing Committee in its meeting dt. 29th Jan., 1990. A sum of Rs. 24859.00 was also demanded vide letter dt. 16th Feb., 1989(annexure -5 at page 38). The demand was subsequently raised to Rs. 24869.00 vide letter dt, 9th May, 1990 but it expected payment by 20th April,1990 (annexure-6 at page 39). A bank draft dt. 8th May, 1990 for Rs, 24869 .00 was sent. But instead of accepting it, the society informed to take it back as it was lying unencahsed with the Society vide letter 29th May, 1990 (annexure-7 at page 40). And, the society sent the demand draft back vide letter dt. 20th June, 1990 without giving any reason (annexure 8 at page 41). On 10th Feb., 1991, Sh. G.Srivastava, the then Administrator of the

Society sent a copy of seniority list of the members for allotment of remaining plots showing seniority of Smt. Gango Devi at sl. No. 13 but the society failed to take any action. Despite service of notice dt. 17th Feb., 1991 and 10th April, 1991(annexure-9 at page 42 and 10 at page 48) sent on behalf of smt. Gango Devi neither any action was taken nor any reply was sent. Smt. Gango Devi died on 15th July, 1993. Sh. Anil Bangia, the present petitioner being nominee of Smt. Gango Devi became entitled to be substituted as member in her place. Petitioner was informed by the society vide letter dt. 30th April, 1994(annexure-II at page 53) that the share of Smt. Gango Devi in the Society had been transferred to the petitioner Sh. Anil Bangia. Inspire of the fact that the petitioner has been substituted in place of Smt. Gango Devi no plot had been allotted in his favour. In similar circumstances, one member Smt. Hemi Bai died leaving behind one Sh. Prem Prakash bequeathing all her rights in his favour. On failure of society to allot the plot in favor of Sh. Prem Prakash, a civil writ No. 83/93 was filed and that was decided on 4th August, 1993 (annexure-12 at page 54). Hence, the writ petition, to issue appropriate direction to the respondents to allot, to hand over possession of a residential plot and to execute a proper conveyance in favor of the petitioner. Further allotment was also sought to be restrained.

(6) Case of Sh. N.L. Gandhi Writ No. 3531/91 According to the petitioner Sh. N.L. Gandhi he became member of the erstwhile society on 31st December, 1960 and his original membership No. was 1180. After the registration of the society at Delhi, he was given seniority No.F.71. He had been timely making all the payments from time to time between 31st Dec., 1960 to 19th Aug., 1983 and thus paid entire amount towards the cost of land. He is thus entitled to allotment of plot of land. Repeated requests and reminders for allotment of plot have proved futile. On the other hand, the respondents (including society) have allotted a plot to a member who is junior to the petitioner Office of Registrar had ordered an inquiry into the constitution, management and affairs of the society. Nothing adverse was reported against him by the Inquiry Officer for his report dt. 3rd April, 1989 (annexure-2 at page 10). The enquiry Officer observed in the report that the changes have been made in the seniority by the management having vested interests, just in order to accommodate their own members. The erstwhile society became defunct and new society was registered in Delhi on 1st May, 1972 and out of 1421 erstwhile members only 504 responded and applied for fresh membership. Therefore, inter-se seniority is to be determined after 1st May, 1972. According to his case the earlier seniority has no bearing. The respondents even did not reply his letter dt. 4th of June, 1991. Three persons namely Mr. Ram Lal Khera, Om Prakash Chugh and Ramesh Kumar Juneja have been allotted the plot No. 271, 148 and 246 respectively by the respondent. By not allotting the plot the respondents have discriminated against him. The respondent failed to implement the findings of the enquiry report, and have also failed to implement the seniority. According to him, the seniority is to be determined on the basis of law as laid down in Cw 1116/84 in S.K. Gambhir vs.

U.O.I.

"(II)HENCE the writ petition seeking directions to the respondents to allot a plot of land to the petitioner and to implement the report of the enquiry officer."

(7) Turns and Twists in the matter. The matter has taken some curious turns and twists. It is notable that in the year 1986- 87 an inquiry was ordered to be conducted into the affairs of the Society as there were serious allegations regarding owning of the property by the members, transfer of membership, refixation of membership by the Managing Committee. On 3rd April, 1989, the Enquiry Officer gave his enquiry report. The said enquiry report was accepted by the Registrar of Cooperative Societies as well as by the Society. On the basis of enquiry report, the Registrar Cooperative Societies vide letter dt. 3rd April, 1989, sought rectification (see Annexure P/2 at p.10 in Cwp No. 3531/91). According to this letter, waiting list has not been prepared on the basis of membership approved by the Registrar, Cooperative societies, seniority of Sh. Bhola Nath Gogia had not been fixed properly. He was having sl.No. 9 and his membership number was 1206. His membership has been fixed on the basis of old list whereas according to the enquiry officer it should have been fixed on the basis of list approved by full forum. The claim of the society that seniority has been fixed on the basis of old record, was not correct since some of the old record had been burnt. Non-residents of Delhi as well as property holders had been recommended by the Society. Some memberships had been transferred without any proper investigation of the bonafides of transferees. Inquiry Officer submitted list of 38 members, were not eligible for allotment of plots and their allotments should be cancelled. He also submitted a list of 33 members whose membership was found doubtful and required further investigation. Record of those who had either resigned, or ceased to be member or had been expelled had not been maintained properly.

"(II)ON 25.3.92, Lt. Governor passed an order holding that the list of eligible members was cleared by the Registrar Cooperative Societies and the position of Sh. Bhola Nath was fixed at sl. No. 9. On 25.5.92 the award was made by the Arbitrator upholding seniority of Sh. Bhola Nath Gogia and Smt. Satya Prabha Dabra at sl. No. 9 and 13 respectively. (iii)At the instance of 2 members of the Society sh. Bhola Ram Gogia and smt. Satya Prabha Dabra a reference for settlement of disputes was filed u/s 63 of Delhi Cooperative Societies Act challenging the criteria followed by the society for deciding the seniority for allotment of plots. By an order dt. 20th May, 1992 passed by the Arbitrator, the allotment of 18 available plots was to be made on the basis of seniority according to the date of enrolment. (iv) The petitioner Sh. Chetan Dass filed a Ccp No. 165/92 for non-compliance of the Court's order dt. 26.2.1992. (v)On 20th April 1992, the respondent society forwarded the documents to the Registrar Cooperative Societies for clearing the name of the petitioner Sh. Chetan Dass for allotment of the plot in terms of directions of this Court. (vi)The Registrar Cooperative Societies felt that he could not implement the order of the

