
(2013) 01 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 1162 of 2011 (O and M) , CWP No. 11652 of 2009 (O and M)
and CWP No. 19749 of 2011 (O and M)

Madan Gopal and others

APPELLANT

Vs

Union Territory, Chandigarh and others
 Balbir Singh
Vs The Pink Rose Co-operative House Building Respondents
First Society Limited and others
 Arun Aggarwal and
others Vs The Chandigarh Administration and others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 27(3), 55, 56, 57

Citation : (2013) 01 P&H CK 0104

Hon'ble Judges : Rajiv Narain Raina, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Narender Hooda, with Mr. Mohnish Sharma in LPA No. 1162 of 2011 O and M, Mr. Akshay Bhan in CWP No. 11652 of 2009 O and M, M/s D.S. Patwalia, Lalit Rishi, Bikramjit Patwalia, Salil Sabhlok and Abhishek Singh, in CWP Nos. 19749, 19805 of 2011 O and M and Mr. Babbar Bhan in CWP No. 285 of 2012 O and M, for the Appellant; Sanjay Kaushal and Kamal K. Sharma, Advocates, for respondent Nos. 1 to 4 in LPA No. 1162 of 2011 (O and M), CWP No. 19749 of 2011 (O and M), for respondent Nos. 1 and 2 in CWP No. 19805 of 2011 (O and M) and CWP No. 285 of 2012 (O and M), Mr. Anurag Chopra, Advocate, in LPA No. 1162 of 2011 (O and M), Mr. Narender Hooda, with Mr. Mohnish Sharma, Advocate for respondent No. 1 in CWP No. 11652 of 2009 (O and M), for respondent Nos. 6 to 10 in CWP No. 19749 of 2011 (O and M) for respondent Nos. 3, 4 to 7, 9, 10, 13 to 17 and 19 to 29 in CWP No. 19805 of 2011 (O and M) for respondent No. 3 CWP No. 285 of 2012 (O and M), Ms. Manpreet Kaur, Advocate for Ms. Lisa Gill, Advocate for respondent Nos. 2 and 3 in CWP No. 11652 of 2009 (O and M), Mr. A.S. Khaira, Advocate for respondent Nos. 3, 4 to 6, 11, 20, 23, 26, 28 and 30 in CWP No. 11652 of 2009 (O and M), Mr. Mukesh Kumar Bhatnagar, Advocate for respondent No. 10 in CWP No. 11652 of 2009 (O and M), Mr. Bhuwan Luthra, Advocate for respondent No. 19 in CWP No. 11652 of 2009 (O and M), Mr. I.S. Saggi, Advocate for respondent No. 31 in CWP No. 11652 of 2009 (O and M), Mr. Mukesh K. Bhatnagar, Advocate for respondent No. 8 in CWP No. 19805 of 2011 (O and M), for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of LPA No. 1162 of 2011 as well as four other writ petitions i.e. CWP Nos. 11652 of 2009; 19749 of 2011; 19805 of 2011 & 285 of 2012 raising similar issues pertaining to the membership of Pink Rose Co-operative House Building Society Ltd. (for short "the Society"). Since the issues are common, the same are taken up for hearing together. Challenge in LPA No. 1162 of 2011 is to an order passed by the learned Single Bench of this Court on 06.07.2011, whereby the writ petition impugning an order dated 13.05.2011 passed by the Registrar, Cooperative Societies, removing the Managing Committee of the Society and appointing an Administrator was dismissed for the reason that the appellants have effective alternative remedy of appeal against the order impugned in the writ petition.

2. CWP No. 11652 of 2009 is preferred by one Balbir Singh, one of the original allottees of the Society, aggrieved against the orders dated 07.04.2009 and 10.07.2009 passed by the Joint Registrar, Cooperative Societies and by the Secretary, Cooperative Societies, Chandigarh Administration, declining reference raising dispute by the petitioner against the restoration of membership of 26 surrendered members.

3. In CWP No. 19749 of 2011, challenge is to an order passed by the Registrar, Cooperative Societies on 13.09.2011 by Arun Aggarwal and five others, the substituted members, whereby membership of Mrs. Suman Mahajan was ordered to be restored after accepting the report of the Enquiry Officer, who was appointed to go into the allegations levelled against the Society including that of removal/expulsion of members in a petition filed by some of the appellants in LPA No. 1162 of 2011.

4. Challenge in other two writ petitions i.e. CWP No. 19805 of 2011 and CWP No. 285 of 2012 is to the election notice dated 08.10.2011, whereby names of 26 surrendered members were included in the voters list for the election process. The writ petitioners were substituted as members vide resolution dated 01.10.2007 after the earlier substitution of 26 members vide resolution dated 24.04.2003 was set aside. However, in CWP No. 19805 of 2011, all the 26 original allottee members are the respondents, whereas in CWP No. 285 of 2012, S.S. Dhingra - an original allottee, who has admittedly surrendered his membership, is the sole private respondent.

