(2010) 04 DEL CK 0396

In the Delhi High Court

Case No : Writ Petition (C) No. 3639 of 1991

H.D. Gupta APPELLANT

Vs

Lt. Governor of Delhi and Others RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Delhi Co-operative Societies Act, 1972 — Section 34, 76, 76(1)
Delhi Co-operative Societies Rules, 1973 — Rule 36, 36(2)

Citation : (2010) 04 DEL CK 0396

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : O.P. Gupta and Neha Gupta, for the Appellant; Sudhir Nandrajog and J.N. Gupta, for Respondent Nos. 3, 6 and 8 and Devender Kumar, for the Respondent

Judgement

Vipin Sanghi, J.—These four writ petitions arise out of a common order dated 28th August, 1991 passed by the Lt. Governor of Delhi in the four appeals preferred by the aforesaid petitioners u/s 76 of the Delhi Co-operative Societies Act, 1972 (for short the ''Act'') against the common order of expulsion dated 16th May, 1990 passed by the Registrar of Co-operative Societies in respect of each of the petitioners. Since the relevant facts and the issues arising in all these petitions are identical, and we have heard learned Counsel for the petitioners and the respondents, we proceed to dispose of these petitions by a common judgment.

2. The petitioners before us were enrolled as members of Sukhdham Co-operative Group Housing Society Ltd. situated at plot No. 1, Sector-9, Rohini. The membership numbers of these petitioners were as follows:

Petitioner''s Name Membership Number

Sh. H.D. Gupta 1 Smt. Darshna Devi 7 Sh. Sita Ram Bansal 55 Smt. Urmil Mittal 150

3. During the course of their membership, the respondent society raised demands on its members including the petitioners to fund the construction activity of the residential flats. The petitioners opted to part finance their flats by taking loans from the Delhi Cooperative Housing Finance Society Ltd. (DCHFC). The amounts stated to have been deposited by these petitioners with the respondent society, from time to time were as follows:

Sh. H.D. Gupta Rs. 78,100/- Smt. Darshna Devi Rs. 58,100/- Sh. Sita Ram Bansal Rs. 63,100/- Smt. Urmil Mittal Rs. 71,100/-

4. The aforesaid amounts were claimed to have been deposited, apart from the amounts released by the Delhi Cooperative Housing Finance Society Ltd. in the account of these petitioners as loan.

5. It appears that the respondent society issued demand notices to each of these petitioners raising demands for varying amounts stated to be due from them, from time to time. The petitioners, however did not make payments of the amounts demanded from them by the respondent society. Eventually the respondent society issued notices to each of these petitioners on 14.01.1989 by registered post under Rule 36 of the Delhi Co-operative Societies Rules, 1973 ("the Rules" for short) to initiate action against them for expulsion from membership of the respondent society on account of their default in not making payments due from them. Each of these notices referred to demands raised by the society on 24.9.1988, 7.1.1988 and 30.12.1988 which had not been complied with by these petitioners. The amounts demanded from these petitioners in the individual notices dated 14.01.1989 were as follows:

Sh. H.D. Gupta Rs. 16,000/- Smt. Darshna Devi Rs. 36,000/- Sh. Sita Ram Bansal Rs. 31,000/- Smt. Urmil Mittal Rs. 23,000/-

6. The respondent society required the petitioners to submit their explanation for not being expelled from the membership of the society on or before 29.01.1989. It was also informed that the General Body Meeting, to consider their cases for expulsion, would be held on 29.01.1989 at 11 a.m.

7. It appears that the respondent-society approached the Registrar of Co-operative Societies for approval of the expulsion of the petitioners. The Registrar of Co-operative Societies heard the parties on 05.10.1989, and passed a common order on or about 09.10.1989 (forwarded to the petitioners vide forwarding letter dated 11.10.1989).

8. From the order passed by the Registrar, it appears that each of the petitioners expressed their willingness to pay the amounts demanded from them as set out hereinabove. At the same time it was represented by the respondent society that on account of the default of these petitioners, the financing institution, namely, DCHFS had deducted the amount due to be released in the account of these four petitioners from the total loan amount disbursed at the time of release of the second instalment in May 1989. It was further claimed by the respondent society

that the individual loans in respect of these four members may be released by DCHFS along with the release of the third instalment in favour of the society. The respondent society had also submitted that these four petitioners should initially pay the entire amount, including the amount of second instalment of loan from DCHFS, from their own resources till the amounts were released in respect of the four petitioners from DCHFS.

9. It appears that in this background the parties mutually agreed that the respondent society would immediately write to DCHFS requesting them to release the amount. The petitioners were held liable to pay the interest on the loan instalment amounts till the time the same are released by the DCHFS. At the same time the claim of interest by the society at the rate of 12% per annum on the outstanding dues for the period 01.08.1988 to 31.08.1989 was held as not supported by any resolution passed by the Managing Committee and also because the society had not charged interest in any other case. The Registrar directed the petitioners to pay the following amounts:

Name	Balance outstanding as on 31.7.88
Sh. H.D. Gupta	Rs. 16,000
Sh. Sita Ram Bansal	Rs. 31,000
Smt. Darshana Devi	Rs. 36,000
Smt. Urmil Mittal	Rs. 23,000

10. The petitioners were also directed to pay interest on the first and second instalments of loan till such time the same was got released from DCHFS. The society was directed to immediately write to DCHFS for release of the loan amount and the society was directed to send copies of all such communications to the petitioners. The society was also required to indicate the amount payable as interest on the two loan instalments from DCHFS and to communicate the same to the petitioners within one week from the issue of the order. The petitioners were granted fifteen days time to pay the aforesaid amounts together with interest on DCHFS loan amount.

