

(2010) 03 PAT CK 0169
In the Patna High Court

The Dream Co-operative House-Construction Society Ltd.	APPELLANT
Vs	
The Registrar, Co-operative Societies, The Additional Registrar, Co-operative Societies (Planning), The Joint Registrar, Co-operative Societies and Naushaba Usmani and Others	RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226

Citation : (2010) 03 PAT CK 0169

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the petitioner, learned Counsel for the respondent No. 4 and learned Counsel for the State.

2. The petitioner seeks quashing of the order dated 4.4.2002 passed by the Additional Registrar, Co-operative Societies in Appeal Case No. 396 of 1996 as also the order dated 30.10.1996 passed by the Joint Registrar, Cooperative Societies in Case No. 40 of 1994.

3. By the impugned order dated 30.10.1996 the Joint Registrar had directed that since the original respondent No. 4 had paid the huge amount of Rs. 2.34 lacs with the petitioner Co-operative Society for the purchase of flat and the flat had been constructed from the said amount and if the respondent No. 4 deposits the escalation amount as per the resolution passed in the meeting of the Co-operative Society held on 14.9.1991 as also the balance instalments, the amount for providing firefighting devices and the amount for road and site development within two months then the Society should hand over the flat to him, but if the respondent does not deposit the amount in lump sum within two months then the Society would have the right to return the amount to the respondent with

interest at the rate of 15% per annum. By the appellate order dated 10.5.2002 passed by the Additional Registrar, Co-operative Society the said order of the Joint Registrar has been upheld.

4. The facts of this case in short are that the petitioner is a Co-operative House Construction Society registered under the Bihar Co-operative Societies Act, 1935. The Society undertook a project for constructing an apartment known as Sapna apartment with a large number of separate flats. The original respondent No. 4 was admitted as an associate member of the Society on 6.7.1988 and he was allotted a flat No. F-1 at a price of Rs. 2.40 lacs to be paid in eight equal instalments by 5.7.1990. The respondent No. 4 was required to pay Rs. 48000/- as a booking amount and Rs. 925/- for purchase of shares, admission fee, etc. The petitioner society also arranged a loan of Rs. 1.10 lacs to respondent No. 4 from the Bihar State Housing Co-operative Federation which was disbursed by 31.3.1990. The respondent No. 4 did not pay either the booking amount or the other instalments within the time fixed as per the terms and conditions laid down which had been signed by him on 6.7.1988 at the time of booking the flat and becoming an associate member. Reminder was also issued to him in that regard. However, the respondent continued to make the payment on his own from time to time and by 16.7.1991 an amount of Rs. 18,150/- alone remained payable as per the admitted accounts. Thereafter on 12.8.1991 a further amount of Rs. 12,150/- was paid. Thus only Rs. 6000/- remained payable.

5. It is the case of the petitioner that under condition No. 9 if there was an increase in the price of the building materials beyond 5% of the price existing on 6.7.1988 then the escalation charges would be leveled upon the same which would be borne by the applicant. It is stated that due to unprecedented rise in the price of building materials the society was compelled to enhance the price of the flats by 21% in terms of Clause ?? of the terms and conditions. In addition to the escalation charges the society also claimed contribution from the allottees for providing firefighting devices as per the Government guidelines and road and site developments with respect to which the managing committee took a decision on 7.7.1991 which was subsequently ratified by the general meeting of the society. By letter dated 16.7.1991 the respondent No. 4 was informed about the same. The respondent, however, raised an issue that the letter had been issued by a person who was not a duly elected Secretary of the society and also raised other issues and sought clarification regarding the escalation of price and the other charges. While replying to the demands, by the letter dated 5.9.1991 to the Secretary of the petitioner society the respondent No. 4 and three other members also submitted a copy of the same along with their complaint to the Registrar, Cooperative Societies. The Registrar, Co-operative Societies directed the District Co-operative Officer, Patna to make an enquiry and submit his report, who submitted enquiry report on 20.6.1992. In the said enquiry the District Co-operative Officer, inter alia, held that the demand for escalation was justified and it is the responsibility of the applicants to make the payment to the society.