Court interview of the aforesaid anomalous situation. If the criteria laid down by the Arbitrator was to be followed, petitioner Chetan Das would not be entitled/eligible for allotment of plot. Consequently, the Registrar of Cooperative Societies filed an application No. CM-7546/92 on 9.11.92(at page 60) seeking clarification by issuing directions as to which of two lists, one prepared by the Society in accordance with the date of enrolment in the erstwhile society at Faridabad, Ballabgarh and another on the basis of enrolment in Delhi as held by the arbitrator is to be followed by the Registrar, Cooperative Societies. (vii) On 16th Feb., 1993 respondent No. 4 Mrs. Satya Prabha Dabra and respondent No. 5 Mr. Bhola Nath Gogia were ordered to be impleaded after noting the award dt.20th May, 1992 to re-determine the seniority without impleading 24 of them and feeling that it was contrary to the order of this court dt. 26th Feb., 1992. (viii) In Cwp No. 3377/91 seeing the gravity of problem, on 11th March, 1993, it was ordered that no allotment would be made by the respondent society to anyone. On 16.4.93, this interim order was ordered to continue. One Shri Prem Prakash filed a civil writ No. 83/93 which was allowed on 4th August 1993 vide judgment Annexure "C" at p.171 in Cwp 3377/91 and Annexure 12 at p.54 in Cwp 4457/94. In case of Prem Prakash by order dt. Feb. 15th, 1994 passed by Hon'ble the Chief Justice and Ms.Justice Usha Mehra, to ensure compliance of the Court's order dt. 4th August, 1993 in Cwp No. 83/93 following order was passed (at p.177 in Cwp 3377/91: . 15.02.94 Present: Mr.Anil Chawla for the petitioner. Mr.A.K. Pathak for the respondent. Cm 611/94 in Cw 83/93 ...We hereby clarify that the order of this Court dated 4th August, 1993 will be operating despite order dt. 11th March,1993 passed in Cm 7456/92 in Cw 3377/91. The respondents will be bound to comply with the Court's order dt. 4th August, 1993 and the order dt. 11 March, 1993 would be operative for allotments except allotment in compliance of order dt. 4th August,1993. Cm is disposed of. sd/- Hon'ble the Chief Justice. 15th Feb., 1994 Usha Mehra, J. (ix) Thus, it was rightly submitted that the order of the Division Bench in the said case would be binding to the extent mentioned in the said orders dated 11th March and 16th April 1993 as modified by the above order, are otherwise still operational. (x) On 1st August, 1994, respondent No. 6 Sh. Kanhiya Lal Chhutani and respondent No.7 Sh. Manohar Lal Chawla were also impleaded for the question whether the members enrolled at Faridabad would carry with them their seniority or not, was also required to be decided after hearing all the parties. (xi) On 4th May, 1995, the respondent society filed additional affidavit to support that seniority was to be determined according to the date of enrolment of members (in the erstwhile society) and not according to file numbers as was done by the Dda in connection with the draw of lots of the plots on 8th November, 1985."

(8) Case of Bhola Nath Gogia. According to the counter filed by Sh. Bhola Nath Gogia in Cwp 3377/91 dt. 23 September, 1994(at page 133). The erstwhile society was registered on 28th August, 1948 vide registration No. 132-B. The said registration of the erstwhile society was subsequently cancelled on 17th July, 1967 and the cancellation order was never withdrawn. Consequently, during

the period between 1967 to 1972, there was no duly constituted society. 56 members including Bhola Nath Gogia and Sh. G.D. Dawra applied for the registration of the society at Delhi. On 11th Feb., 1971 (vide ann.R-1 at page 141). Therefore they were and are senior to all those who have been enrolled later on. Thus, the society registered at Faridabad and the respondent Society registered at Delhi are two independent and distinct entities, though a notification was issued on 3rd December, 1971 whereby the society at Delhi was allowed to take over the assets and liabilities of the earstwhile society. As such, the action of allowing such a transfer by issuing the said notification was without jurisdiction and was nullity. He also relied on the enquiry report conducted u/s 55 of the Delhi Cooperative Societies Act, referred to in para 6 earlier(see annexure R.II at page 147). Seniority of Sh.B.N. Gogia has now been fixed properly at No. 9. The said enquiry report was submitted by the Inquiry Officer on 28th Feb, 1989. It was accepted by the Registrar in March, 1989 and by the Lt. Governor in case no. 291/89- C.A. on 25.3.92 (annexure R.III at page 150)and has not been questioned by anyone. Consequently, the inquiry report made u/s 55 had become and final for all intents and purposes. The said inquiry report has also been suppressed by the petitioner, Sh. Chetan Dass. The said inquiry report has to be given effect to in terms of Rule 86(6) for ensuring rectification at the end of the society.

"THE question of seniority was subjudice before the Arbitrator (Joint Registrar) as noted by Delhi Cooperative Tribunal in its order dt. 11th June, 1991(annexure-R/4 at page 152).On 25th March, 1992 in case No. 291/89 Ca, Lt. Governor observed as under:- "This is a revision petition u/s 80 of the Delhi Cooperative societies Act, 1972 (hereinafter referred to as the "Act") challenging the legality and propriety of the orders passed by the Assistant Registrar(), Cooperative Societies dt. 6.10.1989. Aggrieved by this, the petitioner has filed this petition. The facts of the case are that the" petitioner has been a member of Dera Gashi Khan Cooperative house Building Society Ltd. and figured at sl. No. 9 in the list of eligible members for the allotment of plots. the petitioner has stated that this list was cleared by the registrar, Cooperative Societies (brief y RCS) and forwarded to the Land & Building Department for the allotment of plots. It appears that subsequently the Society had revised the list of eligible members and allegedly brought it on the basis of seniority of the members as existed before 1961. The petitioner has also stated that the inquiry officer appointed by the Rcs has also held that the seniority of the petitioner as per the revised list has not been properly fixed, which has been accepted by the Rcs and a cop of the findings of the inquiry report has been supplied to the petitioner, the petitioner has also challenged the impugned order on the ground that it has nowhere been contemplated that the earlier inter se seniority of the Society as it existed prior to its transfer and registration in Delhi, shall be the future seniority list of such members who are enrolled after 10.5.1972. The policy guidelines of Rcs dt. 10.5.1972 mention only such person who could become members fulfilling all the conditions laid down by RCS. I have gone through the petition

and the comments submitted by the departmental representative. The list of eligible members was cleared by the Rcs and the petitioner's position was fixed at No. 9. The officer appointed by the RCS. I find no valid reason for changing the petitioner's position at sl. No. 9 in the seniority list. the petition is hereby allowed. Announced. sd/- (Markandey Singh) Lt. Governor, Delhi, 25.3.1992."

