
(1997) 04 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Petition No's. 1631 of 1988 and 3628 and 3629 of 1992

Rashmi Naqrath

APPELLANT

Vs

Sarva Priya Cooperative House Building Society Ltd.

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 25(4)

Citation : (1997) 3 AD 309 : (1997) 66 DLT 713 : (1997) 41 DRJ 448

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : G.L. Sanghvi, Vipin Sanghi, Ramesh Chandra, Anand Yadav, S. Poddar, Sumeet Bansal and Manmohan, for the Appellant;

Judgement

Vijender Jain, J.

(1) A backdrop of events of this case in brief are that Mr.S P Kapur, father of the petitioner, was enrolled as a member of the respondent-Society on 30.6.1961. After the death of father of the petitioner his wife, Mrs.Vimal Kapur, was made a member on 23.6.1966. However, on the representation of Mrs.Vimal Kapur, wife of late Mr.S P Kapur, the deposit and share certificate were transferred in favor of the petitioner on 23.7.1966. Petitioner made various payments to the respondent-Society. On 27.6.1971, petitioner married one Mr.Ranjit Nagrath. Respondent-Society wrote to the petitioner to File fresh affidavit by 21.10.1971 that she or her husband or any other dependent member does not own a house or plot of land in Delhi. In the meanwhile, respondent-Society was allotted additional land of 1.7 acres and thereafter respondent No.1 raised a demand against the members to pay Rs.55/= per sq.yds. for developing the said land. The next date of the draw of lot was Fixed by the respondent as 30.6.1979 and on 19.7.1979 respondents informed the petitioner that she was allotted a plot No.7 measuring 371.10 sq.yds. Respondent-Society demanded other amounts, which were duly paid by the petitioner.

(2) The problem started on 18.2.1982. Respondent No.3-Dclhi Development

Authority (in short "DDA") wrote to the petitioner that it came to its knowledge that plot No.2, Tolstoy Marg, New. Delhi stood in the name of her husband and that she had also got the membership on transfer from her father in whose favor Plot No.G-32, Nizamuddin West, New Delhi stood. Petitioner replied the said letter stating therein that at the relevant time when her father became member under the Bombay Cooperative Societies Act, no such stipulation was in existence and requested the respondent-DDA to execute the lease deed in her favour. She had been representing to the respondent that the father of the petitioner was governed by the old bye-laws and the old Act and was a valid member and she was qualified under the new Act to remain a member and entitled for allotment of plot and execution of sub-lease.

(3) MR.G L Sanghi, learned counsel appearing for the petitioner, has contended that the bye-laws of the Society were amended in the year 1969 and as the petitioner was made a member in 1967 after the death of her father, she remains a valid member. Mr.Sanghi laid stress that the superior lessor, i.e. the Dda, Firstly on 28.12.1971 wrote a letter to the respondent-Society that there was no objection to the allotment of plot to the petitioner in view of her marriage as she fulfilled all qualifications for membership at the time of enrollment and subsequently letter dated 31.7.1987 was also written by the Delhi Development Authority to the effect that the objections of Society had been examined and directed the Society to execute sub-lease in favor of the petitioner, in view of the aforesaid letters, Society could not take the plea that no sub-lease be executed in favor of the petitioner. Mr.Sanghi has contended that even the stamp papers for execution of sub-lease were delivered in the office of respondent-Society and at that belated stage, respondent cannot defeat the right of the petitioner by refusing to execute the sublease as it would amount to defeating the right, which vested in the petitioner by non action on the part of the respondents. It has been further contended that the petitioner again on 15.10.1987 wrote a letter giving seven days to the Society to submit lease deed papers without requiring a fresh affidavit, which was asked for by the Society on 25.9.1987 from the petitioner.

(4) It seems that when petitioner failed to give affidavit to the Society, the respondent- Society ceased the membership of the petitioner on 22.2.1988. The said letter reads as under I -

".....With reference to your letter dated the 12th February, 1988, on the above-mentioned subject, I am desired to inform you that your membership of the Society has been ceased by the Managing Committee of the Society as you incurred disqualification to become a member or to remain as a member of the Society. The Registrar, Cooperative Societies, Delhi Administration, has also confirmed the cessation of your membership and has requested the Delhi Development Authority that the allotment of Plot No.7 in Sarva Priya Vihar be cancelled. In view of this the question of executing the sub-lease in respect of the said plot does not arise.....,"

(5) On 23.6.1988, Registrar, Cooperative Societies, passed the impugned order

holding that the Society has rightly ceased the membership of Smt. Rashmi Nagrath, petitioner, as having incurred disqualification under Rule 25 (4) of the Delhi Cooperative Societies Rules, 1973 read with the registered bye-laws of the Society. It is important to quote Rule 25 (1) (c) (i) -

"(I). HE owns a residential house or a plot of land for the construction of a residential house in any of the approved or unapproved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free hold....."

(6) The cessation of membership was upheld by the Registrar and determined under sub- Section (4) of Rule 25 of the aforesaid Act by the impugned order. Mr. Sanghi has contended that the order ceasing the membership of the petitioner by the Society dated 22.8.1988 was bad and he has also assailed the order of Registrar, Cooperative Societies dated 23.6.1988 inter alia holding that the Society has rightly ceased the membership of the petitioner.

(7) MR. SANGHI has further contended that in any case Rule 25 (1) (c) (i) of the Delhi Cooperative Societies Act is only attracted in cases where the properties are held "Benami" and in the present case, there is no allegation that any property is being held by the petitioner. The only allegation is that the husband of the petitioner, Mr. Ranjit Nagrath has got share in the partnership concern "Ralya Ram Mela Ram", which owns property at 2 Tolstoy Marg, New Delhi. Previously the share of Mr. Ranjit Nagrath was 50% in the said partnership and now it is 25% and that of petitioner is 10%. The area of the said property at 2 Tolstoy Marg, New Delhi is 1.4 acres. In support of his contention, learned counsel for the petitioner has relied on O.P. Sethi Vs. The Lt. Governor and Others,