6. Earlier on 26.8.1991 the petitioner society issued a final reminder to the respondent No. 4 directing him to make the payments demanded by the letter dated 16.7.1991 within 15 days, on failure of which the society would be constrained to conclude that he is no longer interested in the allotment of flat and cancel his booking and allot the same to other members who are willing to take the same. After the report dated 20.6.1992 of the District Co-operative Officer a letter dated 16.7.1992 was issued by the petitioner society to the original respondent No. 4 stating that since he had not cleared all the dues of the society as mentioned in the letter dated 16.7.1991 the society has decided to cancel his booking and allot the same to another member of the society who may be interested. Aggrieved by the said action by the petitioner society the respondent No. 4 filed a case being Misc. Case No. 40 of 1994 before the Joint Registrar, Co-operative Societies, who after hearing the parties by the aforesaid order dated 30.10.1996 directed as has been stated above. Aggrieved by the said order the petitioner filed Misc.Appeal No. 368 of 1996 before the Additional Registrar, Co-operative Societies, who by his order dated 4.4.2002 has dismissed the appeal affirming the order of the Joint Registrar.

7. Learned Counsel for the petitioner submits that the original respondent No. 4 had violated the terms and conditions laid down by Annexure-1/A under which he was obliged to make payment of the instalments as per the Schedule annexed to the same and further he was also obliged to make payment of escalation charges and on failure to do so the petitioner was liable for cancellation of his allotment. In this regard, he refers to the various terms and conditions therein. It is urged by learned Counsel that at all times the dues of the respondent No. 4 exceeded an amount of Rs. 14,000/- since all his instalments were paid after substantial delay, which is evident from the details of the accounts given in Annexure-2 and thus the society was justified in cancelling his booking. Learned Counsel also submits that in terms of Clause 16 the time for payment of instalments was of the essence of the contract and there was clear provision for levying the escalation charges which had to be borne by the applicant. Thus when demand for escalation charges of Rs. 50,400/- was made which remained unpaid for a long period of time despite reminder given on 16.7.1991 and even after the final warning on 26.8.1991 the society was well within its rights to cancel the booking of the respondent No. 4.

8. In this regard learned Counsel further submits that the levy of escalation charges was found justified by the District Co-operative Officer as also by the Joint Registrar and thus the petitioner society has not at all acted in an unfair manner in levying the same and respondent No. 4 was obliged to make payment in terms of the agreement that he had entered into.

9. Learned Counsel further submits that the proceeding before the Joint Registrar itself was not maintainable in terms of Section 48 of the Co-operative Societies Act as only a dispute between a member and the society or its managing committee could be referred u/s 48 of the Act. It is contended that respondent

No. 4 was only an associate member who cannot be considered in the category of member. In this regard learned Counsel refers to Section 2(f) which defines "member" and Clause (fff) which defines "nominal or associate member". It is submitted that the definition of associate member has been introduced into the Act by the amending Act 39 of 1982, but no corresponding amendment has been made in Section 48 of the Act to include a dispute between an associate member and the society also within the purview of reference to be made to the Registrar. It is thus urged by learned Counsel that the consideration and decision of the dispute by the Joint Registrar and the appeal by the Additional Registrar are both without jurisdiction, there being no provision for dispute being adjudicated u/s 48 of the Act between an associate member and the society by them.

10. Learned Counsel further submits that since there was a specific condition that time was of the essence of the contract, then if the same was not complied then the society definitely had a right to cancel the allotment in favour of the respondent No. 4. In support of the same he relies upon a decision of a Division Bench of this Court in the case of Bibi Jaibunnisa v. Jagdish Pandit and Ors. 1996(2) PLJR 732 in paragraphs 16, 18 and 19 of which, it has been held as follows:

16. It is true that there was no issue framed by the trial court whether the time was of the essence of the contract, but in the written statement, the defendant specifically pleaded that after expiry of the stipulated period in the agreement for obtaining re-conveyance of the suit property from the defendant, the sale of the suit house in favour of defendant became absolute and that the plaintiff neither in the year 1972, nor at any time in January, 1973 approached the defendant, nor offered the balance of consideration money, nor requested the defendant to execute deed of conveyance, nor requested the defendant to execute deed of conveyance. The trial court following the decision in Hasam Nurani Malik (supra) held that since it was an agreement for re-conveyance of the suit property, so the time was of the essence of the contract and the plaintiff failed to act according to the terms of the contract and as such her right to repurchase was lost and, therefore, she could not enforce the contract.