"(II)Therefore, for all intents and purposes, the alleged waiting list which formed the basis for allotment of the plot to sh. Chetan Dass became null and void. He has claimed that he could not be made a party as the writ petition No. 3377/91 has already been disposed of. It also appears that award dt. 20th May, 1992 has also been given and according to sh. Bholu Nath Gogia, his seniority at sl. No. 9 and that of Smt. Sat Prabha Dawra at sl. No. 13 could not be disturbed. As such both of them claim to be entitled to continue with their alleged original seniority.

(9) Case of Sh. Kanhiya Lal Chutani (CW 3377/91). After being imp leaded as party to the petition, Sh. Kanhiya Lal Chutani filed a counter(at page 178) on 19th January, 1995 in Cw No. 3377/91. According to his counter he is bonafide member of the Society since 1960. He has made payment to the Society towards admission fee, share money and development charges well in time. He filed a case u/s 60 of the Delhi Cooperative Societies Act claiming allotment of a plot on the basis of his seniority. The Society had admitted his claim and included his name in the list of 84 members submitted before the Registrar in November, 1985 and February, 1986(vide reply dt. 27.3.88 annexure A at page 187). But the Registrar cleared names of only 80 members for allotment. The Registrar acted in an arbitrary manner and included 7 names of those members whose names were not submitted to the Registrar for approval, without there being any recommendation by the Society. But the Society vide letter dt. 15th April 1991, (Annexure "B" at p.189) with ulterior motive informed that his name had been kept in waiting list as per seniority. He raised a second dispute u/s 60 of Delhi Act. On 14.6.95, the Registrar stayed the matter sine die in view of the two seniority lists as the Registrar had sought classification in this regard (vide annexure-C at page 190). According to him, out of 1421 members on the roll of the erstwhile society at the time of dissolution of the society, only 504 members submitted their applications for membership of the society in Delhi. Out of 504, there were 15 members who had not furnished the required affidavits at the time of applying for membership. It was a condition that only those who were the members of the erstwhile society on or before 31st December,1961 and were residents of Delhi having no plot allotted at Faridabad could apply for membership of the newly registered society in Delhi. As transfer of society from one State to another was without jurisdiction, the Society in Delhi was altogether a new Society and out of 504, the Registrar approved the names of only 489 on 10th Jan., 1973. The list of 504 members except sr. No 240, 256, 257, 274, 345,358, 381,391,413,420, 462,465, 495, 496 & 500 was treated as freeze list (vide annexure-D) and 29 acres land in Pitam Pura was allotted by Dda 19.1.76. Membership was closed in February, 1973. However, the Managing Committee of the Society arbitrarily inducted 23 members and continued to enroll members in

this very fashion and thus committed bunglings, illegality and enrolled members with ulterior motives. Plots have been allotted to ineligible persons being junior to the respondent. Despite direction on the inquiry report, the Society failed to file any rectification report as per requirement of Sub Rule(16) of Rule 86. The seniority in the erstwhile society had no relevance, the date of resolution passed by Managing Committee approving allotment of plots to members was a material date for determining seniority. The Society failed to observe the requirements of rules. According to him ineligible persons who have been allotted plots and 15 persons who did not fulfill the formalities enumerated in the letter dt.24.1.73 issued by the Assistant Registrar Cooperative Societies (Housing) Delhi should be treated junior to Sh. Kanihya Lal Ghutani.

(10) Case of the Society. According to the counter filed by respondent Society No. I through Sh. B.P Joshi, Administrator dt. 20th January, 1992 (at page 46 in Wp No. 3377/91) Under the practice, by- laws and rules of the Society, the membership alone did not guarantee the allotment of plot to each member. Before any plot was allotted to a member, the member was obliged to file an affidavit as prescribed and his name must be cleared by the Registrar Cooperative Societies, New Delhi for the purpose of allotment of plot. The allotment of plot on draw of lot depended upon the availability of the plot with the Society for allotment. The Society had 18 plots for allotment against a waiting list of 49 members. That list of 49 members including the petitioner was sent for clearance to the Registrar cooperative Societies, New Delhi (in the month of March,1991). But, the required essential clearance had not so far been received in the office of the Society, from the office of Registrar of Cooperative Societies. Various prayers for writ of Mandamus against the Society were unwarranted and uncalled for, as writ petition was premature. A writ of Mandamus would not normally be issued to the organisations like companies or cooperative societies. It was admitted by the Society that the erstwhile Managing Committee did not implement the award of the Arbitrator and also the order passed by the Cooperative Tribunal for reasons best known to it. However, it is admitted that the petitioner Chetan Dass is eligible for allotment of plot subject to clearance by Registrar on filing of prescribed affidavit.

"(II) ACCORDING to the additional affidavit filed on behalf of respondent Society, through P.S:Taneja, Secretary dt.4th May, 1995 (at page 195 Wp 3377/91) the respondent Society had forwarded the names of all eligible persons to the Registrar of Cooperative Societies for scrutiny and recommendations to Dda for allotment of plots. On 16th December, 1985 Deputy Director(CS) Dda addressed a letter to the Society confirming the draw of lots on 8th November, 1985 for allotment of plots in the society along with the list of draw of lots on 8th November, 1985 (vide annexure R-1/3). A joint reading of Rule 37 and Rule 43 would show that allotment of plots is to be determined according to the seniority of with the Society. Seniority could not be based on file numbers and the direction of the Registrar of Cooperative Societies to that effect and contrary to the provisions of the Act was totally illegal and without jurisdiction the Rules and

By-laws of the Society. As per counter, filed by the Administrator of the Society, Sh. B.P.Joshi, in Cwp No. 3537/91(at page 18),N.L.Gandhi was taking seniority No. 1180 on the day. of enrolment. F.71 was not the seniority but file number. Out of 360 plots, 342 plots had been allotted to those who enrolled before 25th May, 1959 were senior to N.L. Gandhi. He also filed a waiting list position as on 25th December, 1991(annexure R-1). Sh. Om Prakash Chugh and Sh. Kamlesh Kumar Juneja were senior to him, their seniority being at 1178 and 1172. Sh. Ram Lal Khera (F.39) was enrolled on 26th Dec-,1960. His name was not shown at proper place due to oversight. The error when detected was rectified. Grounds mentioned in the petition were incorrect factually. The Society was not freshly registered in Delhi. In fact, the Society was transferred to Delhi. And as such on the basis of initial enrolment, the seniority list was prepared and the plots were allotted to the members on that basis. The petitioner has no case for issuance of any writ. He had also filed a seniority-wise waiting list of members for allotment of plots based on the date of enrolment (Annexure R-1 at p.22). (iii) In Cwp No. 4457/94 of Anil Bangia counter affidavit dt. 15th September, 1995 was filed by Sh. Shyam Sunder Kathuria, President of the Society (at page 59). He filed a seniority list according to the date of enrolment of members (in the erstwhile society) (annexure R-3/4 at page 69) as well list according to file numbers (say enrolment in Delhi) (Annexure R-3/5 at page 74). This latter list would materially change the seniority of the persons who were enrolled in May, 1959. He has also filed a list of the plots still available for allotment (annexure R-3/6 at page 79). According to the society, so long as the question of seniority is not determined in Cwp No. 3377/91, it would not be possible for the society to make any allotment in favor of the petitioner. Anil Bangia."