5. Though the impugned order in appeal is appealable, but the fact remains that numerous writ petitions are pending before this Court wherein the issue of membership arises for consideration. Therefore, we consider it appropriate to decide the questions relating to the membership of the Society vide the present order itself. In fact, the learned counsel for the parties sought early decision on the question of membership of many persons, as some of them have deposited substantial amounts to the Society. The said question arises out of the following facts:

6. The Chandigarh Administration promulgated a scheme for allotment of land to the Co-operative House Building Societies in Union Territory, Chandigarh called as "Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991" (for short "the Scheme"). The Scheme contemplated allotment of land for the construction of multi-storey dwelling units to the Co-operative Societies. The members of the Society were, inter alia, required to be bona-fide residents of the Union Territory of Chandigarh at least for last two years on the date of the allotment of land to the Society; employees of the Central Government/Corporation owned or controlled by Central Government stationed at Chandigarh on the date of notification of Scheme or have served in the past at Chandigarh; or the employees of Union Territory Administration or the States of Punjab and Haryana or any Corporation owned or controlled by Union Territory and are either serving at Chandigarh on the date of notification of the Scheme or have served in the past.

7. The Society was registered on 31.03.1983. The Chandigarh Administration fixed 31.10.1990 as the cut-off date to consider the eligibility of the members for allotment of land to the Society. As on that date, there were 413 members of the Society. The General Body of the Society found 292 as eligible members for allotment of flats. The Screening Committee formed by the Administration cleared the names of 292 as eligible members, out of which 151 names were cleared for allotment of flats whereas the remaining 141 were the non-allottee members, for future allotment. The Society was allotted land for construction of multi-storey residential flats and their allotment to its eligible members vide letter of allotment dated 24.01.2002.

8. On 29.01.2003, the Registrar, Co-operative Societies, Chandigarh communicated to the Society that General Body Meeting of the Society has not been called since long and that the meeting should be convened to discuss the agenda of substitution of members and also the issue of enrollment of new members. On 25.03.2003, the Registrar, Co-operative Societies, Chandigarh passed an order dividing the Cooperative House Building Societies including the Society in the present case into two or more societies on the criteria i.e. (i) Society consisting of allottee members; and (ii) Society consisting of non-allottee members.

9. On 24.04.2003, the Assistant Registrar, Cooperative Societies, Chandigarh approved the election programme in respect of holding the General Body Elections of the Society on 26.05.2003. Such election schedule contemplated 07.05.2003 as the date for the issuance of notices. The controversy regarding membership of the Society erupted at this stage. A resolution was passed on 24.4.2003 substituting 17 members against the vacancies caused by the members who had surrendered their membership. Another 9 members were inducted against 9 expelled members, expelled earlier on 13.1.2003. Madan Gopal, Raj Kumar, A.S. Kohli and Mahi Paul are the erstwhile expelled members, the writ petitioners, out of which LPA No. 1162 of 2011 arises.

10. On 28.04.2003, another 9 members were inducted as members against equal number of members who had surrendered their membership. Thus, there were 26 new members inducted against the members who surrendered their membership and 9 members were inducted against the vacancies caused by expulsion. It may be noticed at this stage that none was inducted as member, eligible for allotment of flat out of original 141 applicants, who were to be considered against future vacancies.

11. The action of the Society invited criticism, which led to appointment of an enquiry by the Administration on 06.06.2003. Shri Vivek Atray, the then Director, Information Technology, Chandigarh Administration was appointed to conduct the enquiry. After a report was submitted by the enquiry officer, still no action was being taken on such report. At this stage, a writ petition bearing CWP No. 15359 of 2003 was filed before this Court demanding action on the report submitted by the enquiry officer on 09.07.2003 in respect of the affairs of the Society. The said writ petition was decided on 12.03.2004 directing the Chandigarh Administration to take a final decision in respect of such enquiry report within six weeks. The aforesaid enquiry was consequent to a complaint of the expelled members of which notice was issued to the officer bearer of the Society. There were many issues, which were discussed in the Enquiry Report, but for the purposes of issues raised in the present cases, the relevant extract from the report is as under:

6. Evidence based on Record:

From Proceeding Books

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7. On page-91 dated 16.12.02, 14 members have been declared as defaulters due to non-payment of dues. However, the relevant bye-laws has not been quoted in the proceedings. This list includes the 7 complainants i.e. S/Shri Kartar Singh Madan Gopal Goya, Balraj Kondal, A.S. Kohli, Prem Puri, Raj Kumar Kaushal & Dev Raj Wadhwan.

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Observation:

From the perusal of the record and the statements/ written replies of the office bearers of the Society and the Complainants, the following observations are made:

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3. Declaration of members as defaulters:

As mentioned at 6(7) above, 14 members were declared as defaulters on 16.12.02 and on 07.03.03, 28 more members have been declared as defaulters. The process of declaration of defaulters has not been dealt with as per bye-law

11 (ii) wherein it is pointed out that after the member is not paying his dues as per the schedule of payment, he should be given sufficient notice before declaration as defaulter. The normal practice for such declaration is that first a letter is sent, then a reminder by way of registered letter and after 3-4 such notices, an advertisement in the newspaper and/or pasting of such a notice on the residence of the said members should be carried out. Such procedure does not appear to have been followed for the declaration of defaulters. Only notices by UPC have been sent.