(8) The next contention of the learned counsel for the petitioner was that property at 2 Tolstoy Marg, New Delhi belong to partnership concern as the lease was granted by Government of India in the year 1932 in the name of partnership. He further contended that property of the partnership Firm cannot be construed as property of an individual partner. Mr. Sanghi has contended that the property, which is brought in by the partners either at the time of formation or acquired subsequently in the course of business of partnership, becomes the property of the Firm and a partner is entitled only to his share of the profit and it is only after the dissolution of the partnership, or a share in the money representing the value of the property. He has contended that partnership has no legal existence, partnership property vests in all the partners and in that sense every partner has an interest in the property of the partnership and no partner can deal individually with any portion of the property as his own. In support of his contention, he has cited Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, "The provisions of Ss. 14, 15, 29, 32, 37, 38 and 48 make it clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be

acquired in the course of the business of the partnership it becomes the property of the Firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Cl.(a) and sub-cl.(i), (ii) and (iii) of Cl.(b) of S. 48. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, Therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of partnership. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by S. 29(I), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners. Lindley on Partnership 12th Ed. p.375, Ref. to. English and Indian Case Law Discussed. Air 1947 Lah 13(, Approved. Air 1959 380 Affirmed."

(9) MR.SANGHI has further contended that even from the plain language of Section 14 of the Indian Partnership Act, it is clear that the property of the Firm in clues all property and rights and interest in property originally brought into the stock of the Firm or acquired by purchase or otherwise in the course of business of the firm and, Therefore, till a partnership is dissolved, no new partners could be said to have possessed any specific portion of the property in question. Quoting from a Full Bench Decision of Lahore High Court in the case of Ajudhia Pershad Ram Pershad Vs.Sham Sunder and others Air 134] 1947 Lah 13 as to whether the interest of a partner in partnership asset is only moveable -

".....Thus, it appears that a partner who is not a minor, and has not obtained the agreement of the other partners to severance of his share, can only secure separate possession of his share by seeking dissolution, and in such a case the rules laid down in Ss. 46, 48 and 49 become applicable. These sections require that the debts and liabilities should First be met out of the firm property and thereafter the assets should be applied in ratable payment to each partner of what is due to him Firstly on account of advances as distinguished from capital

and, secondly on account of capital, the residue, if any, being divided rateably among all the partners. It is obvious that the Act contemplates complete liquidation of the assets of the partnership as a preliminary to the settlement of accounts between partners upon dissolution of the Firm and it will, Therefore, be correct to say that, for the purposes of the Indian Partnership Act, and irrespective of any mutual agreement between the partners, the share of each partner is, in the words of Lindley : "his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged."

(10) Learned counsel has also relied upon the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Juggilal Kamalapat, , in which the view taken by the Lahore High Court in Ajudhia Pershad Ram Pershad's case (supra) was approved by the Supreme Court. Mr.Sanghi has also cited the cases of K.P.A. Vellayappa Nadar (Dead) through Lrs. Vs. Bhagirathi Ammal and Others, and Third Income Tax Officer, Circle-I, Salem and Another Vs. Arunagiri Chettiar, in support of his contentions.

(11) Learned counsel for the petitioner has vehemently argued that Rule 25 (1) (c) cannot be read as a rule of disability .In view of the letter of the Delhi Administration dated 28.12.1971, Mr.Sanghi has contended that Rule 25 of the Delhi Cooperative Societies Rules is a general rule and superior lessor, has recommended the case of the petitioner for allotment of a plot in 1971 and 1987 and, Therefore, Rule 25 of the said Rules is not intended to take away the right of the petitioner in view of the mandate from the superior Lesser as contained in the letters dated 28.12.1971 and 31.7.1987. Mr.Sanghi has further contended that even otherwise respondent-Society is estopped from not executing the lease deed in view of their own letter dated 19.7.1979 whereby they had intimated to the petitioner that she had been allotted a plot bearing No.7 measuring 371.10 sq.yds in the Society.

(12) MR.SANGHI has also contended that after membership was transferred in favor of the petitioner, she is entitled for a plot and the respondents cannot take away the right of the petitioner by not executing the lease deed as she was entitled to as beneficiary of the right to membership and has cited the case of Jugalkishore Saraf Vs.Raw Cotton Co.Ltd. [1955] 7 S.C.R. 1369 in his support, in which it was held I -

".....ASsoon as the decree is passed equity fastens upon it and, by treating as done what ought to be done, that is by assuming that the transferor has executed a deed transferring the decree to the transferee as in all conscience he should do equity regards the transferee as the beneficial owner of the after-acquired decree."

(13) Mr. Sanghi has further contended in terms of the perpetual lease deed dated 13.8.1981, in case there is any breach then it is the Lesser who is entitled to take action as per paragraph-18 of the said lease deed. However, in this case, it

is the superior lessor, which itself recommended that the petitioner was entitled for the plot of land and non-execution of the lease deed by the Society was illegal and just to harass the petitioner.

(14) Repelling the arguments of the learned counsel appearing for the respondent that the petitioner has not approached this Court with clean hands as she has taken different stands in a proceeding pending on the "Original Side" in this Court that the property at 2 Tolstoy Marg, New Delhi was not the property of the partnership. Mr. Sanghi has contended that admission by a party in a pleading in one suit is not binding on him in other suit and in support of his contention, has cited -the case of Ramabai Shrinivas Nadgir Vs. The Government of Bombay,

"A party is not bound by an admission in his pleading except for the purposes of the suit in which the pleading is delivered. It frequently happens that a party is prepared in a particular suit to deal with the case on a particular ground and to make an admission, but that admission is not binding in any other suit, and certainly not for all time."