(11) Case of the Registrar of Cooperative Societies,Delhi. In Cwp No. 3377/91 apart from filing Cm No. 7456/92 no counter was filed by the Registrar Cooperative Societies,Respondent No. 2. However, on 13th December, 1995, Sh. Sanjay Poddar, Advocate, appearing on behalf of Respondent No. 2 submitted that he adopted the affidavit filed in Ccp 165/92 for the purpose of this CM(7456/92 in Cw 3377/91). Ms. Geeta Sagar, Registrar Cooperative Societies was present in compliance of the order dt. 31.7.95 to clarify the stand of the Registrar. The stand of the two Registrars as appears from affidavits filed by S.M.S. Choudhary dt. 30th September, 1992 and affidavit of Ms. Geeta Sagar dt. 12th December,1995 is that the Society was ordered to be registered at Delhi, as a successor body of the previously registered Society at Ballabgarh Faridabad on 28th August, 1948. Only those persons were eligible to be unrolled as members of the society who were earlier members of the society registered at Faridabad. The seniority of the waiting list members should be in accordance with the seniority of the members as existing before transfer of the society of Haryana, Along with its membership was given due recognition and consequently the inter-se seniority of the members in the erstwhile society have to be taken into consideration. It also appears, this by itself would not be sufficient and eligibility for enrolment in Delhi has to be seen again and for this purpose it may

relate back from the date when they furnished the proof about their eligibility after the registration of the society in Delhi i.e. in accordance with the "F" list of members. The list annexed as annexure I with counter affidavit of Sh. S.M.S. Choudhry has been prepared in terms of the date of enrolment of members in the erstwhile society and the same was prepared properly. The list as per annexure II to the said affidavit could not be adopted as the same does not reflect the correct position in the facts and circumstances of the present case. However, both sought direction for this Court in this regard.

"(III) In Cwp 3531/91 as per counter filed (at p. 57) by Sh. S.K. Bahl, Asstt. Registrar Cooperative Societies, it was denied that seniority No. of N.L. Gandhi was F.71. His membership (seniority) number is 1180. It was denied that Sh. O.P. Chugh, Sh. Kamlesh Kumar Juneja and Ram Lal Khera were junior to him. The petitioner would be allotted plot as and when his turn comes. (iv) In Cw No. 4457/93, no counter has been filed by the Registrar Cooperative Societies."

(12) Case of DDA. Neither in Cwp No. 3377/91 nor in Cwp No. 4457/94 any counter was filed by DDA.

"(II) However as per counter filed by Respondent Dda and Rajesh Somal OSD(H) in W.P.3531/91, the allotment of plots is made by Dda on the basis of seniority of the members and clearance from the Registrar Cooperative Societies on recommendation of the society. It is for the society to maintain the seniority of the members. It is not the function of Dda to decide the seniority of members. If the society has made allotments to some other junior members then the petition ought to have made that member a party to the proceedings as his interest is to be affected by the decision of the writ petition. As controversy revolves around disputed questions of fact, they cannot be adjudicated in the writ petition. Writ petition against those two respondents being misconceived, should be dismissed.

(13) Satya Prabha Dawra. Smt. Satya Prabha Dawra wife of G.D. Dawra Respondent No. 4 and Sh. M.L. Chawla Respondent No. 7 have not filed any counter in Cwp 3377/91.

"(II) All the three petitioners filed rejoinders in the three writ petitions and Cwp reiterating their own case and disputing the plea taken by the respondents, .pl 11.5"

(14) Application of Sh. Devinder Bajaj, (CM 1109/95) Cm No. 1109/95 (at page 2-3) was filed by one Sh. Devinder Bajaj. It appears in Cw 1584/91, Devinder Bajaj v Registrar of Cooperative Societies a notice was issued and it was also directed that one plot if available should be reserved for the applicant (vide order dt. 11.3.93, annexure F at page 248). In the meanwhile the petitioner in the said writ got the matter referred to the Arbitrator u/s 6 of the Act. The same was decided in his favour. An appeal was filed by the society, the same was also dismissed. However, that petition was disposed of as withdrawn on 24th March, 1994 (vide annexure-C at page 244). Sh. Devinder Bajaj has also filed a copy of waiting cum seniority list of the members who were in waiting list prepared by

Sh.B.P.Joshi, the Administrator of the Society (annexure-1 at page 255). In view of stay order passed in view of stay order passed in Cw 83/ on Cm 6113/94 by the Bench comprising of Hon"ble the Chief Justice and Ms. Usha Mehra, Justice (annexure G at page 247 and reproduced earlier in para...), he could not get possession in terms of award (annexure A). He has also filed a copy of judgment in the case of sh. Prem Prakash vs. the Registrar, Cooperative Societies (W.P.No. 83/93, annexure H) referred to above.

(15) The circumstances in this case appear to be similar to the circumstances obtained in Cwp No. 1116/84 in S.K. Gambhir vs. U.O.I, and to meet those circumstances following observations were made in that case. We may add as a word of caution that it may be that some of the members, who had been allotted plots earlier may have built houses but may be given priority because there appear to be a number of shortcomings on this question. We think that the interest of justice will be served best if the members who have built their houses are not disturbed and their .plots are not taken away from them even if they have been wrongly given plots, to hold otherwise would cause immense loss which would not be in the interest of the petitioner.

(16) We cannot afford to ignore the above mentioned observations also.

(17) Thus, it is apparent that the matter has become too complicated due to certain contradictory directions and numerous cases. Consequently, we would try to do as much substantial justice between the parties as is possible.

(18) One of the objections raised by the respondent-society is that the society, not being a State is not amenable to the writ jurisdiction of this court. A cooperative society is certainly not a State under Article 12 for the society is neither the Government nor the Parliament of India nor the Government and the legislature of any of the States nor a local authority, nor any other authority within the territory of India, nor could it be said to be under the control of the Government of India. In The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, , Supreme Court virtually refused to approve the proposition that the cooperative bank was enable to writ jurisdiction. But the complexion of the matter has however changed after Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Som Prakash Rekhi Vs. Union of India & anr., and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . Consequently, Rajasthan, Andhra Pradesh and Guwahati High Courts took the view that a cooperative society is an "other authority" within the meaning of Article 12 while the Kerala, Punjab, Haryana and Orissa High Courts refused to confer the status of "other authority" on the cooperative societies. However Madras A.M. Ahamed and Co., Madras and Others Vs. Union of India and Others, and Guwahati (Guwahati 1982 Ghc 85...?) High Courts conferred the status of State on cooperative society. There are numerous judgments to support of the two views.