4. Expulsion of Members:

As per bye-law 11 of the Society (Annexure 19) which deals with expulsion of members, again a detailed process has to be carried out before members are expelled. A resolution has to be passed by not less than 2/3rd majority in the general body meeting at which not less than half the members are present and voting. At the general body meeting held on 18.01.2003 as indicated at 6(14) above, 49 members were present and voting which indicates a quorum of less than half of the total members and even less than 1/5th of the total allottee members of the society which are 413, which is a requirement of quorum, as per the byelaws. Even if the number of allottee members is considered, that number is 151 and 49 is less than half of even that. Therefore, the requisite process of expel the members as per bye law 11 has not been complied with in the meeting of the general body held on 18.01.03.

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....Simply by issuing UPC notices and an advertisement in the press, the opportunity of applying for a Flat as an eligible member of the society cannot be taken away. Due opportunity should have been given to all the members. The very fact that only three members gave their willingness in writing and 26 resignations were received out of 86 members indicates that enough publicity and opportunity was not given to these members.

The enrolment of new members and substitution of members (9 members were expelled and 26 members were said to have resigned) is, therefore, arbitrary.

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As per the seniority list at Annexure -17, the following members were eligible for substitution as "senior most eligible members of the society" (Which is the terms used in the said instructions of the Chandigarh Administration)-

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At Annexure 18, can be seen the actual substitution as mentioned at 6(19) above, which was carried out on 24.4.03, of the following members who became the allottee members:

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12. In terms of the orders passed by this Court, the Administrator, Chandigarh Administration and the Registrar, Co-Operative Societies ordered that the enquiry report be acted upon. The communication in this respect was sent by Registrar, Cooperative Societies to the Administrator, Pink Rose Cooperative House Building Society Ltd. appointed by the Registrar, Cooperative Societies. Such communication dated 16.3.2004 reads as under:

It is to inform you that Shri Vivek Atray, HCS, Director, Information Technology, Chandigarh Administration has conducted a detailed enquiry in pursuance of the orders of RCS, U.T. Chandigarh dated 06.06.2003, with regard to certain irregularities taken place in the management of Pink Rose Cooperative H/B Society, Chandigarh and has submitted his report after hearing all concerned. The matter has been examined and legal advice has been obtained from the L.R., U.T. Chandigarh. After examination thereof, the Administrator, U.T. Chandigarh has ordered that the said enquiry report dated 09.07.2003 be acted upon. Since the Administrator of the Society assumes all the functions of the Managing Committee of the Society, therefore, the said enquiry report dated 09.07.2003 submitted by Sh. Vivek Atray, HCS is hereby sent to you for the implementation of the same. This be treated as the approval of the aforesaid action u/s 27(3) of the Punjab Cooperative Societies Act, 1961 (as applicable to U.T. Chandigarh). A copy of the resolution passed with regard to the implementation of the enquiry report be sent to this office for information without any further delay.

13. In pursuance of such direction, the Administrator of the Society, recorded two resolutions on 23.03.2004 scrapping substitution of 35 members vide resolution dated 24.04.2003 and 28.04.2003 and also ordered the restoration of the membership of original allottee members, who had resigned. Vide another resolution, the expulsion of 10 allottee members vide resolutions dated 13.01.2003 and 07.05.2003 was also restored. There was slight modification in another subsequent resolution dated 16.08.2004, whereby instead of scrapping of membership of 35 original allottee members, the membership of 33 original allottees was restored. As a consequence, the voters list was revised but the expelled members were excluded from the election process vide electoral rolls published on 14.05.2003.

14. Eight expelled members filed a petition u/s 55 /56 of the Punjab Co-operative Societies Act, 1961 challenging their exclusion from the election process. The said petition was dismissed on 03.05.2004 inter-alia holding that the petitioners should have filed appeal against the order of their expulsion and that no comment can be made in respect of resolution dated 23.3.2004, as the same has come in existence during the pendency of reference and is beyond the purview of the petition filed. The appeal against the said order was dismissed on 06.06.2006. Both the said orders were subject matter of challenge before this Court in CWP No. 10295 of 2006 with the following prayers:

(i) to issue a writ in the nature of certiorari / prohibition / mandamus quashing the order dated 06.06.2006 (Annexure P-24) passed by respondent No. 1 acting

as Appellate Authority whereby the appeal No. 3 of 2006 filed by the petitioners has been dismissed for the impugned order dated 06.06.2006 (Annexure P-24) passed by respondent No. 1 is wholly arbitrary, illegal and has been passed in totally mechanical manner; and to further quash the order dated 03.05.2004 (Annexure P-20) passed by the respondent No. 3 while exercising powers of Registrar vested in him for the impugned order dated 03.05.2004 (Annexure P-20) passed by the respondent No. 3 thereby dismissing the petition filed by the petitioners u/s 55 /56 of the Punjab Cooperative Societies Act, 1961 without referring to the facts on record and the submissions made by the petitioners before the aforesaid authority;

(ii) Prohibition restraining the respondents from holding the election to the Managing Committee of the respondent-society till the correct voter list is taken into account for the purpose of holding election to the aforesaid Managing Committee;