11. It appears that none of the petitioners made payment of the aforesaid amounts within the period of fifteen days as granted by the order of the Registrar. It is also the admitted position that the respondent society, which was directed to immediately write to DCHFS to release the loan amounts i.e. the first and second instalments in respect of these petitioners, did not do the needful and did not even communicate the amount of interest on the loan amounts (i.e. first and second instalment) to the petitioners within a week of the passing of the aforesaid order by the Registrar.

12. The petitioners being aggrieved by the aforesaid order passed by the Registrar, preferred appeals before the Lt. Governor by invoking Section 76 of the Act. These appeals were dismissed as withdrawn by the Lt. Governor on 24.05.1990 as being premature, on the ground that the petitioners had not been

expelled by the Registrar of Co-operative Societies while passing the aforesaid order.

13. According to the petitioners, they were shocked when they were suddenly visited with identical orders dated 16.05.1990 with regard to approval of their expulsion from membership of the respondent society with immediate effect, on the ground that they had failed to deposit the defaulted amounts within the 15 days period granted by the Registrar by his aforesaid order.

14. The petitioners preferred appeals against the orders dated 16.5.1990 before the Lt. Governor, Delhi u/s 76 of the Act, and as aforesaid, the Lt. Governor dismissed the said appeals being appeal Nos. 113/90-C.A., 121/90-C.A., 122/90-C.A., 123/90-C.A. and 124/90-C.A. by the impugned order dated 28.08.1991.

15. The present writ petitions came up before the Court on 22.11.1991. While issuing Rule nisi the Division Bench directed that in the meantime, the respondents would not enrol any new member in place of the petitioners.

16. The writ petitions were thereafter adjourned from time to time to grant opportunities to the respondents to file their counter affidavits. The respondent society filed identical counter affidavits in all the four petitions. In their counter affidavit filed in January, 1992 the respondent society disclosed that after the expulsion of the four petitioners had been approved by the Registrar on 16.05.1990, the managing committee of the society had resolved to enroll 4 new members in its meeting held on 31.10.1990. Accordingly, the following four members were enrolled:

(i) Smt. Varsha Rani, wife of Shri Jeet lal;

(ii) Sh. Devender Kumar, s/o of Shri Tara Chand;

(iii) Smt Nirmal Garg, wife of Shri Ram;

(iv) Sushil Kumar Parikh, s/o of Shri Sita Ram Parekh

17. Consequently, the petitioner in W.P.(C) No. 3626/1991 i.e. Smt. Urmil Mittal, preferred C.M. No. 3108/92 under Order 6 Rule 17 read with Section 151 C.P.C. to appropriately amend the writ petition for the purpose of impugning the enrollment of the said four members in place of the petitioners and also to implead them as party respondents. Notice of the said application was issued to the proposed respondents who even filed their reply dated 21.04.1983. The said application for amendment was considered by this Court on 26.04.1993 and after hearing the counsels for the respondent- society, the proposed respondents and the Registrar of Co-operative Societies, the said application was allowed. Accordingly, the said newly enrolled members were impleaded as party respondents in the said writ petition and were granted time for filing their counter affidavits. We may note that the said newly added respondents 5 to 8 [in W.P.(C) No. 3626/1991] have, however, preferred not to file their counter affidavits on record.

18. In each of these writ petitions, the petitioners preferred applications u/s 151 C.P.C. to seek a restraint against the respondent society from making allotment of flats to its members till the disposal of the writ petitions. While orders were passed in C.M. No. 1975/94 in W.P.(C) No. 3638/91 and C.M. No. 1973/94 in W.P.(C) No. 3626/91 on 15.3.1994 directing that the draw of lots, if any held, shall be subject to the final outcome of the application, the same order was passed in C.M. No. 1992/1994 in W.P.(C) No. 3639/1991 on 16.03.1994. It appears that though the petitioner in W.P.(C) No. 3625/91 had preferred C.M. No. 1974/94, at the same time, no formal order came to be recorded in the said case. These orders continue to operate till date.

19. The submissions of learned Counsel for the petitioners, Mr. Gupta are as follows:

(i) It is firstly submitted that the respondent society did not comply with the mandatory provisions of Rule 36 of the Rules framed under the Act. He submits that the show cause notice dated 14.01.1989 was issued by the respondent society by registered post and the same was received in the next couple of days. The General Body meeting was, however, fixed for 29.01.1989 thereby not granting sufficient time to the petitioners either to respond to the notice or even to make payment of the amounts claimed by the respondent society as being the defaulted amount. He submits that under Rule 36(2), the meeting could not have been held "earlier than the period of one month from the date of such notice". He, therefore, submits that the mandatory procedure prescribed under Rule 36 has been violated and the expulsion proceedings were void ab initio.