(19) In M.C. Mehta and another Vs. Union of India and others, , after considering

Ajay Hasia (supra), the Supreme Court observed in para 17 about relevant test as under:

"...THE enquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory corporation created by a statute or it may be a... society registered under the Societies Registration Act 1860 or any other statute" (like a society registered under Delhi Cooperative Societies Act or a trust under the Trust Act 1892)."

(20) It may be mentioned that the inescapable conclusion apparent from the detailed discussion is that Shriram Fertilisers and Chemicals Ltd., a public limited company owned by Delhi Cloth Mills Ltd. could not escape the writ jurisdiction of the Supreme Court and that the corporate device would not be allowed to be used as a barrier for ousting the constitutional control of Fundamental Rights.

(21) This judgment was referred to in Sanghi Technologies Pvt. Ltd. Vs. Union of India and Others, after referring to the test as mentioned in the preceding para, in para 11 observed:

"...SUCCINCTLY stated, what is really to be determined for whether a body is or not "other authority" is - who created the body and why - what are its aims and objects, how is it running, the extent of Government financial aid or grant to it and its dependency on the Government and the latter's control over it".

(22) The Full Bench further observed in para 12 as under:

"12. The sum total, broadly speaking, is that Constitutional or statutory bodies set up under a statute - whether as a Government body or undertaking or as corporation - a Government company or public company or a private company under the Companies Act, 1956, or in the form of a society registered under the Societies Registration Act or any other form constituted under a similar statute or a body or a person performing the functions of a Government character will be included in the expression "other authority".

(23) It is notable that Dr. I.P. Massey in his Administrative Law, 4th Edition 1995 at p.208 observed:

"THE approach of the court in the area of fundamental rights must not be whether authority is "State" within the meaning of Article 12. The correct approach should be that every authority or person who poses a threat to fundamental right should be amenable to the jurisdiction of the court. Therefore, not the "type of agency" but the "threat to the fundamental rights" must be the determining factor for the issue of writs under Article 32".

(24) In a recent case in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., (known by the name of "Capitation Fee case"), even individual running private educational institutions have been held amenable to writ jurisdiction of High Court and Supreme Court in view of the infringement of the fundamental right to education flowing and emanating from Article 21

read with Article 41 and 45 of the Constitution.

(25) We need not reiterate the following observations in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, :

"THE term "authority" used in Article 226, in the "context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights, under Article 32. Article 226 confers powers on the High Courts to issue writs for enforcement of fundamental rights as well as non fundamental rights. The words "Any person or authority" used in Article 226 are, Therefore, not to be confined only to the statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not much relevant. What is relevant is the nature of the duty imposed on the body...No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied".

(26) In the light of the above, it is an inescapable conclusion that whenever any fundamental right or a public duty cast on State or other authority or instrumentality of the State or any person is violated, the State or other authority or person would become amenable to the writ jurisdiction of this Court at least under Article 226 if not under Article 32 read with Article 12 of the Constitution.

(27) Since *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , right to life and personal liberty has gained ever expanding meaning and right to shelter also emanating from Article 21 was recognised as fundamental right in *M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others*, . Now "Town planning" is an area lying within the control of the State and local authorities like DDA. On account of failure of Dda to construct appropriate number of shelters, people are rushing to group housing societies registered under the Cooperative Societies Act. The Dda, in order to reduce the pressure of the demands of building more and more flats, is acquiring land under Land Acquisition Act and providing the acquired land at cheaper rates to such societies. In this fashion, the group housing societies are performing the functions of a welfare State by raising construction on such land and providing shelter to their members. Consequently, it cannot be said that no public duty was cast on such societies to nourish, protect and preserve the fundamental right of shelter of each member. Obviously, such societies can also not violate fundamental rights of equality by picking and choosing members for allotment on the whims of the office bearers of the society. If they violate fundamental right of shelter enshrined in Article 21 and fundamental right to equality then neither the group housing society nor the office bearers of the society would be allowed to escape the writ jurisdiction of this court. However, if neither fundamental right nor any public duty cast on them is violated, breach of the bye-laws cannot be enforced by invoking writ jurisdiction of this court (see *Jagjit Singh Sangwan Vs. Union of India* and

Others, a judgment delivered by one of us (R.C. Lahoti, J.). Seeing the allegations made in petitions, documents filed and affidavits as record, plea of arbitrariness, violating fundamental rights of the petitioners will have to be accepted. This makes the respondent-Society amenable to writ jurisdiction of this court. The preliminary objection of the respondent-society is disposed of accordingly.

(28) This Court is supposed to choose one out of several seniority-cum-waiting lists which must be consistent with the intention of Notification dt. 3rd December, 1971(Annexure-B at p. 168 in Cwp 3377), the Act and the procedure followed in the allotment of plots so far, with the principles followed in decided matters and which would cause least disturbance.

(29) We have heard the learned counsel at length and gone through the record. Numerous arguments have been advanced by the concerned counsel and we shall deal with them at appropriate place.

(30) One of the objections raised in reply to application under Order I Rule 10 CPC by Sh. Bhola Nath Gogia was that he could not be impleaded in the writ petition filed by Chetan Dass after it was decided on 26th February, 1992. Our answer would have been "Yes" in ordinary circumstances. But, in this case, if the order passed in that matter could not be executed on account of some order in favor of Satya Prabha Dabra and Bhola Nath Gogia, then for just decision of the matter and for doing complete justice in between the parties, it was essential to hear Bhola Nath Gogia and Satya Prabha Dabra to find a just way out either to enforce or execute the order passed by this Court on 26th February, 1992 or to hold otherwise. Earlier there was conflict of opinion about taking note of events subsequent to filing of petition. However, now after various pronouncements of the Supreme Court, the law appears to have settled down in favor of taking note of events, situations and circumstances, which have taken place after filing of the petition, in order to meet out justice, the anxiety and endeavor of the Court being, to remedy injustice, rather than denying relief on purely technical and procedural grounds. Consequently, this Court can undoubtedly take note of the situation and circumstances which have arisen after filing the petition and its decision on 26th February, 1992 and grant relief to the party in order to meet out justice in the case. As far as possible, the anxiety and endeavor of the Court is to remedy injustice, rather than deny relief on purely technical and narrow procedural ground. (see B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, , P. Venkataswarlu vs. Motors and General Traders, Air 1975 Sc 1469, Rameshwar vs. Jot Ram Air 1986 Sc 49, Rameshwar and Others Vs. Jot Ram and Another, , Hasmat Rai and Another Vs. Raghunath Prasad, One of the arguments advanced by Sh. Rakesh Munjal, learned counsel for respondent No.4 Sh. Satya Prabha Dabra and respondent No.5 Sh. Bhola Nath Gogia, was that the present society was not a continuation of the erstwhile society registered at Faridabad for the registration of that society was cancelled on 17th July, 1967. It is notable that Bhola Nath Gogia had filed