(15) On the other hand, Mr. Ramesh Chandra, learned counsel appearing for respondent No.1- Society, has contended that model bye-laws were adopted by the Society in the year 1969 and the bye-laws were amended on 19.5.1965 to the effect that any person shall be eligible to be a member provided he or his wife (she or her husband in case of a woman) or any of his/her dependents does not own a dwelling house or a plot for building a house in Delhi. The bye-laws further states that every person seeking membership from the Society shall submit a declaration to the effect that he or his wife (she or her husband) or any of his/her dependents does not own a dwelling house or plot in Delhi and that he/she is not a member of any other Cooperative House Building Society. Mr. Chandra laid great stress that in compliance of said provision late Mr. S P Kapur did not submit the requisite affidavit and, Therefore, even the said Mr. S P Kapur, through whom petitioner is claiming her right as member, could not have continued to be a member under the aforesaid provisions. He has further argued that Ministry of Home Affairs, Government of India, vide its Circular No. F.37/16/60-Delhi (i) dated 2.5.1961, which is at page-133 of the paper book, regarding allotment has issued guidelines that no plots should be allotted to any person, who or his wife/husband or any of his/her dependent relation including unmarried children own a house or residential plot of land in Delhi/new Delhi/Delhi Cantt. and as per Clause-10 of the said letter, the following conditions shall govern the allotment of land where by auction or otherwise to individuals -

"(A) No plot should be allotted to any person, who or whose wife/husband or any of his/her dependent relations including unmarried children owns a house or residential plot of land in Delhi, New Delhi or Cantonment. The question making an exception in the case of persons living in a congested locality or whose family has outgrown should be considered after some experience has been gained of the working of the scheme.

(16) MR.CHANDRA has contended that as per the Policy of the Government of India, which was notified way back on 2.5.1961, no plot was to be allotted to any person, whose wife/husband or any of his/her dependent relations including unmarried children owns a house or residential plot in Delhi/New Delhi/Delhi Cantonment except in case of person living in congested locality. As a matter of fact, the Society vide letter dated 12.9.1961 requested all the members to furnish an affidavit duly attested by an Oath Commissioner or First Class Magistrate to the effect that he does not own any land/residential house in Delhi/New Delhi/Delhi Cantt. in terms of the said circular. Mr.Chandra further contended that Delhi Administration vide its letter dated 19.1.1962 inter alias laid a pre-condition that the allotment of land to the Society will be considered only if all the members of the Society furnish an affidavit to the effect that he/she does of own any land/residential house in Delhi/New Delhi/Delhi Cantt., either in his/or her own name or in the name of his wife/husband or any of his/her dependent children or step children in terms of the said circular and such members, who do not furnish the affidavit, will not be eligible for plot of land. Mr.Chandra has further contended that on the death of Mr.S P Kapur on 1.3.1966 his membership was transferred in the name of his wife on 23.7.1966 and on her representation/request. He contended that she herself was visualized as she owned a residential House bearing No.G-32, Nizamuddin West, New Delhi, Realizing this, wife of late Mr.S P Kapur requested the Society to transfer her membership in favor of her daughter, i.e petitioner herein and the Society without knowing that neither Mr.S P Kapur nor his wife, Mrs.Vimal Kapur, had incurred disqualification, transferred the membership to the petitioner.

(17) MR.CHANDRA has contended that after the marriage of the petitioner with Mr.Ranjit Nagrath, petitioner was not entitled for the allotment of plot of land as the husband of the petitioner had 50% share in the partnership firm "M/s Ralya Ram Mela Ram".. Mr.Chandra has contended that if the plea of the petitioner is accepted then it will defeat the very object for which the Policy was made by the Government of India that a person, who owns a residential plot in Delhi either in his name or in the name of his spouse .or dependents would not be eligible for allotment of land. He has also contended that in terms of Section 15 of the Indian Partnership Act, it is only that property of the Firm, which is used exclusively for the purposes of business, could be construed as a property of the partnership. Mr.Chandra has contended that no material was brought on record by the petitioner that the property at 2 Tolstoy Marg, New Delhi, which is constructed on 1.4 acres of land, is the property of the partnership Firm and used exclusively for the purposes of partnership business by the partners. On the basis of this argument he has contended that a huge residential plot of land is available to the petitioner and her spouse. Reliance was placed by the learned counsel for the respondent No.1- Society on Section 15 of the Indian Partnership Act.

(18) Mr. Chandra has contended that it is not sufficient for the petitioner to allege that the property at 2 Tolstoy Marg was the property of the partnership in

the absence of any material to show that the same was used for the purposes of business and specifically for the purposes of partnership business.

(19) The true import and purport of the properly at 2 Tolstoy Marg, New Delhi, according to Mr.Chandra, was that the petitioner, her husband and other partners of M/s Ralya Ram Mela Ram" was co-owners in relation to the said property and not partners and in his support has cited the case of Govindan Nair Vs. Nagablulshanammal and another AIR[35] 1948 Mad 343

"ON these allegations the only question that arises for decision is whether defendant I is the exclusive owner of the tea shop or whether the plaintiff and defendant I are joint owners. Even according to the facts as alleged by the plaintiff the relationship constituted by them would not be a partnership. Nothing more is done by the parties than utilising the common property and obtaining a return for such use by leasing the property for rent. The contribution made by the plaintiff and defendant I towards the price for the acquisition of the property in equal moieties would only make them co-owners and not partners. They never carried on any business but only obtained a return by using the common property. The distinction between part ownership and partnership is no doubt very difficult to define. As pointed out by Lindley on Partnership, Ed n.to at page 32 : "If each owner docs nothing more than take his share of the gross returns obtained by the Use of the common property, partnership is not the result."

(20) At page 33 the learned author observes : "Moreover, part owners who divide what is obtained by the use or the employment of the thing owned arc not thereby constituted partners. For example, if two tenants in common of a house let in and divide the rent equally between them, they are not partners although they may pay for the repairs out of the rents before dividing it. So two persons who are co-owners of a race horse, and share his winnings on the one hand, and the expenses of his keep on the other, are not partners but co-owners only."

(21) This last illustrating my opinion exactly applies to the facts of the present case. The same distinction is provided by Expin.1 to S. 6, Partnership Act, which reads as follows:

"THE sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners."

(22) MR.CHANDRA has contended that at best the property at 2 Tolstoy Marg, New Delhi could be construed as a property under co-ownership simplicitor, which is distinguishable from partnership and has cited Gopalji and Another Vs. Nagarmal Baijnath, in his support, in which it was held -

"CO-ownerSHIP simplicities must be distinguished from partnership. The distinction between co-owners and partners is that in the case of co-ownership the co-owners do not intend to carry on a business, still less do they intend to share the profits realised. On the other hand, in case of partnership the partners

intend to carry on business with money, or property which belongs to both of them, and they intend to realise profits, and share the same. Co-ownership does not, of itself, create a partnership as to anything so owned, even though the owners agree to share any profits made by the use thereof; it is necessary that there should be consent of all to trade as partners before there can be a partnership."