(ii) Mr. Gupta further submits that even on 29.1.1989, no resolution was passed by the General Body of the respondent society to expel the petitioners from their primary membership of the society. He submits that the so-called resolution, which was required to be passed by a majority of not less than 3/4th of the members entitled to be present and vote at the general meeting, and which purported to expel the petitioners, had not seen the light of the day. No such resolution was ever placed before the Registrar of Co-operative Societies and none has been placed before this Court. In this regard, he specifically draws our attention to the averment made in para 3 of the writ petition to the effect that in the General Body Meeting held on 29.01.1989, no resolution for expulsion was passed and that the only resolution passed was that some more time be given to the petitioners to deposit their dues. He also refers to the corresponding reply given by the respondent society wherein the respondent society states that in the said meeting held on 29.01.1989, it was unanimously resolved that in case the defaulters deposit the amount within fifteen days, the same may be accepted, otherwise they be treated as expelled from the membership of the society. He submits that despite the specific plea raised by the petitioners, the respondent had not produced before this Court the resolution passed in the General Body meeting held on 29.01.1989.

(iii) The third submission of Mr. Gupta is that even before the Registrar, when the matter was taken up for hearing on 05.10.1989, the Registrar did not grant approval to the resolution for expulsion purportedly passed by the respondent society. He submits that the petitioners had agreed to make payment of the aforesaid amounts as set out in para 5 hereinabove on account of the false representation made by the two representatives of the respondent society i.e. Shri Tara Chand and Shri Hem Raj Bansal, to the effect that the DCHFS had not released the first and the second instalments of the loan amounts in the accounts of the four petitioners. It was on this representation that the petitioners had agreed to pay the interest for the period the first and the second instalments had not been released in respect of the petitioners. He submits that after the passing of the order by the Registrar of Co operative Societies, the petitioners had approached the DCHFS to enquire about the amounts, if any, released in their account. The DCHFS had provided the relevant information to each of these petitioners vide communication dated 11.10.1989 with regard to the sanction and release of the amounts in the respective accounts. The information disclosed by the DCHFS in this regard, in respect of each of these petitioners is as follows:

-- S. Name Loan Loan released No. sanctioned -------------------- first Second -- 1. Mr. H.D. Gupta Rs. 1,00,000.00 25,000 38,000 -- 2. Ms. Darshana Rs. 80,000.00 21,000 31,000 Devi -- 3. Mr. Sita Ram Rs. 80,000.00 21,000 31,000 Bansal -- 4. Ms. Urmil Rs. 1,00,000.00 25,000 38,000 Mittal --

(iv) Mr. Gupta further submits that in the communications sent to Smt. Darshana Devi (petitioner in W.P.(C) No. 3638/1991) and Smt. Urmil Mittal (petitioner in W.P.(C) No. 3626/1991), the dates on which the amounts had been released by the respondent society towards the first and second instalments had also been indicated as 18.10.1988 and 17.05.1989 i.e. even prior to the date of hearing before the Registrar i.e. 05.10.1989. He submits that the stand taken by the respondent society that the loan amounts in respect of the petitioners had not been released when the amounts in respect of the other members were released by the DCHFS was, therefore, palpably false and misleading. In any case the respondent also did not communicate the amounts payable in terms of the order dated 09.10.1989 of the Registrar. He submits that it was on these accounts'' that the petitioners did not pay the amounts indicated in para 5 above.

(v) In support of his aforesaid submission, Mr. Gupta relies on the specific averments made in para 5 of the grounds urged in the writ petitions and the response thereto given by the respondent society. He submits that the respondent society had not denied the fact that the first and the second instalments of the loans sanctioned in respect of each of the petitioners had, in fact, been released by the DCHFS in the normal course. He submits that the respondent society had sought to give a patently false explanation by stating as follows:

The facts of the case are that the Delhi Group Housing Finance Society Ltd. had released the second instalment only because the Joint Registrar Cooperative Societies while granting time to the petitioner to deposit the dues within 15 days asked the society to get the loan instalment also released from the Finance Society but when the petitioner failed to deposit the amount as directed by the Joint Registrar the Finance Society adjusted the amount of instalment of the society.

(vi) Mr. Gupta submits that, in any event, there was no justification for the respondent society to take action for expulsion of the petitioners as they had deposited substantial amounts, apart from the loan instalments released by the DCHFS Ltd. In support of this submission he points out that in respect of other members, who had paid comparable or much lesser amounts no action was taken by the respondent society to expel them.