EX.R.I along with his counter at p. 141 of the file in writ No. 337/91. On this basis, it was also contended that Bhola Nath Gogia was promoter- member of the present society and his name had been mentioned at sl. No. 9. The application for registration Ex.R.1 itself indicated that there were 1421 members including 56 promoters as is mentioned in the column "Members at present". Such information could not have been given unless the application was moved for the benefit of all the members registered in the erstwhile society. It also indicated that along with application, balance sheets for the years 1966-67, 1967-69, 1969-70 and 1970-71 were also enclosed along with the account up to 31st December, 1971. It also indicated that a sum of Rs. 70,380.00 was lying with them in deposit. This amount obviously belonged to 1421 members and not to the 56 promoter-members. The letter dt. 13th May, 1971 (Annexure A at p.166) filed along with the counter of Chetan Dass indicated the sanction of the President of India to the registration of Dera Ghazi Khan Cooperative House Building Society in Delhi was in relaxation of existing orders on the subject. It also indicated that only those members of the society who were residents of Delhi and were enrolled up to 31st December, 1961 were to be considered for allotment of plots. It was also made clear that the society would not get any priority in the matter of location of the land on the basis of its date of registration in Faridabad Distt., Gurgaon. This indicated that all the promoter- members were claiming land for the benefit of those members of their society who were living in Delhi on the basis of their enrollment as member in the erstwhile society at Faridabad. This definitely indicated that even Bhola Nath Gogia accepted that position. We do not think that in such circumstances, he can be allowed to take the aforesaid plea nearly after 23 years. But this half-hearted argument advanced by learned counsel for B.N. gogia does not find much support from the counter.

(32) Besides, so far as the question of membership of Chetan Dass is concerned, it is an admitted fact that he became member in the year 1959; his membership was cancelled on 28th July, 1985 and after the dispute u/s 60 was referred for arbitration, it was decided in favor of the petitioner Chetan Dass. The society went in appeal to Delhi Cooperative Tribunal. The appeal was dismissed vide its order dt. 4th May, 1988. When the society failed to take immediate action; letters were sent by the office of the Registrar. On 10th July, 1989, the society intimated that his membership had been restored. It is an admitted fact that in the erstwhile society, the membership No. of Sh. Chetan Dass was 131 and his date of enrolment was 25th May, 1959 and membership No. of Manohar Lal Chawla was 973 with date of enrolment 30th December, 1960 while Nand Lal Gandhi, Bhola Nath, Satya Prabha etc. all were enrolled on 31st December, 1960. It would be evident that Bhola Nath Gogia was much junior in the list. This is in tune with the stand of the society, as well as of the Registrar of Cooperative Society and subsequent conduct of the members. The society is evidently successor society and this fact cannot be agitated at this late stage. The argument that Bhola Nath Gogia had become senior as he was mentioned as

promoter- member of the society at No.9 by itself would not be sufficient in the afore-mentioned circumstances to say that the promoter-members had become senior.

(33) Besides adopting a different mode of deciding seniority of last few persons for the purpose of allotment of plots would amount to violation of Art. 14 of the Constitution, even if one leaves aside, the question of finality of judgment of Chetan Das dt. 26.2.92.

(34) We may mention that on 12th April, 1991, Administrator General Manager (DFC), Dera Ghazi Khan House Building Society Ltd. sent a letter to the Asstt. Registrar (NB), indicating that the membership of Sh. Chetan Dass, Sh. Hans Raj Jain, Sh. N.C. Chawla, Sh. Dev Kumar Jain, Smt. Hemi Bai, Sh. B.R. Nangia, Smt. Gango Devi and Sh. Harkishan Lal had been restored by the concerned authorities by maintaining their inter-se seniority. (This fact is confirmed in respect of all of them excepting B.R. Nangia by Annexure R-1 at p.22 of Cwp No. 3531/91). All of them were members of the erstwhile society enrolled between 25th May, 1959 to 30th December, 1960. This letter was referred to in the judgment in civil writ No. 83/93 in Prem Prakash vs. Registrar Cooperative Societies and others. This Writ petition has already been decided on 4th August, 1994 and respondent No.3 was directed to accord necessary permission for allotment of plot according to the petitioner's seniority (annexure-N) within 2 months from the date of the receipt of the order. Respondent No.1 was directed to hand over the plot to the petitioner within 2 months from getting the necessary intimation from respondent No.3.

(35) It is also notable that on 26th Feb., 1992 the writ petition No. 3377/91 filed by Sh. Chetan Dass stood disposed of and the judgment is binding on the Registrar of Cooperative Societies, Delhi, the society and the DDA. The arbitrator was also supposed to take note of the judgment before passing the impugned award on 20th May, 1992. Therefore, the award made in ignorance of or by ignoring the said judgment though may apparently be final but it is not so, for it could not adversely affect the rights of Sh. Chetan Dass confirmed and declared by this Court by the judgment dt. 26th Feb., 1992. Besides, the arbitrator could not re-determine the seniority of 26 members without impleading 24 of them and which order was prima facie contrary to this Court's orders dt. 26th Feb., 1992 as was observed by another Bench of this Court in order dt. 16th Feb., 1993.

(36) It was also pointed out that Sh. B.N. Gogia was one of the promoter members as well as Vice President of the Society from time to time (see rejoinder affidavit of Chetan Dass at p 53). Naturally, he was supposed to know that erstwhile society was being registered in Delhi, when the letter dt. 31st May, 1971 sent by the Assistant Housing Commissioner, Delhi Administration (annexure-A at page 165) forwarding copy of letter No.7-I(58)/69-UDI dt. 13.5.71 was received by Sh. Gian Chand Khattar. He was also supposed to know that only those members of the erstwhile society who were residents of Delhi and