(iii) Mandamus directing the respondents to conduct the elections of the Managing Committee of the respondent-Society strictly on the basis of only approved list of voters which was enclosed with the land allotment letter Annexure P-1 as available on the date of commencement of the election process i.e. on 07.05.2003 as per schedule of programme of election notified vide letter dated 24.04.2003 Annexure P-6; or

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15. The above said writ petition was disposed of vide order dated 25.04.2007, with the following observations:

We find that as a consequence of enquiry report dated 09.07.2003 (Annexure P-11), the matter was dealt with by the authorities vide Annexure P-16 and P-17, and the issue of expulsion was finalized vide Annexure P-17 dated 23.03.2004 which has been reproduced hereinabove. Subsequent and second opinion of LR has been made the basis to negate orders, Annexure P-16 and P-17, and the stand as has been taken in para 16 of the written statement placed on behalf of respondent Nos. 1 & 2, is the only argument raised on behalf of the respondents.

We are of the considered opinion that once the expulsion of the petitioners had been set aside and consequent substitution of the petitioners by others had also been held to be illegal, the respondents cannot now turn around and say that the LR's opinion had again been taken, and that simply because remedy of appeal was available, therefore, the petitioners would have no right to continue as members. There is no legal basis for the stand taken by the respondents particularly keeping in view the right of the petitioners to vote. The petitioners have been able to satisfy us that their expulsion indeed was illegal. The basis thereof is the enquiry report, Annexure P-11 and consequent approval orders, Annexures P-16 and P-17 which were never set aside. The enquiry report or consequent orders Annexures P-16 and P-17 have not been set aside in any proceedings. The stand of the respondents that opinion of legal remembrancer

was taken against and therefore, Annexure P-17 needs to be ignored, is not a legally tenable ground.

16. Annexure P-16 in the said writ petition is the communication dated 16.3.2004 from the Registrar, Co-operative Societies to convey acceptance of the report of the Enquiry Officer dated 9.7.2003 by Administrator, Chandigarh Administration with a direction to implement the same. Annexure P-17 is the proceedings recorded by the Administrator of the society on 23.3.2004. The Court also held that the voters list issued on 14.05.2003 is after the issuance of the election process and cannot be considered for the conduct of elections in view of the enquiry report. It was directed that the process of election shall be started within three weeks of the receipt of the copy of the order. Consequent to the said order, a public notice was issued for election on 11.06.2007 on the basis of electoral rolls which included 26 members, who have surrendered their membership, but such members were not allowed to cast their votes. In terms of the directions dated 25.4.2007 of the Division Bench of this Court, the elections were held on 11.6.2007. The Managing Committee so elected in its meeting held on 01.10.2007 substituted another set of 26 members.

17. COCP No. 1048 of 2007 was filed by 7 petitioners including 4 members, who have allegedly surrendered their membership raising grievance of exclusion of such members from the election process. Such four petitioners were not party to the writ petition or party to the proceedings under the Punjab Cooperative Societies Act, 1961. The remaining three petitioners were the erstwhile expelled members, who have earlier invoked writ jurisdiction of this court. The stand of the official respondent in the written statement was that the High Court has held that the expulsion of the petitioners is illegal, but it has never been opined that the surrender of the membership by the various members is illegal. It was averred:

At this point of time, it is pertinent to point out that this Hon''ble Court has held the expulsion of the petitioners in the writ petition to be illegal, but it has never been at any stage opined that the surrender of the membership by the various members is illegal or incorrect and furthermore neither have the said members at any stage challenged the same. They have never raised any objection and have neither denied the surrender of their membership. A bare perusal of the inquiry report dated 09.07.2003 would also show that the substitution has been opined to be done in a wrong fashion, but there is nothing to say that the surrender of the membership is objectionable or wrong....

18. The Contempt Court prima facie framed an opinion on 26.02.2008 that as 25 out of 33 original allottee members were not permitted to cast their votes, therefore, it amounts to a total derogation and deliberate disobedience to the directions issued by this Court. The Registrar, Cooperative Societies was directed to take over as the Administrator of the Society, whereas the election, consequent to exclusion of 25 members, was stayed. On 11.09.2008, another three weeks'' opportunity was given to the respondents to comply with the order

after observing that the respondents are prima facie guilty of non-compliance of the directions of Court. Subsequently, the contempt petition was disposed of on October 21, 2008, after the elections were conducted on 15.10.2008 and notified on 16.10.2008. The order reads as under:

Today Ms. Lisa Gill has produced on record copy of a communication dated 16.10.2008 whereby the result of the election held for the Managing Committee, Pink Rose Cooperative House Building First Society Limited, Chandigarh was notified to Registrar, Cooperative Society by the Returning Officer. According to the aforesaid communication, as many as 7 persons named therein were declared elected in the election held. It is not disputed on behalf of the petitioner that the election has been held in accordance with the judgment of the Court dated 25.04.2007 and in terms of the observations made by this Court vide order dated 04.09.2008. In this view of the matter, nothing survives in this petition.