(vii) The next submission of Mr. Gupta is that, in any event, before the Registrar of Co-operative Societies the approval of expulsion did not come about when the Registrar passed the order dated 09.10.1989, which was forwarded to the petitioners on 11.10.1989. He submits that the expulsion proceedings, in any event, stood dropped and instead the Registrar granted fifteen days time to the petitioners to make payment of the amounts indicated hereinabove while directing the respondent society to take immediate steps for release of the first and the second instalments of the loan amounts, under intimation to the petitioners. He submits that even if it were to be assumed that there was any default on the part of the petitioners on account of the non-payment of any amounts under the order passed by the Registrar, the same gave a fresh cause of action to the respondent society to initiate expulsion proceedings in accordance with law. There was no condition attached in the order passed by the Registrar to the effect that the expulsion of the petitioners would stand approved if the petitioners did not comply with the orders of the Registrar. He submits that in the order dated 09.10.1989, there is not a whisper of any discussion regarding the validity and justifiability of the so-called expulsion proceedings, and the same shows that there was no application of mind by the Registrar to the so-called expulsion proceedings, as the parties apparently proceeded to diffuse the situation by undertaking to take steps according to the Schedule filed by the Registrar. He submits that this position is further fortified by the fact that the appeals preferred by the aforesaid petitioners before the Lt. Governor against the order passed by the Registrar dated 09.10.1989 were dismissed as withdrawn being premature, as the Lt. Governor also appreciated the fact that the Registrar had not granted approval to the expulsion of the petitioners. Mr. Gupta has relied upon the averments made in paragraph 5 of the writ petitions, which record the withdrawal of the petitioners'' appeals on account of they being premature vide order dated 25.04.1990, and the reply of the respondent society wherein the said position has been admitted to be correct. He submits that it was never the case of the respondent society that by the order of the Registrar aforesaid, the expulsion of the petitioners stood approved either absolutely or conditionally upon the making of payment by the petitioners as directed by the said order.

(viii) Mr. Gupta submits that if the respondent society desired to take action against the petitioners on account of non-payment of the amounts mentioned in the order of the Registrar, it was obligatory on its part to resort to the mandatory procedure prescribed under Rule 36 of the Rules. Admittedly, the same had not been done.

(ix) Mr. Gupta further submits that the order dated 16.05.1990 passed by the Registrar granting approval to the expulsion of the petitioners is void ab initio since the same was not preceded, either by the compliance of the procedure prescribed under Rule 36 by the respondent society, or even by a notice or hearing being given to the petitioners before the passing of the said order. The Registrar of Co-operative Societies, he submits, had plainly accepted the statement made by the respondent society that the petitioners had not cleared up their outstanding dues within fifteen days, without even putting the petitioners to notice or ascertaining whether the respondent society had fulfilled its own obligations under the order dated 09.10.1989 passed by the Registrar.

(x) In so far as the challenge to the order passed by the Lt. Governor is concerned, Mr. Gupta submits that the said order is ex facie illegal and suffers from non application of mind. The Lt. Governor had passed a cryptic order without addressing any of the submissions made by the petitioners and had failed to appreciate that the procedure under Rule 36 of the Rules had been given a complete go-by by the respondent society and the Registrar.

(xi) Learned Counsel for the petitioner further submits that the conduct of the respondent society in seeking to expel the petitioners was wholly mala fide and without any cause. He submits that there were other members whose monetary contribution at the relevant time was either far less than the contributions made by the petitioners or were comparable to the contribution of the petitioners, yet no action was taken against them. Few instances in that regard have been pointed out by the petitioners from the list of members as on 31.03.1989, which forms part of the audited accounts of the respondent society.

(xii) So far as the enrolment of the four new members is concerned, the action of the respondent society in enrolling respondents 5 to 8 was completely mala fide. These respondents were enrolled as members on a mere deposit of Rs. 11,000/-. For this purpose, learned Counsel for the petitioners has relied upon the list of members as on 31.03.1992 published by the society as a part of the audited accounts of the society. The said list discloses that respondents 5 to 8 had each paid only Rs. 11,000/- at the time of their enrolment on 31.10.1990, and even till as late as 31.03.1992 they had not paid further amounts. He submits that if there was such urgency of receiving payments, on account of the alleged defaults of the petitioners, the respondent society should have realized the entire cost of the flats from the four newly enrolled members. However, the conduct of the respondent society shows that there was no urgency, occasion or justification to insist on raising the demands as raised by the respondent society and to take the step of illegally expelling the petitioners from the membership of the society. He also submits that the four newly enrolled members were closely related to the members/office bearers of the society at the relevant time. Respondent No. 5, Smt. Varsha Rani was related to Shri Hemraj Bansal, the then General Secretary of the society. Shri Devender Kumar, respondent No. 6 is the son of the ex-President of the society; Smt. Nirmal Garg, respondent No. 7 is the daughter of Shri Jagdish Bansal, the treasurer of the respondent society and Shri Sushil Kumar Parikh, respondent No. 8 is the nephew of Shri Shiv Dutt Purohit, a member of the managing committee of the society. He submits that the enrolment of these four members had been done even though the appeals preferred by the petitioners from the order of expulsion were pending before the Lt. Governor. The petitioners had also moved applications for stay on enrolment of new members in their place. The appeals had been preferred at the earliest on or about 29.5.1990. Mr. Gupta, therefore, submits that the enrolment of the said new members could not be said to be bona fide, without notice or for valuable consideration. He submits that all the newly enrolled members were very well aware of the pendency of the appeals preferred by the petitioners and that their enrollments would be governed by the doctrine of lis pendens. He submits that, in any event, this Court had restrained the enrolment of new members in place of the petitioners on 26.11.1991 and had further directed that the draw of lots, if held, shall be subject to the final outcome of the said applications moved by each of the petitioners. The said stay applications are still pending and the orders are still operating. He, therefore, argues that the petitioners are entitled to allotment of the four flats illegally allotted to respondents 5 to 8 in W.P.(C) No. 3626/1991.