were enrolled up to 1961 were to be considered for allotment of plots and for determining the quantum of land to be allotted by the Society. He must also be presumed to know that notification dt. 3rd December, 1971 was issued u/s 66 of the Bombay Cooperative Societies Act, 1925. When the Society is being registered in the year 1971 and when the notification as well as by-laws specifically provided that no person who was not the resident of Delhi and who was not enrolled as member up to 31st December, 1961 shall be eligible to continue to be member of the Society when registered at Delhi, the obvious purpose was that seniority of the members for the purpose of allotment of plots was supposed to be decided on the basis of enrolment as members in the erstwhile society registered at Faridabad.,Tehsil Balabhgarh, Distt. Gurgaon. It is apparent that the present society is registered by the Registrar under the Bombay Act deeming it" to be a successor society of the erstwhile society registered at Faridabad. The plea now being taken by Sh. B.N. Gogia appears to be contrary to his own standing in the Society. If membership in the erstwhile society has no meaning from his point of view, and if he has been enrolled as a member of the society in the year 1971 then according to the bye-laws of the Society 5(I)a, referred to above he could not be a member and same would be true about satya Prabha Dawra and Moti Lal Chuttani and persons like them who intend to sink or swim together. The arguments that the society was not in existence since its registration had been cancelled in 1967, that membership in the erstwhile society was of no relevance and the award based on the conception that the present society registered in Delhi is not a successor society, cannot be acted upon by this Court for it runs contrary to conduct of 56 promoter members, notification dt. 3rd December,1971(Annexure-B at p. 168) the resolution passed by the Society after notification on 7th Dec.,1971(Annexure R-1 at p.204) authorising the President and Secretary of the Society to apply for registration, the judgments passed in Chetan Dass matter on 26th Feb., 1992; and in the case of Sh. Prem Prakash. It must be kept in mind that the judgment in Chetan Dass on 26th Feb., 1992 has neither been questioned by any of the respondents nor it could be questioned, for that Judgment has attained finality between the parties in Chetan Dass at that stage. Even a legislation can not adversely affect the rights of the parties after a judgment so far as parties in Chetan Das and Prem Prakash are concerned, (see S.R. Bhagwat and others, Vs. State of Mysore, . On this very analogy, the order obtained from the Lt. Governor dt. 25th March,1992 (annexure R-III at p.150 by suppressing material facts of transfer and registration of the Society as successor of the erstwhile society, and the notification issued on 3rd December 1971 exempting the society from applicability of certain provisions and decision Cwp No. 3377/91 could not be accepted and acted upon in view of the judgment of this Court dt. 26th Feb.,1992. A bare perusal of the above said order of the Lt. Governor indicates that case had not been presented before Lt. Governor in proper perspective, including the fact that the present society is successor of the society registered at Faridabad. Besides, the order in the Cwp 3377/91 were passed on 26th February,1992 while the order of the arbitrator and Lt. Governor in the matter os

Sh. Bhola Nath Gogia were of subsequent date, we assume that neither the Arbitrator nor the Lt. Governor were posted with all the facts when they passed orders. We also assume that when the Lt. Governor passed the order dt. 20th May, 1992, he was virtually misled by nondisclosure of these facts by the society, by the office of the Registrar, and by Bhola Nath Gogia.

(37) No doubt that for the reasons best known to the then office bearers of the society they have allowed such an order to stand and we have been left with Hobson's choice to choose in between the judgments of this Court dt. 26th Feb., 1992 and the order passed by the Lt. Governor dt. 25th March, 1992. Seeing the circumstances mentioned above, we have to opt for the judgment delivered by the High Court in Chetan Dass on 26th Feb., 1992 and the judgment dt. 4th August, 1994 in the case of Sh. Prem Prakash vs. Registrar Cooperative Societies Ltd. 83/93. We reiterate for clarity and ready reference that name of the petitioner Sh. Chetan Dass is mentioned at sl. No. 1 and name of Smt. Gango Devi predecessor in interest of Sh. Anil Bangia is mentioned at sl. No. 7 in the list (in annexure-N) which formed the basis to decide the matter in the case of Sh. Prem Prakash. Consequently, applying the doctrine of necessity, we opt for a better order in all respects.

(38) Besides, Sh. B.P Joshi, Administrator of the Society, in his counter affidavit in the case of Sh. N.L. Gandhi dt. 24th Feb., 1992 also mentioned that file number was not the seniority number. He also filed seniority-cum-waiting list in annexure R-1 (at p.22) of those members who were eligible for allotment of plot in the society. Similar list (Annexure 1) was also filed on 30.9.92 by Sh. S.M.S. Chaudhary, Registrar Cooperative Societies in Ccp 165/92 at p.22 along with his affidavit. According to his successor Ms. Geeta Sehgal, Registrar, Cooperative Society, only this Annexure I (filed on 3.9.92) was the proper seniority list. However, the latest similar list is Annexure R-3/4 at p.69 in Cwp 4457 filed by the Secretary of the Society. It may be mentioned that judgment in the case of Chetan Dass as well as Sh. Prem Prakash is based on the membership in the erstwhile society.

(39) In addition to the above, even the arbitrator treated the freeze list of 504 old members, and observed in para 10 of the award dt. 2nd May, 1992 (annexure A at p.68) as under;

"...THE members who were enrolled after submitting the list of 504 members could, thus, not rank senior to the claimants, who, in fact, happened to be promoter members for registration of the society."

(40) The real impact of the award is to give effect to freeze list of 504 members based on seniority in the erstwhile society and to give seniority to the promoter members of over those who were not in freezed list and further allotment be made "on the basis of the seniority list drawn among the remaining 26 persons with reference to their date of enrolment in Delhi which is already available from the so called "F " No. assigned to each case. This is the last direction where he

committed factual error by not going even by what he himself has said earlier. Consequently, this list (annexure R-3/4 at p.69 in Cwp 4457/94) alone could provide a working solution to the complex problem. It is reiterated that according to the bye-law 5(i) only those (i) who were residents of Delhi(ii) who have not been allotted any plot by the erstwhile society at Faridabad and (iii) who had been enrolled as member in the erstwhile society before 31st December, 1961 could be the members. It may be mentioned that others could not even be the members of the society, this list was sent by him to the office of Registrar. According to Annexure R-3/4 indicated that Sh. Chetan Dass Dawra was mentioned at sl. No.2 with membership No. 131 enrolled on 25th May, 1969; Sh.Anil Bangia at sl.No. 16 with membership No. 819, enrolled on 28th December, 1960, Sh. K.L. Chutani at sl. No. 34 with membership No. 1204, enrolled on 31.12.60. Sh M.L. Chawla at sl.No.19 with membership list No.973, enrolled on 30.12.60, sh. N.L. Gandhi at sl. No. 25 with membership No. 1180 enrolled on 31.12.60., Sh. B.N. gogia at sl. No. 35 with membership No. 1206, Smt. Satya Prabha Dabra at sl. No. 37 with membership No. 1208, both enrolled on 31.12.60.

(41) There are allegations as well as inquiry report that the then Managing Committee was allegedly found guilty of including the names of their favourite ones in the list of seniority and the possibility of their succeeding in getting a few irregular allotments made, could also not be ruled out. We are also not happy in view of the allegations made that in the office of Registrar few names were arbitrarily inserted in the list of members without there being any recommendations of the Managing Committee of the Society and probably without giving any opportunity to the Managing Committee to object to such insertions in the list of members.