At this stage, Mr. Hooda learned counsel for the petitioner has tried to impress upon the Court to issue fresh directions to the respondents to constitute the Managing Committee. This prayer is beyond the scope of the contempt petition and no such direction can be issued after compliance of the judgment. However, the petitioner is at liberty to seek any other appropriate remedy available under law, if the Managing Committee is not constituted on the basis of the election held on 15.10.2008.

Proceedings are dropped.

19. After the aforesaid proceedings, the resolution substituting members earlier was scrapped on 17.11.2008, as 26 original allottee members, who have allegedly surrendered their membership were allowed to cast vote in the election held on 15.10.2008. It was also observed in the resolution that Chaman Lal Kalia and S.S. Dhingra, who have received the refund of their share money be also given option, if they are still interested to have flats in the Society. It is no longer in dispute that the two above said members have admittedly withdrawn from the membership of the Society, therefore, the reference shall be made only of 24 members, who have surrendered their membership but the Letters Patent Appeal, it is claimed that they continue to be members of the Society.

20. Another Contempt petition (COCP No. 1676 of 2008) was filed by one K.K. Monga - an original allottee, who is said to have surrendered his membership, raising a grievance of his exclusion on the basis of the orders of this court dated 25.4.2007. The argument raised was that he has only received refund of the amount deposited but not the share application money, therefore, he continues to be member of the Society was not accepted. The Court noticed that the amount was refunded in pursuance of the resolution dated 24.5.2003 and that the reference petition filed by the said petitioner under Sections 55, 56 and 57 of the Punjab Cooperative Societies Act was dismissed on 3.10.2006. The Court observed as under:

It is not in dispute that petitioner was originally the members of the society but

in the year 2003 itself he surrendered his membership and received not only the deposit made by him for allotment of dwelling unit but also the share money. Thus, he ceased to be member of the society notwithstanding the fact that his name continued to figure in the voter list. Even though the voter list which was upheld by this court includes his name but his exclusion from the voter list subsequently cannot be said to be deliberate or willful act of the respondents warranting any action for the non compliance of the court order. No contempt is constituted.

21. Another Contempt Petition was filed by Ashok Kumar Thapar and 6 other original allottee members (COCP No. 319 of 2009) again alleging violation of the orders dated 25.4.2007. The said petition was disposed of on October 7, 2009, after the respondents therein filed an affidavit to withdraw the letter 6.8.2009, by which the Administration has kept the issue of surrender of the membership pending in view of the pending contempt petition. The Court passed the following order:

An affidavit of NPS Randhawa, Joint Registrar, Cooperative Societies, UT Chandigarh has been filed wherein it has been stated that the order dated 06.08.2009 has been withdrawn vide memo dated 11.09.2009, attached as Annexure R-3 with this affidavit.

This satisfies learned counsel for the petitioners. However, he states that an undertaking be got from the respondents to comply with the judgment of this Court dated 25.04.2007 passed in CWP No. 10295 of 2006. The submission of the learned counsel is, however, without any merit as even without undertaking, the respondents are bound to comply with the judgment of this Court.

No further action is required.

Rule discharged.

22. Thereafter, one Balbir Singh raised dispute through a petition under Sections 55 /56 of the Punjab Cooperative Societies Act, 1961 in respect of demand raised by the Society from the 26 original allottees, who have surrendered their membership, to deposit the dues and to take part in the special body meeting of the Society. The Joint Registrar exercising the powers of Registrar, Cooperative Societies, Chandigarh in its Award dated 07.04.2009 held that there is no dispute within the meaning of Section 55 of the said Act as the petitioner is the defaulter of the Society. An appeal against the said order was dismissed on 10.07.2009.

23. Five members, (Arun Aggarwal and others) who were inducted on 24.04.2003 and/or 28.04.2003 raised dispute regarding cancellation of their membership and for setting aside the enquiry report to the extent it affects and cancels the valid substitution of the members before the Registrar, Cooperative Societies. The said petition was dismissed on 25.08.2010, whereas the appeal was dismissed on 30.09.2011. It has been, inter alia, observed in the appeal that the appellants, the present petitioners, have already been refunded the amount

deposited by them and have not participated in the elections held on 15.10.2008 and for the reason that the enquiry report stands accepted by the Administration, therefore, the claim of the petitioners is not sustainable.

24. It would be relevant to mention here that none of the 24 members, who have allegedly surrendered their membership, ever disputed their surrender of membership before any Forum such as Registrar, Cooperative Societies by raising a dispute under the provisions of the Act or before this Court, though some of the members have disputed their surrender of membership by writing a letter to the Society. The stand of such members is based upon the proceedings recorded by the Administrator of the society and the fact that they were permitted to participate in the election process.