(xiii) Mr. Gupta further submits that each of the petitioners are ready and willing to pay to the respondent society whatever amounts are legally found to be due from them, along with interest at the rate of 18 % per annum for the period the said amounts have remained due and payable.

20. In support of his submissions, learned Counsel for the petitioners has placed reliance upon the decision of the Division Bench of this Court in R.K. Aggarwal Vs. Registrar Co-operative Societies, Delhi and Others, to submit that the procedure prescribed under Rule 36 of the Rules for expulsion of a member of a co-operative society is mandatory and not directory and that non-compliance of the mandatory provisions would invalidate the expulsion order.

21. Mr. Sudhir Nandrajog, learned senior Counsel who appeared on behalf of the respondent society submits that the petitioners were wilful defaulters and despite three notices, they had failed to pay the amounts due from them. It was only

thereafter that the respondent society had been driven to initiate expulsion proceedings in respect of the petitioners vide notice dated 14.01.1989. He submits that the period of one month provided under Rule 36(2) for the purpose of holding a meeting after the issuance of the requisite notice to the defaulting member is the period prescribed for the benefit of the defaulting member and it is always open to the member for whose benefit the said period is prescribed, to waive off the same. He submits that the petitioners had also waived the notice period of 30 days and this is evident from their conduct in agreeing to make payment of the amount due from them within a period of fifteen days of the passing of the order of the Registrar dated 09.10.1989. He further submits that after the approval of the expulsion of the petitioners by the Registrar of Co-operative Societies, on 16.05.1990, the respondent society had enrolled four new members in terms of the Managing Committee resolution passed on 31.10.1990 on the same date. He submits that there was no stay obtained by the petitioners from the Lt. Governor of the order approving expulsion, and there was no impediment in the respondent society enrolling the new members. He submits that, in any event, the appeals preferred by the petitioners have been dismissed and there is no illegality in the enrolment of respondents 5 to 8 as members in place of the four petitioners aforesaid. In support of his submission that the petitioners had waived their right to receive 30 days clear notice, Mr. Nandrajog relies upon the Supreme Court decision in Krishna Bahadur Vs. Purna Theatre and Others, and Jay Rubber Co. (India) Pvt. Ltd. v. State Chemicals & Pharmaceutical Corporation of India Ltd. 21 (1982) DLT 11 .

22. Mr. Nandrajog submits that the conduct of the petitioners demonstrates their continued willful defaults in making payment. They failed to make payment despite three notices and despite the issuance of the statutory notice dated 14.01.1989. Even after the passing of the order dated 05.10.1990 by the Registrar granting then fifteen days time to make payment, these petitioners failed to make the payment of even their admitted dues. Mr. Nandrajog submits that this Court in the decision reported as Satish Chand Gupta Vs. The Presiding Officer, Delhi Co-operative Tribunal and Others, 7 relied upon another Division bench decision of this Court in Satish Chandra and Anr. v. Registrar of Cooperative Societies 1993(26) DRJ (DB) wherein this Court had held that the defaulting members should not be permitted to hold the society to ransom and should deposit the call money with the society under protest to show their bona fides, even if they dispute the demands raised by the society. Mr. Nandrajog further submits that at the time when the respondents 5 to 8 were enrolled as members on 31.10.1990, the respondent society was not required to invite applications from all eligible persons of the public or to enroll members only after holding a draw of lots. Mr. Nandrajog also relies on Section 34 of the Act to submit that even if there was any shortcoming in the procedure adopted for the expulsion of the petitioners, the same stands validated under the said provision.

23. Mr. J.N. Gupta, Advocate who appears on behalf of respondent Nos. 3, 5, 6, 7 & 8 has urged that respondents 5 to 8 are bona fide purchasers without notice

and for valuable consideration in respect of the flats allotted to them. He submits that they were enrolled on 31.10.1990 i.e. after the approval of the expulsion of the petitioners by the Registrar on 16.05.1990. He also submits that there was no bar to the enrolment of any new member. He explains that the respondent society had received Rs. 11,000/- from each of the respondents 5 to 8 at the time of their enrolment and the balance amount was not demanded in view of the pendency of the appeals preferred by the petitioners before the Lt. Governor. He also adopts the arguments advanced by Mr. Sudhir Nandrajog, who is appearing on behalf of the respondent society and respondents 1 to 4.

24. Having heard the arguments of learned Counsel for the parties, we are of the view that the expulsion of the petitioners from the respondent society by the Registrar of Co-operative Societies; the dismissal of their appeals by the Lt. Governor, and; the enrolment of respondents 5 to 8 in W.P.(C) No. 3626/1991 in place of the petitioners are patently illegal and cannot be sustained. We are also of the view that the actions of the respondent society and respondents 5 to 8 in W.P.(C) No. 3626/1991 cannot be said to be bona fide and, therefore, we are of the view that no equity is created in favour of the said respondents merely on account of the fact that the said respondents 5 to 8 have since paid the amounts demanded by the respondent society and they have been allotted flats by the respondent society, and ever since they are in occupation of the flats.