18. In Smt. Indira Kaur and Ors. (supra), neither there was any pleading, nor any issue was framed as to whether time was of the essence of the contract, nor any evidence on the said point was adduced by the parties, whereas in the present case, the defendant pleaded and the parties led evidence on the said point, although no such issue was framed by the trial court and both the courts below concurrently recorded findings of fact that the plaintiff failed to perform her part of the contract within the stipulated period in the agreement. Further in the aforesaid case before the apex court, in the agreement for sale, there was no reference of any transaction of sale, though both the deeds were executed contemporaneously, whereas in the present case, in the agreement (Ext.I) it was specifically recited that on the same day (21.1.1969), the executant of the agreement, namely, Bimli Devi, had purchased the property in question by

registered sale deed for Rs. 4000/- (rupees four thousand). In the said case, the defendant had permitted the plaintiff to continue in possession of the property in question on payment of rent equivalent of about 13.5% interest on the consideration amount, whereas in the present case, although the plaintiff asked for relief of confirmation of possession, or in case, she was deemed to have been dispossessed, then in alternative for recovery of possession, but has failed to prove her possession over the suit house. In the circumstances, in my opinion, the aforesaid case is distinguishable in the facts and circumstances of the present case and the ratio of the said case is not applicable herein.

19. In view of the concurrent finding by the courts below that the plaintiff failed to tender/pay the balance amount of consideration money within the stipulated time, she was not entitled to get a decree for specific performance of contract for sale in question. This appeal stands concluded by the findings of fact.

11. It is also urged by learned Counsel for the petitioner that on facts both the Joint Registrar and the Additional Registrar have held that the petitioner was justified in raising the demand and the respondent No. 4 ought to have paid the same; once it was held that the payment was due then there was no occasion for the Joint Registrar to have set aside the order of cancellation by directing the society to receive the money if paid by the respondent within two months and hand over the flat to him or on nonpayment of the balance amount to refund the money with 15% interest. It is contended that the findings of fact having been found against the respondent No. 4 the application should have simply been dismissed and no further orders should have been passed. It is submitted that under the terms and conditions it is the delay in payment of the instalments that would have attracted the interest of 18% per annum for the period of delay, but in case of default resulting in cancellation of possession only the full amount was to be refunded as per the condition No. 6 without payment of any interest.

12. Learned Counsel for the respondent No. 4, on the other hand, submits that the plea of lack of jurisdiction has no legs to stand upon. It is submitted that the respondent No. 4 had been duly inducted as an associate member and allotted share of Rs. 950/- and thus had become an associate member of the society. It is urged that so far as the rights with regard to the flats are concerned, there is no difference between an associate member and a member and the same terms and conditions applied to both and thus merely because as an associate member the respondent No. 4 did not have a right to participate in the elections of the society that does not mean that the dispute between the respondent No. 4 and the society could not have been raised u/s 48 of the Act before the Joint Registrar.

13. It is further submitted that the petitioner society has treated the respondent like any other member and had even assisted him in getting loan from the Bihar Housing Co-operative Federation whose loans are given only to the members of Cooperative Societies. It is thus urged by learned Counsel for the respondent that in terms of Section 48(1)(e) and Section 48(1)(b) read with Explanation 1 the respondent No. 4 is entitled to raise the dispute. Learned Counsel points out

that even a claim of a registered society for any debt or dues against a non-member has been treated by Explanation 1 as dispute touching business of the society which is capable of being referred to the Registrar and, accordingly, the Joint Registrar has rightly entertained the dispute and the Additional Registrar has rightly not accepted the objection raised by the petitioner in this regard.

14. In support of the aforesaid stand learned Counsel relies upon a decision of a Division Bench of this Court in the case of *Sudarsan Singh and Anr. v. Ram Ekbal Singh and Ors.* 1956 BLJR 627 in the relevant part of paragraph 11 of which, it has been held as follows:

11. Mr. Shambhu Nath's contention that "member" has been defined in Section 2(f) of the Act as follows:

(f) "member" includes a person joining in the application for the registration of society and a person admitted to membership after registration in accordance with the rules and bye-laws of such society;

Relying on the above definition, he contends that as, admittedly, Ramjas Singh is not one of the persons who joined and signed the application for the registration of the Society nor, was he a person admitted to membership after registration in accordance with the rules and bye-laws of such society, Ramjas Singh was in the position of a non-member, and, as such, the Assistant Registrar had no jurisdiction to pass a decree against him also....