25. Mr. Narender Hooda, learned Senior Counsel for the erstwhile expelled Members and the Society argued that the order passed by the Division Bench of this Court on 25.04.2007; restoration of membership of the members by the Administrator of the Society in the resolution recorded on 23.03.2004 and the orders passed in contempt petitions leaves no manner of doubt that 24 members (excluding Chaman Lal Kalia and S.S. Dhingra), in the original list of 151 members alone can be considered for allotment of flats as their membership was never terminated as per the bye-laws of the Society. It is contended that it is the General Body of the Society, who has to take a decision in respect of substitution of members and that such jurisdiction of the General Body cannot be taken away. He relies upon circular dated 08.06.2006 issued by the Registrar, Cooperative Societies that the Cooperative House Building Societies may take their own decision in respect to the substitution in their General Bodies. The circular contemplated thus:

The matter has been examined and it has been decided that after allotment of land to the societies, some of the members withdrew, surrendered their shares and also some dwelling units have become available due to expulsion, cancellation for default in payment etc. and the said dwelling units are unallotted. For this purpose the substitution issue was discussed in detail and it was decided that the Cooperative House Building Societies may take their own substitution decisions in their General Bodies, provided such decisions are consistent with:-

- i. The provisions of the Cooperative act and rules framed thereunder:
- ii. Articles of associations / Bye laws of the said Cooperative House Building Society:
- iii. The terms and conditions of allotment of land to the society.

26. It is argued the instructions of the Registrar, Cooperative Societies dated 11.10.1999, which provides the manner of filing of vacancies of members of the Society are no longer in force. Therefore such instructions cannot be taken into consideration. The said circular contemplated as under:

(i) the surrendered plots/flats cannot be allowed to remain unallotted. The plots/flats surrendered by any cooperative House Building Society should be offered to the Senior most eligible member of the Society.

(ii) if in case of any doubt regarding the eligibility and bonafides of a member on the waiting list, the same may be referred to the Registrar, Cooperative Societies, who will examine the same and convey his decision.

(iii) in order to discourage any irregularities in the enrollment of members and preparation of waiting list, the Registrar, Cooperative Societies must separately evolve a set of clear guidelines in this regard. He should also ensure that decision of Chandigarh Administration is implemented in its right spirit and no irregularities/malpractices are committed by anybody.

27. Mr. K.K. Sharma, had produced the record of the Chandigarh Administration including copies of the record of the Enquiry Officer, which has been returned to the Society. One of the files produced is in respect of the request of 26 members to surrender their membership. Mr. Sharma, points out that the originals had been handed over to the Society, as per the acknowledgement of the receipt of the records.

28. On the other hand, Mr. Patwalia, learned counsel representing the substituted members, pointed out that the Enquiry Officer has found the expulsion of 9 members as illegal and that he is not disputing such findings that such members were illegally expelled. He does not dispute the consequent restoration of their membership. However, in respect of 24 members, it is argued that the Enquiry Officer has not ordered the restoration of their membership. They have never disputed their surrender of membership before any forum at any stage except in the contempt petitions. The erstwhile expelled members cannot espouse the cause of the members, who have surrendered their membership; as such cause is personal in nature. The erstwhile expelled members cannot be permitted to dispute the question of surrender of the membership of the said 24 members either before the Registrar under the Act or in a writ petition before this Court. It is argued that the orders of this Court dated 25.04.2007 in an earlier writ petition filed by the appellants are to be examined keeping in view the facts and the controversy raised and cannot be read to mean that the membership of 24 members stands restored, when no such claim was even raised even by the expelled members either before the Registrar or before this court in the earlier writ petition. The proceedings during the course of contempt proceedings are not the orders of the Court except that the Learned Single Judge has observed prima facie violation of the orders passed. It is contended that in the absence of categorical finding, such observation will not confer any right of membership on such 24 original members.

29. It is, in fact, pointed out relying upon a certificate issued by the Chandigarh Central Cooperative Bank that 8 members have received the amount deposited by them. Six more have admittedly received back their contributions as per the

additional documents filed and not disputed by Mr. Hooda. Thus, out of 24 members, who have allegedly surrendered their membership, as many as 14 members are proved to have received back their contribution, whereas from the documents given to the Society after the enquiry was conducted shows that in fact all 26 now 24 members have surrendered their membership.

30. In this factual background, we have heard the learned counsel for the parties at some length and find that the following questions would require adjudication by this Court:-

1. Whether the report of the Enquiry Officer, accepted by Chandigarh Administration, deals with the restoration of the membership of 26 members, who have allegedly surrendered their membership?
2. Whether the restorations of the membership ordered by the Administrator of the Society vide Resolution dated 23.3.2004 as modified on 16.8.2004 is legal and valid in view of the findings recorded the Enquiry Officer?
3. Whether the Society or the erstwhile expelled members of the Society can be permitted to espouse the cause of the members, who have surrendered their membership either in the Letters Patent Appeals or in the Writ Petitions?
4. Whether the members who have surrendered their membership and even accepted refund of the amount deposited by them can be permitted to claim restoration of membership more so when no assertive action was taken by them to dispute surrender of membership?
5. Whether the substitution of members is legal and valid or that the Society is bound to offer membership leading to allotment of flats to non-allottees in terms of the eligibility finalized and approved by the Administration?