25. No doubt the petitioners evidently were in default of making payments to the respondent society of the amounts due from them. However, that by itself could not have necessarily led to their expulsion from their membership of the respondent society. It is well settled that it is not imperative for a co-operative society to expel a member in case he is in default of making the requisite payment. It is open to a co-operative society to decide to give further time to the member to clear his outstanding dues, or to downgrade his entitlement or seniority for allotment of a flat. In this regard we may refer to the judgment of the Supreme Court in Myurdhwaj Cooperative Group Housing Society Ltd. Vs. The Presiding Officer, Delhi Cooperative Tribunal and Others,

26. Consequently, it cannot be said that the non payment of the dues by each of the petitioners would have necessarily had the consequence of their being expelled from the membership of the respondent society. From the above narration of facts, it is clear to us that the petitioners were, in fact, not validly expelled from the membership of respondent society at any stage. Firstly, the requisite notice in compliance of Rule 36(2) of the Rules, admittedly, had not been given to the petitioners. The said notice should have been given for a minimum period of one month before holding the general body meeting.

27. Secondly, the so-called resolution passed by the general body in its meeting purportedly held on 29.01.1989 has not seen the light of the day. Despite the aforesaid specific averments made by the petitioner to the effect that no such resolution to expel the petitioner had been passed, the respondent society has not placed before us the said resolution. The fact that the procedure prescribed

in Rule 36 of the Rules is mandatory also cannot be disputed in view of the Division Bench judgment of this Court in R.K. Aggarwal (supra).

28. Thirdly, the expulsion proceeding evidently stood dropped with the passing of the order dated 09.10.1989 as it did not contain even a whisper with regard to the approval or even conditional approval of the petitioners expulsion by the registrar. The said order merely records a time schedule to be followed by the petitioners as well as by the respondent society for taking steps to discharge their respective obligations. Pertinently, whereas the petitioners were granted 15 days time to make the payments as aforesaid, the respondent society was required to take immediate steps for release of the loan in the account of the petitioners from the DCHFS. Admittedly, the respondent society had not taken the said steps. In fact, it is seen from the record that the respondent society had already received both the first and second installments in respect of the loans sanctioned in favour of the petitioners and the registrar was indeed misled at the time of passing of the order dated 09.10.1989 into ordering the petitioners to pay interest on the delayed release of the first and second installments of loans by DCHFS. The least that the respondent society could have done was to rectify its mistake by informing the petitioners and the registrar of cooperative societies that the two loan installments in respect of the petitioners had already been released on 18.10.1988 and 17.05.1989. It appears that it is precisely for this reason that the respondent society did not request DCHFS to release the loan installment in respect of the petitioners and also did not communicate to the petitioners the amount of interest to be paid by the petitioners on the delayed release of the installments within one week as required by the order dated 09.10.1989 passed by the registrar.

29. Fourthly, the common order dated 16.05.1990 granting approval to the expulsion of the petitioners passed by the Registrar of Cooperative Societies is patently illegal. The same is, in fact, void ab initio as it was not preceeded by even a notice, much less a hearing to the petitioners. It is well settled that no order which causes prejudice to any party or materially affects his/her rights adversely can be passed by any authority without complying with the requisite rules and principles of natural justice. The order dated 16.05.1990 passed by the registrar granting approval to the expulsion of the petitioners therefore cannot be sustained and is liable to be quashed.

30. The arguments of Mr. Nandrajog, learned senior Counsel appearing for the respondent, that the notice period of 30 days under Rule 36 had been waived by the petitioners is wholly without merit. A perusal of the order passed by the Registrar on 09.10.1989 shows that the Registrar did not even proceed to examine the validity or justification of the expulsion proceedings undertaken by the respondent society. The said order does not record the so-called waiver of their rights under Rule 36 by the petitioners. Even by conduct it cannot be said that the petitioners have waived their rights under Rule 36, as the issue of validity or justification for the said action has not been gone into, by the

Registrar at all. It also cannot be said that the Registrar had rejected any of the contentions of the petitioners with regard to the validity or justification of the expulsion proceedings. We cannot conclude that had the occasion arisen, the petitioner would not have raised the issues with regard to the validity or justification of the expulsion proceedings before the registrar. A perusal of the grounds of appeal taken by the petitioners in their appeals preferred u/s 76(1)(e) of the Act before the Lt. Governor shows that the very first ground was to the effect that the requisite notice of minimum 30 days had not been given as required under Rule 36(2) of the Rules.

31. Reliance placed by Mr. Nandrajog on the decisions aforesaid appears to be wholly misplaced. In Krishna Bahadur (supra), the Supreme Court while holding that a right can be waived by a party for whose benefit certain requirements or conditions have been provided for by the statute, clearly held that "whenever waiver is pleaded, it is for the party pleading the same to show that an agreement waiving the right in consideration to some compromise came into being". The respondents have, however, failed to even plead "waiver" by the petitioners of their right to receive a 30 day notice. Pertinently, in their statutory appeal before the Lt. Governor, the first ground of appeal taken by the petitioner was the failure of the respondent society to give a 30 day notice to them. From the orders passed by the registrar on 09.10.1989 and 16.05.1990 as also from the order passed by the Lt. Governor, it cannot be said that the plea of waiver was ever pleaded or advanced by the respondent society. Pertinently, even in the counter affidavit filed before us, no plea of waiver has been taken by the respondent society. The argument now advanced by Mr. Nandrajog, learned senior Counsel appearing for the respondent society appears to be a result of the counsel''s ingenuity, but it has no factual basis for us to accept it.