The above case, however, has no application to the present case, because it is clear from Section 48(1)(e), and, Explanation (1) to Sub-section (1) of Section 48, of the Act, that even a non-member is now amenable, by virtue of the Bihar Co-operative Societies (Amendment) Act, 1948 (Bihar Act XVI of 1948), to the jurisdiction of the Registrar, Section 48(1)(e) of the Act provides for reference to the Registrar of any dispute touching the business of a registered Society between a "financing bank" authorized under the provisions of Sub-section (1) of Section 16 and a person who is not a member of a registered society. "Financing bank" has been defined in Section 2(c) of the Act as meaning a "registered society" the main object of which is to make advances in cash or kind to other registered societies or to agriculturists who are not members of registered societies or to both such societies and agriculturists. Explanation (1) to Sub-section (1) of Section 48 of the Act also provides that a claim by a registered society for any debt, or demand due to it from a member, non-member, post member or the nominee, heir or legal representative of a deceased member or non-member or from sureties of members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment. Explanation (2) to Sub-section (1) of Section 48 of the Act provides that the question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of

this sub-section. In view of the Explanations (1) and (2) to Sub-section (1) of Section 48 of the Act, it cannot now be said that the Registrar is not empowered to decide the question whether a person is or is not a member of a society. Even if the Registrar comes to the conclusion that a person is not a member of the Society, he, by virtue of Explanation (1) to Sub-section (1) of Section 48 of the Act, has got the power to decide about the ability to pay, or the manner of enforcement of payment, between the Society and such non-member. In the Orissa case, there was no such provision in the Act empowering the Registrar to entertain a dispute between a Society and a non-member. The decision of the Orissa High Court, therefore, can have no application to the present case, where there is a specific provision in the Act itself for reference of a dispute between a Society and a non-member. It may also be mentioned in this connection that Section 57(1) of the Act provides that save in so far as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any dispute required by Section 48 to be referred to the Registrar. The order of the Assistant Registrar and the Registrar under Sub-section (9) of Section 48 of the Act has been declared to be "final", and, Section 57(3) of the Act further provides that such an order, which has been declared "final", shall not be liable to be challenged, set aside, modified, revised, or declared void in any Court, upon merits or upon any ground whatsoever except want of jurisdiction. As no want of jurisdiction has been shown in the present case, the order of the Assistant Registrar and of the Registrar on appeal, which have been declared to be "final" u/s 48(9) of the Act cannot be questioned at all. In my opinion, therefore, the Assistant Registrar, who acted u/s 48(1), Explanation (1), of the Act, had the power to give his decision on the question of liability of Ramjas Singh, petitioner No. 2, to pay the loan. The contention also is, therefore, rejected.

15. The further contention of learned Counsel for the respondent is that the right to cancel the booking was only there if the dues were more than Rs. 14,000/- at any time. According to learned Counsel the said condition No. 7 has to be read with condition No. 8 which provides that delay in payment of instalments will attract 18% interest for the period of delay. It is submitted that although the respondent deposited the instalments with some delay, but that was not the case only with respect to respondent No. 4 but also of a large number of members of the society and the society itself waived its right to charge interest or cancel the allotment for the said reason when it kept on accepting the payments made by the respondent No. 4 from time to time till 12.8.1991. Once the said right has been waived the same cannot be raised at any later stage. It is urged that by 12.8.1991 only an amount of Rs. 6000/- remained due as per the original agreement and even for that a cheque dated 26.9.1991 was sent which was not accepted by the society and thus there was no default in terms of the original terms and conditions.

16. The further submission of learned Counsel is that there was no right to cancel the allotment for non-payment of the enhanced cost as Clause 9 of the terms and conditions did not lay down any such right except providing that the

cost to the extent of change beyond 5% of the existing price of building material will be borne by the applicant. It is thus submitted that only the amount of Rs. 6000/- remained to be paid on 12.8.1991 and the said amount also having been tendered thereafter on 26.9.1991 there was, in fact, no dues in terms of the original agreement and so far as the escalation price is concerned, the same was disputed by the respondent No. 4 before the Registrar, Co-operative Societies who had accordingly ordered for enquiry by the District Co-operative Officer. Hence, according to learned Counsel there was no default with respect to the amount of Rs. 50,400/- since the matter was pending enquiry by the District Cooperative Officer.

17. Learned Counsel submits that the petitioner society has acted in a most arbitrary and unreasonable manner by not issuing demand notice after the District Co-operative Officer had given his report on 20.6.1992 justifying the demand on account of escalation cost and by directly issuing letter of cancellation of allotment within 15 days from the date of report. It is urged that the same shows the malafide intent of the petitioner society to some how or other deprive the respondent No. 4.