Question No. 1

31. In a report submitted by Mr. Vivek Atray, the expulsion of members was found to be illegal. Four of such expelled members are the writ petitioners now in the Letters Patent Appeal. The restoration of their membership is not in controversy any longer. Mr. Atray also dealt with in his report the declaration of certain members as defaulters. It is also found that due opportunity to apply for a flat was not given to all the members. To return such a finding, Mr. Atray, relied upon the fact that only three members gave their willingness in writing, whereas 26 resignations were received out of 86 members. It is, thus, apparent that the receipt of 26 resignations was noticed by Mr. Atray to return a finding of not giving due opportunity to the remaining members. There is no finding that such resignations were not voluntary or were not submitted. After returning such finding, the report proceeded to observe adversely on the enrolment of new members and substitution of the members. Thus, the resignation of 26 members is not disputed in the report, but only substitution of the members in lieu of such members was commented upon adversely. Therefore, the factum of resignations of 26 members stands noticed in the report dated 9.7.2003 submitted by Mr.

Atray. Such report has been accepted by the Administration and the Registrar, Cooperative Societies. The only finding is against the substituted members and not that of restoration of memberships of the members, who have surrendered their membership. The surrender of the membership is complete as against 26 members as per report submitted and accepted by the Administration. There is no reference in the report submitted by the Enquiry Officer regarding restoration of membership of 26 members, who have surrendered their membership.

Question No. 2

32. A Resolution was recorded by the Administrator on 23.3.2004 to substitute 35 members as earlier substitution by the Society stood scrapped in terms of the report submitted. But, the Administrator has erred in law in restoring the membership of the original allottee members as there is no such recommendation in the report submitted by Mr. Atray. It is misreading of the report of Mr. Atray, which led to the proceedings recorded by the Administrator on 23.3.2004. Since the report was accepted in its entirety by the Administration, the Administrator of the Society could act only in terms of the report and not in contravention of the same. Therefore, the surrender of the membership of 26 members is final though the substitution of the members vide Resolutions dated 24.4.2003 and 28.4.2003 has been rightly scrapped in such proceedings.

33. The reliance on the orders passed by this Court on 25.4.2007 by Mr. Hooda, is again not tenable. Such order does not deal with the surrender of the membership of the 26 members. No challenge was laid to the surrender of membership by 26 members. The writ petition was filed by the expelled members. Their expulsion was set aside. The order passed by this Court is only to accept such fact. The order categorically records that the enquiry report has not been set aside in any proceedings. Though the order observes that the consequent orders, Annexure P-16 and P-17 have not been set aside in any proceedings, but the proceedings recorded vide Annexure P- 17 are in fact in contravention of the enquiry report as accepted by the Administration and the Registrar, Cooperative Societies, to the extent of restoration of the membership of the original allottees. Therefore, the said order is of no help to the arguments raised by Mr. Hooda. In fact, there is no dispute in respect of the findings recorded by Shri Atray.

34. As a matter of fact even in the orders passed in COCP No. 1048 of 2007 and COCP No. 313 of 2009, there is no finding that the 26 members have not surrendered their membership. Such members have been permitted to participate in the election process under mistaken belief on the strength of the resolutions recorded by the Administrator of the Society. But such participation will not lead to restoration of their membership when out of 24 members, 14 members have got the refund way back in 2003-04 and have never disputed the surrender of the membership before any appropriate Forum. Therefore, the participation in the election process by few members, who have surrendered

their membership on the threat of initiation of contempt proceedings and/or on the basis of the proceedings recorded by the Administrator, will not confer any legal or equitable right in their favour. Any observation made in such proceedings is not conclusive and is subject to the decision on merits, whenever and wherever, raised. As a matter of fact, in another petition bearing COCP No. 1676 of 2008 filed by one Mr. K.K. Monga, an original allottee, who is said to have surrendered his membership, stands dismissed. The case of all the surrendered members stands on the same footing. Therefore, the proceedings recorded by the Administrator on 23.3.2004, so as to restore membership of those who have surrendered their membership is unwarranted, without jurisdiction and against the report of the Enquiry Officer.

Question No. 3

35. 24 members, who have surrendered their membership, have not raised any dispute regarding their express or implied termination of membership before any competent authority. The Society as a juristic person cannot espouse the cause of an individual member, when the grievance in respect of the membership is personal in nature. The Society has no locus standi to plead that a particular member would continue to be a member, when no such grievance was raised by the aggrieved member. Similarly, the other petitioners - the earlier erstwhile expelled members have successfully challenged their expulsion before the Enquiry Officer. Such claim was accepted by this Court as well. Such erstwhile expelled members can raise grievance only in respect of their expulsion, but not in respect of members, who have surrendered their membership. Factually no such dispute was raised even by the expelled members in the earlier writ petition. The right of members, who have surrendered their membership is personal in nature and cannot be espoused by proxy.