(23) MR.CHANDRA has contended that the partnership deed copy of which has been placed on record at page-384 of the paper book, does not reflect that the property at 2 Tolstoy Marg, New Delhi was used for the purposes of business of the said partnership firm except the averment that it was the asset of the partnership firm and to the shares of the partners in the property. Shares of the partners in the partnership firm were modified, petitioner was also admitted as a partner having 10% share in the profit and loss and her husband having 25% share in the profit and loss of the partnership firm subsequently. No object of the partnership firm has been given in the said partnership deed except that property at 2 Tolstoy Marg, New Delhi shall be developed for residential plot by entering into a collaboration agreement with the builder.

(24) Another leg of the argument of the counsel for the respondent No.1-Society was that there was inherent cessation of membership as per rules framed under the Delhi Cooperative Societies Act Rules, 1973. Repelling the contention of the learned counsel for the petitioner that the Society has not issued any notice before cessation of membership, Mr.Chandra has. contended that the answer lies in Rule 25 (2) of the Delhi Cooperative Societies Rules, which read as follows -

"NOT WITHSTANDING anything contained in the rules or the bye-laws of the cooperative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-rule(I), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred."

(25) MR.CHANDRA has contended that from the plain reading of the aforesaid rule, it is manifest that the petitioner ceased to be a member when her spouse owned 50% share in the partnership, which owned the property at 2 Tolstoy Marg, New Delhi and in any event of the matter, the petitioner herself acquiring 10% share in the said partnership and, Therefore, she cannot maintain the petition as she stands disqualified to be a member of the Society and for the purposes of allotment of plot by the Society. Mr.Chandra has vehemently contended that once the property of the partnership is not used for business purposes and the same being residential property, it would attract disqualification as contemplated under the Model Bye-laws, which were adopted by the Society in the year 1969 and rules, which were applicable at the time of the allotment to the petitioner in terms of Rule 25 (1) (c) of the said Rules.

(26) MR.CHANDRA has further contended that the petitioner has hopelessly failed to show that the property at 2 Tolstoy Marg, New Delhi was a partnership property, which was used for the purposes of business of the partnership firm.

Even the objects of partnership, which have been specified by the petitioner at page-226 of the paper book, nowhere mentioned that the property was ever used except for the purposes of residence of the partners. Mr.Chandra has contended that even the initial deed was signed by Mr.Ralya Ram as sole proprietor of the partnership concern "M/s Ralya Ram Mela Ram".

(27) Mr. Chandra has further contended that in the perpetual lease deed, which was executed by the Lessor in favor of the Society, which is at page-462 of the paper book, a clause, i.e.Clause 5 (a), was also incorporated, which reads as under) -

"THE Lessee shall sub-lease, within such time and on such premium and yearly rent as may be fixed by the Lessor, one residential plot to each of its members who or whose wife/husband or any of his/her dependent relatives including unmarried children does not own, in full or in part, on free-hold or lease-hold basis, any residential plot or house in the urban areas of Delhi, New Delhi or Delhi Cantonment, and who may be approved by the Chief Commissioner."

(28) MR.CHANDRA has further contended that there is no force in the argument of the learned counsel for the petitioner that as Delhi Development Authority vide its letters dated 28.12.1971 and 31.7.1987 had recommended for allotment of a plot to the petitioner, Society has no alternative but to execute sub-lease in favor of petitioner. According to Mr.Chandra the right of membership ,whether the member is qualified or disqualified or his membership is rightly ceased or not, are all matters to be governed under the Delhi Cooperative Societies Act and Rules framed there under and any recommendation, which is contrary or inconsistent with the statutory provisions, are de hors void . and can not be looked into. Mr.Chandra has also contended that the order ceasing the membership of the society and cancelling allotment was fully justified in view of the petitioner's inability to furnish the requisite affidavit in terms of bye- laws and rules. He has also contended that Rule 36 of the aforesaid Rules is applicable in case of expulsion and not in case of cessation of membership under the bye-laws 8 [VII] read with Rule 25 (2). .

(29) Learned counsel has further contended that the mother of the petitioner, Mrs.Vimal Kapur, applied for the transfer of membership in the name of the petitioner knowing fully well that she was not entitled to become a member of the Society as she owned a residential property bearing No.G-32, Nizamuddin West, New Delhi. He contended that it was a clever device on the part of the mother of the petitioner to circumvent her disqualification to be eligible for allotment of plot in the Society.

(30) MR.CHANDRA has contended that Mr.S P Kapur could not have become a member and after his death, application of his wife, Mrs.Vimal Kapur, to transfer the membership in her daughter's name, petitioner herein, was motivated to circumvent the bye-laws of the Society, i.e. bye-law 5 (i) (e). These Bye-laws were approved by the Registrar, Cooperative Societies on 17.5.1969.

(31) On the basis of above submissions, Mr.Chandra has contended that the property at 2 Tolstoy Marg, New Delhi, which is a substantially huge property having residential house in which the petitioner is living with her husband, even if the share of the petitioner and her husband is counted, it would be more than 1000 mtr. He has further contended that adverse inference be drawn against the conduct of the petitioner by withholding the relevant information from the Society as well as Registrar of Cooperative Societies in not Filing the affidavit in terms of old Bye-laws adopted by the Society and in terms of Rule 25 (1) (c) of the aforesaid Rules. Learned counsel has contended that in certain proceedings pending in this Court, petitioner has taken the stand that the property at 2 Tolstoy Marg, New Delhi was not a partnership property but on account of some oral partition between the family members of "M/s Ralya Ram Mela Ram", specific share in the said property devolved upon her and her husband. Taking that into consideration, he has contended that the writ petition should be dismissed on the ground that the petitioner has not approached this Court with clean hands.

(32) I have given my careful consideration to the arguments advanced by the learned counsel appearing for both the parties.