(42) The office of Registrar Cooperative Society has found himself in most unenviable position when he received contradictory directions two in the Civil Writ petitions of Chetan Dass Cwp No. 3377/91 and Prem Prakash Cwp No. 83/93 from two Divine on Benches of this Court and one from the Lt. Governor. All the three are lawful and all the three have become final so far as the respondent society and the Registrar of Cooperative Societies are concerned. Thus, Registrar and the Society are supposed to perform an impossible act to comply on one hand the orders passed by the Lt. Governor, Nct of Delhi directing the Registrar to treat Sh. B. N. Gogia at sl. No. 9 and enforce seniority list on the basis of fresh enrolment at Delhi. On the other hand, they are also supposed to comply with the directions in the matter of Sh. Chetan Dass in Cwp No. 3377/91 dt. 26th February,1992 and in Cwp No. 83/93 of Prem Prakash dt. 4th August, 1993 to allot plots to Sh. Chetan Dass and Sh. Prem Prakash and thereby to resort to seniority list based on membership in the list of erstwhile society. Seeing the impasse, the Registrar moved Cm No. 7456/92 (p.60) seeking clarification and direction in the light of the impasse mentioned above.

(43) So far as the Registrar of Cooperative Societies is concerned, it appears that

he is entitled to get the benefit of the maxim "Lax non cogit and impossible" i.e. the law does not compel a man to do which he cannot possibly perform. This argument has been exemplified by a reference governing to law of Mandamus in Broom's Legal Maxies, 10th edition at p. 163-164. Following illustrations given therein will help appreciate the point.

"WHERE an order had been made by the Board of Trade upon a Railway Company, requiring the Company to carry a turnpike road across the railway, the Court refused a Mandamus to compel the company to carry out the order upon proof that the company had no funds and were practically defunct and was not in a position to obey the writ if granted."

(44) Though it apparently appears easy to follow the above precedent but things are not that simple in absence of absolute non-availability of .the plots of land for allotment amongst members. Here, in this case 17 or 18 plots are available for allotment. Thus, it was not altogether impossible for the Registrar to comply with the directions issued in CWP.No. 3377/91 in Chetan Dass, and in Cwp No. 83/93 in Prem Prakash as well as the orders of the Lt. Governor in the matter of Sh. B.N. Gogia (annexure R-III) dt. 25th March, 1992 at p.150 of Cwp No.3377/91. However, had the Registrar complied with all the three orders then she might have failed to follow any definite principle or mode or policy of deciding seniority and might have created more problems than solving them. In that case by following inconsistent policies by allotting 242 plots on the basis of seniority in the erstwhile society and by following the seniority decided on the basis of fresh enrolment at Delhi, he or she might have violated the principles of equality enshrined in Article 14, apart from setting judgments in Chetan Das and Prem Prakash at naught. Accordingly, this Ccp No. 165/92 is dismissed.

(45) DIRECTIONS: In view of the aforesaid observations and having no other just option left to us, we issue following directions:

"I)CWP 4457/94 (filed by the petitioner Anil Bangia) is allowed subject to subsequent direction in the light of the seniority list Annexure Rw 3/4 in Cw 4457/94 at P.69. This list shall form part of this judgment. ii) Cwp 3531/91 filed by Shri N.L. Gandhi is dismissed for the present in view of the seniority as per Annexure R3/4 and due to non-availability of any plot for allotment at the moment in his favour. iii) In order to avoid any further delay and to do substantial justice in favor of persons named in Annexure R3/4 and to enforce the orders passed in Cwp 3377/91 as well as Cwp 83/93 of Prem Prakash and Cwp 4457/54 filed by Anil Bangia, all stay orders granted by any authority within the superintendence of this court as well as by this court which are contrary to these directions are hereby vacated. iv) The Registrar Cooperative Societies as well as Dda are hereby directed to adhere to the seniority based on the enrolment of the eligible members in the erstwhile society and in respect of un-allotted plot List Annexure R3/4 shall be followed to initially clear 17 names out of the list (Annexure R3/4) for allotments of plot without any delay on filing affidavits by 37 members named in the said list including Shri Chetan Dass and

Shri Anil Bangia to the effect that the concerned member has not earned any disqualification at any time since the beginning of his membership till the date of filing of the affidavit to secure allotment of any plot and further, that neither he himself has any such residential building in the Union Territory of Delhi in his name nor in the name of his/her spouse nor in the name of his/her minor children which would lead to any disqualification now under Rule 25 (I)(c) of Delhi Cooperative Societies Rules. We further direct that if any one of these first 17 members fails to file an affidavit by 16th September 1996, his name shall not be included in the draw of lots and in his place the member named at Sl.No. 18, 19 and 20 and so on in the said list, as may be required, shall be included in the draw of lots. The draw of lots shall take place on or before 11th October 1996. After the draw of lots, the possession of the 17 plots shall be delivered, by the President and Secretary of the Society to the above said members in the said list by 28th October 1996. v) The Registrar, Cooperative Societies, the President and the Secretary are directed to issue a copy of these directions by Regd. post as well as under Upc to all the 37 members along with a copy of Annexure R-3/4 to all the members mentioned in the said list, within ten days asking all the 37 members in the list to file affidavits, mentioned in the direction No.4 by 16th September 1996 to be considered for allotment in draw of lots, if permissible. vi) The Registrar, Cooperative Societies, the President and the Secretary of the respondent- society are further directed to examine cases, particularly in the light of paras 5 to 8 of Annexure P.2 letter dt. 3rd April 1989) relating to findings of enquiry report u/s 55 of Delhi Cooperative Societies Rules, to enable any of these 37 members mentioned in Annexure R-3/4 to claim appropriate relief, if possible, against those who have wrongly been allotted a plot either by giving compensation for the built up construction or by taking compensation in lieu of the property which might have been allotted to any of these 37 members. The Registrar, Cooperative Society shall take appropriate criminal action also in case any ineligible person is found to have furnished wrong information for the purpose of getting a plot allotted. vii) As discussed above, we dismiss Ccp 165/92. viii) Application of Devinder Bajaj Cm 1109/95 also stands disposed of in terms of direction No.(iv). In the peculiar facts and circumstances in all the three writ petitions, we leave the parties to bear their own costs."

(46) A copy of these directions along with photocopies of Annexure R-3/4 and Annexure P.2, letter dated 3rd April 1987 be given to each of the counsel for the Registrar of Cooperative Societies, Dda, the Society, the petitioners in the three petitions and two objectors, B.N. Gogia and M.L. Chhutani, for information and immediate compliance.