32. We may refer to Ground No. 3 taken by the petitioners in their writ petition, wherein they have expressly urged that Rule 36(2) had not been complied with by the respondent society inasmuch as the requisite notice had not been given to the petitioners. In response to the said ground, all that the respondent society has stated is that it had initiated action for default in September 1988 by issuing a notice of demand followed by a reminder and that a decision to expel was taken on 29.01.1989 with another 15 days time was given to clear the dues. It is urged that the registrar had given further time to the petitioners to clear the dues. It is, therefore, pleaded that Rule 36(2) had been complied with in letter and spirit. It is not pleaded that the petitioners had waived the said objection.

33. The notice of demand or even reminders cannot be treated as notice for expulsion which is required to be issued to the member under Rule 36 of the Rules. A notice for expulsion should specifically put the member to notice that the respondent society proposes to expel the defaulting member. It is that notice which should give a minimum 30 days to the defaulting member before the general body meeting to consider expulsion of the member is held. The earlier notices issued to the petitioners raising demands or as reminders for making

payment of the demands earlier raised, cannot be treated as notice of expulsion for the purposes of Rule 36. For the same reason, we find that the reliance placed in decision in Jai Rubber Co. (I) Pvt. Ltd. (supra) is misplaced.

34. In our view, if the respondent society was aggrieved by the non compliance of the order dated 09.10.1989 by the petitioners, it was open to the society to initiate fresh expulsion proceedings against the petitioners under Rule 36 by issuing a fresh notice to each one of them.

35. So far as the expulsion proceedings initiated vide notice dated 14.01.1989 were concerned, the same stood dropped upon the passing of the order dated 09.10.1989 by the registrar as no approval to the proposed expulsion was granted by the registrar by the said order. The order dated 09.10.1989 of the Joint Registrar (Group Housing) was not a conditional order. It also did not provide for any consequence for its disobedience. The order records that the parties "mutually agreed" to the terms of the directions which were passed. The society did not make any reservation in the proceedings before the Joint Registrar to the effect that in case of non-payment of the amounts by the petitioner, their expulsion from the society membership would stand restored. In fact, the society accepted the order dated 09.10.1989 and thereby waived their objections to the petitioners'' default and entitlement to expel them from membership of the society.

36. In this background, the registrar could not have suddenly issued the order dated 16.05.1990, as done by him, granting his approval to the expulsion of the petitioners without requiring compliance of Rule 36 by the respondent society and without even granting to the petitioners prior notice and hearing in the matter. The order dated 16.05.1990 granting approval to the expulsion of the petitioners could not have been founded upon the earlier order dated 09.10.1989 as the former order was completely silent on the aspect of expulsion and did not state that failure of the petitioners to make payment within 15 days of the passing of the said order would result in the consequence of grant of approval to the expulsion of the petitioners. This is clearly evident, firstly, on a bare perusal of the order dated 09.10.1989 passed by the registrar, as also by the fact that the petitioners'' appeals against the said order were dismissed by the Lt. Governor as being pre-mature. Pertinently, the respondent society did not challenge the order of the Lt. Governor dated 25.04.1990 to say that in his order dated 09.10.1989 the registrar had granted conditional approval to the expulsion of the petitioners.

37. The conduct of the respondent society in seeking to expel the petitioners and rushing to enroll new members even when the petitioners'' statutory appeals along with application for interim protection were pending before the Lt. Governor does not appear to be bonafide. Firstly, the respondent society demanded and recovered a paltry amount of Rs. 11,000/- from the four newly enrolled members on or about 31.10.1990. By that date, the other members of the respondent society, including the petitioners had deposited much larger

amounts with the respondent society. If the respondent society was in such urgent need of funds to keep its building project going and if the respondent society were acting bonafide, the respondent society would certainly have demanded and realized from the newly enrolled members the amount which had been realized from other members who are not in default. There was no reason for granting such favourable treatment to the newly enrolled members, and the only reason appears to be the close relationship that the four newly enrolled members had with the then office bearers of the respondent society. Pertinently, for at least 2 1/2 years thereafter, these newly elected members did not pay a penny other than Rs. 11,000/- each deposited by them in first instance.

38. As pointed out by Mr. O.P. Gupta, learned Counsel for the petitioners, a perusal of the list of members as on 31.03.1989, which forms part of the audited accounts of the respondent society shows that as on 31.03.1989, the construction money deposited by various other members was far less than the amounts admittedly deposited by the petitioners. For instance, Sh. Pawan Kumar having membership No. 8 had deposited only Rs. 12,728/-. Mr. Harkesh Gupta having membership No. 111 and Smt. Usha Jindal having membership No. 112 had deposited only Rs. 16,000/- and Rs. 15,000/-respectively, towards construction money. Pertinently, these members had not even availed of the loan facility and so no amount in their account had come from DCHFS Ltd. Similarly, Smt. Chander Prabhu Dhavan having membership No. 199 had merely deposited Rs. 100/- towards share money and Rs. 11,000/- towards land money. No amount was deposited by her towards construction money. These facts show that there was no justification whatsoever for the respondent society to take the drastic step of expulsion of the petitioners. The petitioners appear to have been treated less favourably when compared to the other members of the society.