(33) Dealing First with the argument of the learned counsel for the petitioner that whatever be the character of the property, which is brought in by the partners or which has been acquired in the course of business of the partnership, it becomes the property of the Firm and a partner is entitled to his share of profits, if any, after realisation of the property and only upon dissolution of the partnership to a share in the money representing the value of the property for which reliance was laid by the learned counsel for the petitioner on Addanki Narayanappa and another's case (supra) in support of his contention. There cannot be any dispute with the proposition of law as laid down in Addanki Narayanappa and another's case (supra) and Ajudhia Pershad Ram Pershad's case (supra) that partner is entitled to a share in the money representing the value of the property after dissolution and the partnership property vests in all the partners and every partner has an interest in property of partnership. No partner can deal with any portion of the property on his own. In the case in hand, it is not disputed that property was acquired by the funds of the partnership.

(34) So far so good but whether the property of partnership was used for partnership. Section 15 of the Indian Partnership Act deal with application of the property of the Firm. Section 15 of the-Indian Partnership Act reads as follows -

"APPLICATION of the property of the firm. - Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of business."

(35) From the aforesaid Section, .it is clear that the property should be such, which is held and used by the partners exclusively for the purpose of business. If

a property is not used exclusively for the purpose of business, can that property be said to be the property of the partnership? Nothing was brought on record on behalf of the petitioner either before the Society or before the Registrar, Cooperative Societies, so as to enable them to come to a finding that the property was used for the purpose of business and specifically for the purpose of business of the partnership. In Chumanmal Nurijmal & others Vs. Papurbai and another Air 1915 Sind 10, following Bank of England's case (1). Turner, L.J. said at p.284, Court held) - "It cannot, I think, be laid down as an universal rule, that when lands are bought by partners in trade, and are paid for out of the partnership assets they of necessity become part of the joint estate of the partners. There are different purposes for which the lands may have been bought. They may have been bought for the purpose of being used and employed in the trade.....or they may have been bought, not for the purpose of being used or " employed in the trade, but for the purpose of a mere speculation on account of the partnership.....Again they may have been bought without reference to the purposes of the trade or the benefit of the partnership, with the intention of withdrawing from the trade the amount employed in the purchase, and converting that amount into separate property of the partners, or they may have been bought on account of one or more of the partners, he or they becoming debtors to the partnership for the amount laid out in the purchase..... Where land purchased is of merely paid for out of the partnership assets, but is bought for the purpose of being used and employed in the partnership trade, it is scarcely possible to conceive a case in which there could be sufficient evidence to rebut the trust,.....but where the land is not purchased for these purposes, the question becomes more open, and we have to consider whether the circumstances attending the purchase show that it was made on account of the partners individually, or of any one or more of them in whose name the land may have been bought."

(36) It follows, Therefore, that if land is purchased out of the partnership assets and not used for the purpose of partnership business, the question is an open one and is to be determined on the general evidence. Here the partnership business was a grocer's shop and the land was not necessary for the purpose of this business....."

(37) Can the property at 2 Tolstoy Marg, New Delhi be described as a property of the partnership in the absence of any material, as I have stated above, or at best it was only obtained for a return as was mentioned in Gopalji & another" case (supra) -

"THE sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners."

I Find support from the view expressed by Madras High Court in K. Viswanathan Vs. Namakchand Gupta and Another,

"INExs.P. 1 and P. 2 the only business which the parties agreed to do was the exhibition of Films. The lease of the theatre was taken only for the purpose of that business; the furniture and other equipments were acquired only for that purpose. These form the capital which was invested in the business and it is on this basis that they were valued at Rs.1,30,000 and the defendants paid a half of it as their contribution to the capital. Neither the taking of the lease, EX.P. 3, nor the purchase of the furniture and equipment can, Therefore, be regarded as themselves Constituting business; they are only assets with the aid of which business was to be carried on. The true position of the parties with reference to these assets is that they are co-owners thereof each being entitled to a half share therein. Mere co-ownership of property does not amount to partnership though when utilised in business it may become partnership property. As we are of the opinion that the only business contemplated by the agreement was the running of the theatre as a cinema house and that was illegal the entire partnership was illegal and must be declared void "ab initio"."

(38) The petitioner has approached this Court under Article 226 of the Constitution of India. The petitioner was expected to plead all the relevant and material information so as to enable her to secure relief on equitable grounds. A suit was Filed by one Mr.Bikramjit Nagrath bearing Suit No.2327/1991 in which petitioner herein is defendant No.1(c). Written statement was Filed by the defendants in the said suit on 22.11.1994. In Preliminary Objections of the said written statement, the petitioner herein has taken the stand that the portion abutting the Hailey Lane of property at 2 Tolstoy Marg, New Delhi has been in possession of the family of Lala Ralya Ram and the portion abutting 4 Tolstoy Marg, New Delhi has been in occupation and possession of family of Lala Mela Ram as the property has been earlier divided by way of an oral family settlement. Both the portions are absolutely separate and independent portions with the independent entrance and there is a dividing wall dividing the property running through the main house which divide the constructed portion. Annexe and servant quarters having the same area and dimension are in the respective portions of the house and the legal heirs of Lala Mela Ram and Lala Ralya Ram have not interfered in each other's user and occupation. It has further been averred in the said pleadings that -

".....Infact but for the fact that lease of the land is one in relation to 2, Tolstoy Marg, the property has been already partitioned and divided equally between two families and the said oral family arrangement has been duly acted upon all through since around 1932.

(39) In para-8 of the said written statement, the petitioner has taken the stand that the partnership deed dated 8.7.19C)4 and all accounts in relation to the said partnership have been fully settled and nobody has any claim in that regard. Again in para-13 of the said written statement, "it has been reiterated by the petitioner that in terms of the oral family arrangement between two brothers, the property was divided/partitioned equally in that manner. The said position

continues from 1932 to date without any hindrance or disturbance and the said arrangement has been acted not only by the parties in suit but by their predecessors-in-interest". The amended written statement was Filed by the petitioner herein on 16.7.1996 in the said suit. Again, the averments made in the earlier written statement were reiterated. In para-13 of the said amended written statement, it has been stated that)- "As far as para No 13 of the plaint is concerned, it is submitted that during the life time of Shri Ralya Ram and in fact before they shifted to 2 Keeling Road (now called Tolstoy Marg) the property was built in two specific equal portions as shown in the plan annexed. The portion abutting Hailey Road was in the exclusive user of Shri Ralya Ram's family and the other portion abutting 4 Keeling Road, was in the exclusive occupation of family of Lala Mela Ram. In terms of the oral family arrangement between the two brothers the property was divided/partitioned equally in that manner. The said position continues from 1932 to date without hindrance or disturbance. The said family arrangement has been acted not only by the parties in suit but by their predecessor in interest. It was only for the reason that the plot is lease hold with one single undivided lease that the partnership deed dated 29/30th Sept 1978 was entered into so that the property could be developed together between two families."