Question No. 4

36. From the certificate of the Bank, 10 members have received the amount deposited including M/s Chaman Lal Kalia and S.S. Dhingra. In pursuance of an interim order passed by this Court, the parties have furnished additional documents and such documents prove that 6 more members have received their contributions. The record is in possession of the Society and we find that Society is selective in producing record. The record produced by Mr. Sharma, learned standing counsel for the Chandigarh Administration is in respect of surrender of 26 members including Mr. Chaman Lal Kalia and Mr. S.S. Dhingra. Such request of surrender of membership is said to be handed over to the Society. The surrendered members i.e. respondent Nos. 4 to 29 in CWP No. 19805 of 2011 except respondent Nos. 8, 11 & 12 namely J.K. Sharma, Chaman Lal Kalia & S.S. Dhingra respectively have filed joint written statement leveling allegations against the President, Secretary and Treasurer of the Governing Body namely Sh. Jagjit Singh, Sh. Balbir Singh and Mrs. Rajneet Kaur respectively but have not sought to raise dispute that they have not surrendered their membership. The entire argument is based upon restoration of membership recorded by the

Administrator of the Society in the proceedings dated 23.03.2004. While dealing with Question No. 2 above, it has been already held that the proceedings recorded by the Administrator on 23.03.2004 are against the report of the Enquiry Officer accepted by the Administration and the Registrar, Cooperative Societies. The Administrator of the Society could not travel beyond the findings recorded and accepted by the Administration and the Registrar, Cooperative Societies. Such members, who have not sought restoration of membership before any Forum and have not even remotely raised any argument even before this court against their surrender of membership, cannot claim restoration of membership on the strength of proceedings recorded by the Administrator on 23.03.2004.

Question No. 5

37. Some members were substituted by the Society in its meeting held on 24.03.2003 and 28.04.2003. Such substitution was found to be illegal in the report submitted by Mr. Atray. Such report has been accepted by the Administration and the Registrar, Cooperative Societies. The Administrator of the Society has recorded proceedings scrapping substitution of such members acting on the said decision on 23.3.2004. Such substituted members disputed their scrapping of membership through a writ petition (CWP No. 5693 of 2010). The said petition was dismissed on 25.8.2010 with liberty to avail remedy of appeal. The appeal against the order of expulsion stands dismissed on 30.11.2011. It is such orders which are subject matter of challenge by the petitioners i.e. Mr. Arun Aggarwal and others (CWP No. 19749 of 2011). Since such petitioners were substituted in an illegal manner, such members do not get any right in respect of the membership of the Society. The first right is of the non-allottee members (141 in number) in terms of the circular of the year 1999 which was in operation in the year 2003, when they were substituted. Such substituted members, though were not party to the enquiry conducted by Mr. Atray, but such fact will not render their induction as legal as even in these proceedings, they could not show any semblance of right for induction as members. In fact, they have sought to raise dispute regarding the cancellation after gross delay and laches after the Managing Committee inducted another set of members on 01.10.2007. Such substitution is against the directions of the Registrar, Cooperative Societies dated 11.10.1999, which contemplates that the flats surrendered by any Cooperative House Building Society should be offered to the senior-most eligible members of the Society. Such instructions also contemplate that in case there is any doubt about the eligibility and bona-fides of such members, the same shall be rendered to the Registrar, Cooperative Societies. The only distinction between the Circulars of 1999 and 2006 is that in terms of 1999 Circular, the Registrar could play proactive role, whereas in the 2006 Circular, the Society itself has to decide. Since initially the Society consisted of both set of members i.e. allottees and non-allottees, therefore, the non-allottees members cannot be dumped at this stage by allottee members in the guise of 2006 Circular.

38. Though Mr. Hooda, has referred to the Circular dated 8.6.2006 which contemplates that the House Building Societies to take their own decision regarding the substitution in their general body provided such decisions are consistent with the provisions of the Act and the Rules framed there under; Articles of Association and the Terms and Conditions of the allotment of plot to the Society; but such circular does not override the circular issued in the year 1999 which contemplates that the flats surrendered should be offered to the senior most eligible members of the Society. The circular dated 8.6.2006 came into force much after the surrender of the membership by 24 members in the year 2003. The rights of the existing non-allottee members, arise on the day, when the members have surrendered their membership. Initially the Administration determined 292 as eligible members, which included 141 as the non-allottee members for future allotment. Since the Society stands bifurcated amongst the allottee and non-allottee members, therefore, the Society of the allottee members is to ensure that the remaining flats are offered for allotment to 141 non-allottee members in the first instance.

39. In terms of the discussion and findings recorded above, we conclude with the following directions:

1. The 26 members, now 24 have surrendered their membership and have no claim for allotment of flats built by the Society.
2. The substitution of members on 23.4.2003 and 28.3.2003 is illegal & void and was rightly scrapped by the Administrator of the Society.
3. The substitution of 33 members on 01.10.2007 after scrapping the earlier substitution is illegal, as non-allottee members alone could be substituted members.
4. The Society is bound to offer flats to the non-allottee members in order of seniority in terms of 1999 circular. Such offer shall be sent under Registered Post and also by public advertisement within one month. The flats shall be allotted in terms of the seniority of such 141 members within next two months. In case sufficient members do not respond, only then the society of the allottee members can induct the new members.
5. The amount received by the Society from the substituted members shall be refunded to such persons within three months with interest at the rate of 10 percent per annum as the amount was utilized by the Society for this period.

Consequently, LPA No. 1162 of 2011 and CWP No. 19749 of 2011 are dismissed, whereas CWP Nos. 11652 of 2009; 19805 of 2011 and 285 of 2012 are allowed, in the manner mentioned above.