39. It was submitted by Mr. J.N. Gupta, advocate, who appeared for some of these private respondents, that the reason why the society did not demand any amounts beyond Rs. 11,000/-from them was the pendency of the appeals of the four petitioners. This statement of Mr. J.N. Gupta clearly shows that the said respondents were aware of the pendency of the appeals preferred by the petitioners as also the possibility of the petitioners succeeding, in which case, the said respondents would lose their right, if any, to get enrolled as members of the respondent society. This also clearly shows that the respondents were also aware of the applicability of the doctrine of lis pendens to their case.

40. The submission of Mr. Nandrajog that the action of the respondent society in expelling the petitioners was saved by Section 34 of the Act needs only to be stated to be rejected. Section 34 of the Act reads as follows:

34. Acts of co-operative societies not to be invalidated by certain defects. - No act of a co-operative society or of any Committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution of the society or of the Committee or in the appointment or election or on the grounds that such officer was disqualified for his appointment.

41. Section 34 is not intended to validate acts of a cooperative society which are in breach of even mandatory provisions of the Act and the Rules, and the principles of natural justice. The said section protects from invalidity the acts of a cooperative society; its committee, or; officer when there is any defect of procedure in the constitution of the society; the committee, or; the appointment of or election of an officer. Therefore, the action taken by an officer of a cooperative society; any of its committee, or; by the cooperative society itself cannot be called in question on account of a defect in the procedure relating to the appointment or constitution of the officer/committee or the society. The interpretation sought to be advanced by Mr. Nandrajog, if accepted, would lead to absurd consequences and would make a cooperative society, its committee and officer bearers a law unto themselves as they would, then enjoy complete protection of their conduct even if the same is violative of the mandatory procedures prescribed under the Act and in breach of the principles of natural justice. We, therefore, reject the aforesaid submission of Mr. Nandrajog. Moreover, what is in challenge is also the order passed by the Registrar, granting approval to the petitioners'' expulsion vide order dated 16.05.1990, and the appellate order passed by the Lt. Governor. It is not even the respondent''s case that the orders passed by these statutory authorities are protected by Section 34 of the Act.

42. Lastly, coming to the order passed by the Lt. Governor, we find that he has not addressed any of the submissions advanced by the petitioners. He has merely proceeded on the basis that the petitioners were persistent defaulters and that they had failed to make the deposit despite the order passed by the registrar granting them 15 days time. The issue with regard to non compliance of Rule 36, and the legality and justification for invocation of Rule 36 by the respondent society have not at all been addressed by the Lt. Governor. The impugned order passed by the Lt. Governor, therefore, in our view, cannot be sustained.

43. We, accordingly, quash the order dated 16.05.1990 passed by the Registrar of Cooperative Societies thereby granting approval to the expulsion of the petitioners from the respondent society. We also quash the impugned order dated 28.08.1991 passed by the Lt. Governor dismissing the petitioners appeals. We hold that the expulsion of the petitioners from the membership of the respondent society was illegal and we restore the membership of the petitioners. We also hold that the enrolment of respondent Nos. 5 to 8 in W.P.(C) No. 3626/1991 against the memberships of the petitioners to be illegal as there was no legally existing vacancy in the respondent society at the relevant time and they had been enrolled as members in place for the four petitioners. Consequently, we direct the respondents to take immediate steps to get the flats occupied by respondents Nos. 5 to 8 in Writ Petition (C) No. 3626/1991, namely, Smt. Varsha Rani, Sh. Devender Kumar, Smt. Nirmal Garg and Sh. Sushil Kumar Parikh, bearing membership Nos. 208, 209, 210 & 211, respectively, vacated.

44. We further direct the respondents to forthwith hold the draw of lots in respect of the four flats occupied by respondent Nos. 5 to 8 in W.P. (C) No. 3626/1991 for allotment of the flats to the petitioners within six weeks.

45. The petitioners are also directed to pay to the respondent society the following amounts within four weeks from today:

-- Name W.P. (C) Balance No. outstanding as on 31.7.88 -- Sh. H.D. Gupta 3639/1991 Rs. 16,000 -- Sh. Sita Ram Bansal 3625/1991 Rs. 31,000 -- Smt. Darshana Devi 3638/1991 Rs. 36,000 -- Smt. Urmil Mittal 3626/1991 Rs. 23,000 --

46. The petitioners shall also pay interest on the aforesaid amounts at the rate of 18% per annum simple interest from 01.11.1989 onwards till the date of payment. The respondent society shall also be entitled to raise demands from each of the petitioners of any further amounts towards construction of the flats, if similar amounts were demanded from all other members of respondent society. Such demands shall be raised upon the petitioners within a period of two weeks with complete details, particulars and justification. The petitioners shall be liable to make payments of the amount within two weeks thereafter. In case of a challenge to the amount demanded, the petitioners may deposit such amount without prejudice to the rights and contentions and subject to the outcome of any legal proceedings which they may initiate in this regard. However, we make it clear that the petitioners shall not be liable to pay any amount towards maintenance charges as they have not been allowed to enjoy the use of the flats by the respondent society for all these years.

Each of the petitioners shall also be entitled to costs quantified at the rate of Rs. 20,000/- payable by the respondent society. The writ petitions are allowed in the above terms.