(40) In view of the specific admission and plea of the petitioner in the written statement filed, knowing fully well that present writ petition is pending in this Court, and in the absence of any material brought before this Court or before the Registrar that the said property was used exclusively for the business of partnership, can the argument of the learned counsel for the petitioner hold any ground? If the argument of the learned counsel for the petitioner that the property is held by partnership, Therefore, petitioner has not incurred any disqualification, is accepted then it would mean that a person may hold a property in the name of partnership and yet acquire a plot through the cooperative societies, this will defeat the very purpose of the policy laid down vide circular dated 2.5.1961 of the Government of India and the perpetual lease deed executed by the superior Lesser in favor of the Society and it would also mean that any person may float any partnership concern with his or her spouse, purchase a property in the name of the partnership, can become a member of the housing cooperative society. While arguing the matter, learned counsel for the petitioner contended on the basis of Ramabai Shriniwas Nadgir's case (supra) that a party is not bound by an admission in his/her pleading except for the purposes of the suit in which the pleading is delivered. When a party consciously takes the stand in the pleading for the purpose of unveiling the truth and do justice in this writ petition, the Court can go behind the smoke screen in order to find out the truth. Admission in a pleading will be a material, which will be relevant and pertinent to decide the matter in controversy. It will be relevant to determine the using of property, more so, when according to Section 15 of the Indian Partnership Act it is necessary that partnership property should be used by the partners exclusively for the purpose of business. Even otherwise, as to

what is the value of such admission made by a party in a suit it may not be used as evidence against that party in other suits. In other suits, the admission cannot be regarded as conclusive but to say that it does not raise suspicion, is far from the truth. In view of the pleadings, a strong presumption was raised that the property was not used exclusively for the purpose of partnership but was used for a residence in which the petitioner has specific portion for her residential accommodation. In *Shanti Sarup Vs. Radhaswami Satsang Sabha, Dayalbagh Agra and Others*, , the Allahabad High Court had occasion to deal with somewhat similar circumstances and Court held -

"IT appears from the record that the defendants had in an earlier litigation admitted the valid registration of the society. The Income Tax Officer, Agra, treating all the contributions made by the Dayal Bagh Satsangis and all the properties which had been acquired from those contributions as also of the income which arose out of such properties as the personal property of Shri Sahabji Maharaj started proceedings against him for assessment of income. The Sabha filed suit No.4 of 1987 against the Secretary of State for India in Council and also imp leaded Shri Sahabji Maharaj as a defendant. It was alleged in paragraph I of the plaint (Ext-157) that the plaintiff Sabha was a validly registered society under Act No.21 of 1860. Shri Sahabji Maharaj filed a written statement (Ext.19) on 14th April, 1937, admitting paragraphs 1 to 11 of the plaint. Shri Sahabji Maharaj died during the pendency of the suit, and one Prem Swarup and both the defendants of this suit were imp leaded as his heirs. It is clear from the statement made by Shanti Swarup (defendant No.2) that he and the other heirs of Shri Sahabji Maharaj had adopted the same written statement which had been filed by Shgri Sahabji Maharaj. The defendant's own admission can be regarded as evidence of the fact that the plaintiff Sabha had been duly registered under Act No.21 of 1960."

(41) Similar view was taken by Punjab and Haryana High Court in *Smt. Neera and another Vs. Har Kaur and others* 1989 (1) Hlr 125 in which it was held that -

".....IT is a well-established principle that admission made in pleadings are conclusive and no further evidence is required. Evidentiary admissions are not conclusive proof of a fact admitted. They may be explained or shown to be wrong. The evidentiary admissions shift the burden of proof on the persons making them or the representatives claiming through them to show that they are wrong or are not binding. In the absence of such a proof they are the best evidence. The admissions are substantive evidence of facts admitted."

(42) Keeping in view the purpose and purport of the guidelines issued from 1961 by the Government of India to the effect that any person shall be eligible to be a member provided he or she does not own a dwelling house or plot for building a house in Delhi/New Delhi/Delhi Cantt., it cannot be said that for the purpose of this writ petition admission of the petitioner cannot be relied.

(43) The lands to the cooperative societies had been given at subsidised rates for

the purpose of providing housing accommodation to those who do not have any other dwelling house in Delhi. Keeping in view the fact that there is limited land available in Delhi, land has been acquired by the State for providing house sites with the idea that those who already possess residential houses may not concentrate in acquiring house sites at the expense of those who possess nothing. A wider prospective of the guidelines and policy has to be taken, it is the duty of the Court where on account of ingenuity to defeat the purpose of welfare legislation or policy to go behind the smoke-screen, to discover the true state of affairs. This was so succinctly held in *Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry Ltd., Bhavnagar and Another*,

".....IT is the duty of the court, in every case where ingenuity is expended to avoid taxing and welfare legislations ,to gel behind the smokescreen and discover the true state of affairs. The court is not to be satisfied with form and leave well alone the substance of a transaction....."

(44) Supreme Court in cases, *The Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, and *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , has held that in cases where company being legal and juristic person and a separate entity, the lifting of veil is permissible so as to examine the substance. In *Life Insurance Corporation of India*" case (supra) Supreme Court held -

"....." IN *Workmen V. Associated Rubber Industry* (supra), the corporate vet was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In *Workmen v.Associated Rubber Industry* (supra), resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasis that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies arc inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since, that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

(45) I may recall the observations of Viscount Simon in *Latilla Vs.I.R.* 25 Tc 107, which was quoted in *Mis Mcdowell and Company Limited V"s.Commercial Tax Officer* 11985 3 Scc 230 ;

"OF recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country

while receiving the equivalent of such income, without sharing in the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are "entitled" to do so. There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary one result of such methods, if they succeed, is of course to increase proportionately the load of tax on the shoulders of the great body of good citizens' manoeuvres."