18. Learned Counsel justifies the orders passed by the Joint Registrar stating that there was a clear finding that the petitioner has also committed default in not adhering to the terms and conditions. Learned Counsel also challenges the aforesaid terms and conditions as not a binding agreement as the same has not been signed by both the parties and the same was on a plain paper and not a stamp paper and it is not open to the petitioner society to have cancelled the allotment on the basis of any such one-sided terms and conditions on a plain paper.

19. It is further urged by learned Counsel that immediately after the order dated 30.10.1996 of the Joint Registrar, on 8.11.1996 the respondent No. 4 tendered the balance amount of Rs. 66,400/- through cheque sent by courier which was returned by the petitioner society and thus the respondent had complied with the order of the Joint Registrar. It is pointed out by learned Counsel that by an order dated 10.8.1992 the Joint Registrar had stayed the order of cancellation passed by the petitioner society and thus there was no occasion for the society to have allotted the flat to another person and the same has been done in violation of the order passed by the competent authority which also shows to the extent that the petitioner society to go. It is thus urged that the petitioner society has all along acted in a most arbitrary and whimsical manner with the sole aim to deprive the respondent No. 4 for the flat.

20. Learned Counsel also points out that when the cheque has been sent there was no appeal pending filed by the petitioner society and thus non-acceptance of the same was a wilful disobedience of the order passed by the Joint Registrar who is a statutory authority under the Act.

21. Learned Counsel for the State also submits that the Joint Registrar was well

within his rights to entertain the dispute u/s 48 of the Act as an associate member would be equal to a member. In this regard he accepts the submissions made by learned Counsel for the respondent.

22. I have considered the rival submissions of learned Counsels for the parties.

23. So far as the challenge to the maintainability of the dispute before the Joint Registrar and Additional Registrar is concerned, reference may be made to the relevant provisions of Section 48(1)(b) and (e), Explanation 1 to it as also Section 2(f) and (fff) of the Act, which are as follows:

48. Disputes.- (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises-

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased member, whether such sureties are members or non-members and the society, its managing committee or any officer, agent or servant of the society; or

(e) between a financing bank authorized under the provisions of Sub-section (1) of Section 15 and a person who is not a member of a registered society;

such dispute shall be referred to the Registrar:

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of Section 32 or Section 63.

Explanation.- (1) A claim by a registered society for any debt or demand due to it from a member, non-member, past member or the nominee, heir or legal representative of a deceased member or non-member or from sureties or members, last members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

2(f) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the rules and the bye-laws of such society;

(fff) "nominal or associate member" means a member who possesses such privileges or rights of a member of a society, and who is subject only to such liabilities of a member as may be specified by the bye-laws.

24. On a consideration of the aforesaid provisions it is evident that the dispute which may be referred to the Registrar must be one between a member and the society or its managing committee u/s 48(1)(b) of the Act. While the term

"member" has been defined in Clause (f) of Section 2 and a "nominal or associate member" has been separately defined in Clause (fff) of Section 2 which provision was introduced in the year 1982 by an amending Act. There is no specific reference to an associate member in Section 48 of the Act but for that reason it cannot be straightaway held that a nominal or associate member cannot raise a dispute u/s 48 for reference to the Registrar. On looking at the definition of nominal or associate member it is evident that it has been defined to mean a member who possesses such privilege or rights of a member of society or subject to only liabilities of a member as may be prescribed by the bye-laws. Thus, the very definition of a nominal or associate member is in terms of a member possessing limited rights and liabilities. In the said circumstances, a nominal or associate member has also to be held to be a member of the society whenever the content so requires since the definition itself is in terms of a member. In the said circumstances, there was no need for any further inclusion of an associate member in Section 48 of the Act for a dispute to be raised by him before the Registrar. An associate member is also a member of the Co-operative Society albeit a member with limited rights and liabilities that may be prescribed by the bye-laws. Since he is a member he would be entitled to raise a dispute u/s 48 of the Act.

25. Moreover, under Explanation 1 of Section 48(1) of the Act, even a claim by a registered Co-operative Society for any debt or demand due to it from a non-member has been deemed to be a dispute capable of reference, and, thus, the present matter would come within the purview of reference.