(46) Applying the aforesaid principles, I must lift the veil of alleged partnership firm "M/s Ralya Ram Mela Ram" and on the basis of aforesaid decision, I cannot resist the temptation of finding the true colour and nature of the property at 2 Tolstoy Marg, New Delhi to be a residential property in which petitioner and her spouse are living, which will fall within the mischief of Rule-25 (1) (c) of the Rules read with byelaws of the Society.

(47) As the allotment by the Society of a specific plot to the petitioner was done under a mistaken notion on petitioner not filing the affidavit, I do not find any force in the argument of the learned counsel for the petitioner that by mere non-executing the lease deed, the respondent- Society is not permitted to take away the right of the petitioner to the plot in question. The authority cited by the learned counsel for the petitioner, Jugalkishore Sarafs case (supra), is not applicable to the facts of the present case, in this case Statute specifically bars the petitioner from holding or acquiring the plot in question.

(48) From the whole catena of case law discussed above, circumstances of the case and in view of the stand of the petitioner in the suit aforesaid, it cannot be said that the property at 2, Tolstoy Marg, New Delhi, falling in the share of the petitioner and her husband, was ever dealt with as property of the partnership and the same was used during the course of the business and that seems to be the reason that petitioner has not brought on record any material regarding the said property. Admittedly, the property at 2, Tolstoy Marg, New Delhi is constructed on an area of 1.4 acres and half of the portion of the said property is used by the petitioner and her husband exclusively for the purpose of their residence. Even in the affidavit filed along with this writ petition, the address given as residence of the petitioner is 2, Tolstoy Marg, New Delhi. Therefore, I hold that the property for all intent and purpose was used for a residential purpose by the petitioner and if that is so, the petitioner ceased to be a member when she was married in 1971 and acquired the property of her spouse at that time, as per the rules framed under the Delhi Cooperative Societies Rules. Rule 25 (2) of the said Rules is as follows -

"NOT WITHSTANDING anything contained in the rules or the bye-laws of the cooperative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-ruled), he shall be deemed to have ceased

to be a member from the date when the disqualifications were incurred."

(49) From the bare perusal of the aforesaid rule, it is clear that the petitioner ceased to be a member when her spouse and she herself had share of 35% according to their own admission in the property measuring 1.4 acres at 2, Tolstoy Marg, New Delhi. Even at the time of allotment of the land to the respondent-Society, it was made clear that allotment is subject to the affidavit being submitted that any person, who already owns a house/residential flat in his own name or in the name of his wife or dependent children will not be allotted any land as a member of the society. Clause-5 of the lease deed also contained the same clause by which the land has been allotted to the Society. While discussing the effect of Rule 25 of the aforesaid Rules, a Full Bench of this Court in the case of Daulat Ram Mehnidratta Vs. Lt. Governor of Delhi and Others, held

".....ITwill be appreciated that R.25 (2) (1) and (2) has the effect of providing that a person will be disqualified for being a member if he owns a residential house or a plot of land in his or in his wife's or in the name of his dependent children. The purpose of this rule is obvious. As there is large scale housing shortage and as land is limited the Government must so frame and modulate its policies that it should be able to satisfy as large a number of people in their need of providing houses to them. This can only be done if the distribution in the shape of land at concessional prices and with governmental aid is done to meet the genuine need of each family. This purpose would certainly be defeated if there was no limitation on a person or on a family acquiring more than one residential plot. It is true that there may not be any legal bar to a family or a person owning more than one house. If the person does want to own it and if there is no prohibition in law he may do so but then he cannot be permitted to avail of the instrumentality of a co-operative society to further this end. We must remember that R.25 (1) (c) and 25 (2) have been framed and are applicable to only members of the co-op. Societies. Section 4, Delhi Co-operative Societies Act, 1972, clearly lays down that a society which has as its object the promotion of economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act. Thus the societies-registered under the Act and to which R.25 will be applicable are societies which are meant to advance the interests of members....."

(50) When the petitioner was to be allotted the plot at that time she was not eligible for allotment of that plot and on that account cessation of the membership of the petitioner cannot be termed as illegal. Much reliance was placed by the learned counsel for the petitioner on the letter written by the Dda in the years 1971 and 1987 inter alia directing the respondent-Society to execute the sub-lease deed in favor of the petitioner. In view of the specific bar in the perpetual lease deed, which was executed by the Lesser in favor of the Society, the letters written by Dda cannot take away the bar imposed by

Clause-5 (a) of the lease deed.

(51) Any letter inconsistent with the conveyance deed was not in conformity with the terms of the lease and the Society had rightly decline to execute sub-lease in favor of the petitioner. I find considerable force in the arguments advanced by the learned counsel for the respondent-Society that, as a matter of fact, that letter ought not to have been written by the DDA. Question relating to a member whether he or she is qualified or disqualified or his/her membership is rightly or wrongly-ce.ased, are all matters which are under the domain of Statute i.e. Delhi Cooperative Societies Act and Rules framed there under and it was not a grey area on which Dda could plough or could have recommended to the Society. Another argument of the learned counsel for the petitioner that the cessation was bad as recourse to Rule 36 of the Delhi Cooperative Societies Rules was not taken is devoid of any force. Rule 36 of the Delhi Cooperative Societies Rules deals with procedure for expulsion of members were as Rule 25. of the Rules deals with disqualification for membership. Sub-rule (2) of Rule 25 specifically states that notwithstanding anything contained in the rules or the bye-laws of the co-operative society, a member shall be ceased to a member from the date when the disqualifications were incurred. Therefore, even if the petitioner was made a member, same will not confer any right on her.