26. From the facts of the case also it is evident that respondent No. 4 while being taken in as an associate member was required to subscribe to the shares of the society. Moreover, in terms of condition No. 1 of the terms and conditions relied upon by learned Counsel for the petitioner a flat can only be allotted if the applicant's membership to the society is confirmed by the Board and thus it is to be held that the society has treated the respondent No. 4 as a member for all practical purposes except that being an associate member he would have no right to vote. Moreover, the society itself has assisted the respondent No. 4 in getting the loan of Rs. 1.10 lacs from the Bihar State Housing Co-operative Federation which shows that the society was treating the respondent No. 4 as its member as such loans are not allotted to non-members of the Co-operative society. Thus from the factual aspect also it has to be held that the respondent No. 4 for all practical purposes is a member of the society having exactly the same rights upon allotment of the flat as a full time member and the same liabilities and thus it cannot be held that a member can approach the Registrar of the Co-operative Societies if a dispute arose regarding the flat in question, but an associate member cannot. Such is not borne out from the scheme of the Act also as contended. Thus the challenge to the jurisdiction of the Joint Registrar and the Additional Registrar to consider the dispute and the appeal u/s 48 of the Act must fail and the same is rejected.

27. So far as the challenge to the order of the Joint Registrar is concerned, it is no doubt true that the finding has been given by the Joint Registrar and the Additional Registrar that the society was justified in claiming the escalation charges and raising the demand for firefighting equipments and development of road, etc., but that does not mean that the petitioner society would be justified in cancelling the allotment for non-payment of the same on a bona fide dispute being raised, solely on the basis of the so-called terms and conditions which has only been signed by respondent No. 4 and does not appear to be an agreement properly stamped and signed by both the parties in the presence of witnesses. Even on the terms of the said terms and conditions it is evident that the right to cancel has been referred to in the context of the instalments payable for the flat in question. So far as the right to charge escalation price is concerned, it does not provide for any specific time limit within which it is to be paid and further it does not specifically say that for non-payment of the same also the allotment of flat can be cancelled. It is evident that the respondent has paid the entire amount of Rs. 2.40 lacs except Rs. 6000/- for which a cheque had been sent before the cancellation order was issued, but the same has been refused by the petitioner society. Thus, there was no default on behalf of the respondent No. 4 in making the entire payment under the instalments. This Court agrees with the submissions of learned Counsel for the respondent No. 4 that by accepting the instalments after the due time without charging any interest as provided under condition No. 8, the petitioner had waived its right to charge interest and to cancel the allotment for that reason and thus there would be no occasion to cancel the allotment.

28. As a matter of fact, the ground for cancellation is non-payment of the escalation charge and the other demands raised with respect to which the respondent No. 4 had immediately raised a dispute before the Registrar who had directed an enquiry to be made by the District Co-operative Officer. After the report of the District Co-operative Officer was submitted in favour of the charge of escalation price the petitioner society ought to have raised another demand, but it did not do so except straightaway cancelling the allotment. The same does not appear to be a fair action on the part of the petitioner society. Anyway the order of cancellation had been stayed by the Joint Registrar on 10.8.1992 and thereafter the orders had been passed in favour of the respondent No. 4 and immediately thereafter the respondent No. 4 within nine days of the same tendered the entire amount which was not accepted by the petitioner society. Thus there does not appear any laches on the part of the respondent No. 4 in the matter so far as the payment after the order of the Joint Registrar is concerned.

29. This Court also does not accept the submission of learned Counsel for the petitioner that no such order could have been passed directing handing over of the flat to the respondent No. 4 on making all the balance payments since the escalation price was found justified by the Joint Registrar. In my view, the finding regarding charge of escalation price as justified does not lead to the conclusion that the order for delivery of possession of the flat on payment of the balance

amount could not have been passed by the Joint Registrar. The Joint Registrar has been conferred the power u/s 48(7) of the Act even of the inherent jurisdiction u/s 151 of the CPC and it was expected of him to have passed an order which would be just and fair in the facts and circumstances of the case. The order of cancellation of allotment against a member who has practically paid the entire amount of the flat cannot be easily allowed to stand unless there are good and justified reasons for the same. This Court does not find any sufficient and justified reason for cancellation of the allotment in view of the fact that the entire amount of original consideration had been paid by the respondent No. 4 except Rs. 6000/- and the said amount of Rs. 6000/- had already been tendered much before the cancellation order; only for raising a dispute regarding the further charges on account of escalation and other heads, the respondent No. 4 could not have been deprived of his right to own and possess the flat allotted to him.

30. Moreover, this Court finds that the petitioner has violated the order dated 10.8.1992 passed by the Joint Registrar staying the cancellation order by allotting the flat to another person and has therefore disentitled itself to any relief under the equitable jurisdiction under Article 226 of the Constitution.

31. Thus, in the light of the aforesaid discussions, this Court does not find any merit in the writ application and it is, accordingly, dismissed.