(52) Civil Writ Petition No-3628/1992 has been filed by Ms.Pranav Kapur, sister of the petitioner herein, Mrs-Rashmi Nagrath, and Civil Writ Petition No.3629/1992 has been filed by Mr.Sanjay Kapur, brother of the petitioner, Mrs.Rashmi Nagrath. Even according to the petitioners, Ms.Pranav Kapur and Mr.Sanjay Kapur, present petitions were filed after the petition filed by her sister, Mrs.Rashmi Nagrath, was admitted and the interim order stood confirmed. Not a whisper was raised by the petitioners, who are sister and brother of petitioner herein, Mrs.Rashmi Nagrath, but for the first time when they realised that the plot of land is not to be given to Mrs.Rashmi Nagrath, they filed objections before the Registrar, Cooperative Societies, inter alia, alleging that in the alternative, if Mrs.Rashmi Nagrath, is not found to be eligible, they may be substituted joint members in place of their deceased father. The petitioners, Ms.Pranav Kapur and Mr.Sanjay Kapur, have challenged the order passed by the Registrar, Cooperative Societies on 16.5.1992. As a matter of fact, the mother of both the petitioners, Ms.Pranav Kapur and Mr.Sanjay Kapur, Mrs.Vimal Kapur applied for transfer of membership in the name of her daughter, Mrs.Rashmi Nagrath, on 25.6.1966 and accordingly the same was transferred in the name of Mrs.Rashmi Nagrath. Ms.Pranav Kapur and Mr."Sanjay Kapur did not challenge the said transfer of membership either to Mrs.Vimal Kapur or from Mrs.Vimal Kapur to Mrs.Rashmi Nagrath. As a matter of fact, both the petitioners, Ms.Pranav Kapur and Mr.Sanjay Kapur, took somersault and pleaded in their objections before the Registrar that the membership of late Shri S P Kapur, their father, could not be transferred in the name of their mother and took the stand that Mrs.Rashmi Nagrath was in any case holding the membership as a trustee for other successors of Shri S P Kapur and even she was disqualified under Rule 25(4), the membership should have reverted to other

legal heirs of the deceased S P Kapur. Ms. Pranav Kapur and Mr. Sanjay Kapur had not disputed the transfer of the membership in the name of Mrs. Rashmi Nagrah and it was only when the membership of Mrs. Rashmi Nagrah was held by the Registrar, Cooperative Societies to be rightly ceased by the Society, Ms. Pranav Kapur and Mr. Sanjay Kapur filed the objections before the Registrar for the first time in the year 1989. The conduct of the petitioners, Ms. Pranav Kapur and Sanjay Kapur, disentitle them for any relief in the writ jurisdiction from this Court as they have not taken any steps to approach any Court or the office of Registrar, Cooperative Societies or any other proceedings by way of filing a civil suit claiming their interest in the property of their deceased father S P Kapur.

(53) Learned counsel for the petitioner has contended that late Mr. S P Kapur did not leave a nominee in view of the stand taken by the respondent that Mrs. Vimal Kapur wife of late Mr. S P Kapur was a nominee of the original member. Mr. Sanghi has contended that mere creation of nomination in favor of Mrs. Vimal Kapur could not have created a right in her favor and disability qua other legal heirs and in support of his contentions, has cited the cases of Priya Nath Mehta Vs. Manju Aggarwal and Others, , Gopal Vishnu Ghatnekar Vs. Madhukar Vishnu Ghatnekar, and Smt. Sarbati Devi and Another Vs. Smt. Usha Devi,

(54) MR. CHANDRA has contended that on the death of Mr. S P Kapur, the nominee or successor would not automatically succeed to the share of the interest of the deceased member as there was a restriction of transfer of interest on the death of member even in the old Act i.e. Bombay Cooperative Societies Act, 1925, which was enforced in Delhi at the time when Mr. S P Kapur died. Section 27(1) of Bombay Cooperative Societies Act is as follows -

" ON the death of a member of a society such society may within a period of one year from the death of such member transfer the share or interest of the deceased member to a person or persons nominated in accordance with the bye-laws of the society, or if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member if duly elected a member of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or bye-laws."

(55) On the basis of the aforesaid argument, Mr. Chandra has contended that even after his death Section 27(1) of the Bombay Cooperative Societies Act gives the Society a right to transfer the share or interest of a deceased member but it does not give any such right to a nominee of a deceased member. In fact, even Society cannot transfer the share or interest of a deceased member to the nominee of such a member except after the nominee is duly admitted to be a member of the society. In support of his contentions, Mr. Chandra has cited a judgment of this Court in the case of The Chief Commissioner (Now Lt. Governor), Delhi and Another Vs. Kitty Puri and Another, in which it is held -

"UNDER the general law, the share or interest of a member could devolve on his nominee or successors .But the general law is modified by Section 27 of the Act with the effect that a nominee or a successor has been only given the right to apply to become a member of the Society. He does not automatically succeed to the share or interest of the deceased member. The reason is that the membership is a contract between the member and the Society. It is not an interest which can be inherited by the nominee or the successors from the deceased member without reference to the Society. The right to transfer the share or interest of a member can be exercised only by a member u/s 19(2) but not by his nominee or successor. This may be contrasted for instance, with Section 109 of the Companies Act, 1956, which permits a transfer of the share or other interest in a company of a deceased member by his legal representative although the legal representative is not himself a member."

(56) MR.CHANDRA has contended that in any case the other two petitioners in Civil Writ Petition bearing Nos-3628/92 and 3629/92, namely Ms.Pranav Kapur and Mr.Sanjay Kapur respectively, are not entitled to any relief from this Court as the mode of the transfer of share by the Society after the death of the member is provided u/s 27 of the Bombay Cooperative Societies Act and its effect is that only the share/interest of a deceased member can be transferred within a period of one year from the death of such member and in his support has cited The Chief Commissioner and another's case (supra).

(57) I need not go into various submissions of the learned counsel appearing for the parties .The petitions of Ms.Pranav Kapur and Mr.Sanjay Kapur are not maintainable as they have acquiesced to the nomination of Mrs.Rashmi Nagrath from 1966 to 1989 to be the member of the Society and Filed a writ petition in 1992 at such a belated stage after Mrs.Rashmi Nagrath was declared dis-entitled for membership, cannot put up a claim for transfer of membership as successors of late Shri S P Kapur.

(58) In view of the above discussions and reasons stated above, I hold that there is no infirmity with the order passed by the Registrar, Cooperative Society upholding the order of the respondent-Society ceasing the membership of the petitioner, Mrs.Rashmi Nagrath. Ms.Pranav Kapur and Mr.Sanjay Kapur, have also failed to make any case for interference in the order passed by the Registrar, Cooperative Societies. The present writ petitions have no force and the same are dismissed with no order as to costs.