

Bhagwati Cooperative Group vs Delhi Development Authority & Anr. on 7 November, 2024

Author: Dharmesh Sharma

Bench: Dharmesh Sharma

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment reserved on : 05 September 2024
Judgment pronounced on : 07 November 2024
+ W.P. (C) 10033/2020 & CM APPL. 31952/2020, CM APPL.
57714/2023, CM APPL. 67067/2023

BHAGWATI COOPERATIVE GROUP Petitioner
Through: Mr. Bhuvan Mishra, Mr Yash
Maheshwari and Mr. Krishna
Kanhaiya Kumar, Advocates.

versus

D.D.A & ANR. Respondent
Through: Ms. Shobhana Takiar, SC for
DDA with Mr. Kuljeet Singh,
Advocate.
Mr. D. K. Gupta, Advocate.
Mr. Anupam Srivastava, ASC
for GNCTD with Ms. Sarita
Pandey, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
JUDGMENT

1. The petitioner is invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking the issuance of an appropriate writ or directions for the quashing of the impugned order dated 30.09.2020 passed by the respondent No. 1/DDA1, thereby cancelling the lease deed of the petitioner society, and further seeking direction against the respondent No. 2/Registrar of Societies to certify the list of existing genuine members of the petitioner society and initiate the process of allotment of the residential flats to those found eligible.

2. The petitioner society is a Co-operative Group Housing Society duly registered with the office of the Registrar Cooperative Societies vide registration No. 1112(G/H) on 22.12.1983. The DDA being the land-owning agency in the National Capital Territory of Delhi, had originally allotted the Plot No. A1, Sector 22, Dwarka, New Delhi- 1100752, to the petitioner society in the year 2000 but the Lease Deed was executed on 12.02.2015 in its favour, as would be explained hereinafter.

3. The petitioner society has claimed the following reliefs in the instant writ petition:

"a) Issue a Writ in the nature of Certiorari or any other appropriate Writ quashing or setting aside the Order dated 30.09.2020 passed by the Respondent No. 1 cancelling the Lease Deed dated 12.02.2015

b) Issue a Writ in the nature of Mandamus or any other appropriate Writ directing the Respondent No. 2 to verify the existing List of genuine members of the Petitioner Society, within a time bound manner, so that allotment of flats can accordingly done in favour of the respective bonafide members of the Society;"

BRIEF FACTS:

4. There have been several twists and turns in the long history of the petitioner society. It is the case of the petitioner society that on 25.04.1990, the office of respondent No. 2 ordered the petitioner society to be wound up under Section 63 of the Delhi Cooperative Societies Act, 1972, against which the order was assailed and set 1 Delhi Development Authority 2 Plot in question 3 DCS Act aside by the Hon'ble Lieutenant Governor⁴ on 24.08.1990, thereby remanding the matter back to the respondent No. 2 for re-examination, and eventually the winding up order passed by the respondent No. 2 was withdrawn vide order dated 12.06.1997. In the interregnum, the then Secretary Late Sh. R.L Arora in the Managing Committee on 31.03.1997 applied to respondent No. 2 for an increase in the sanctioned membership strength of the petitioner society from 150 members to 300 members, simultaneously supplying a list of 300 members, which was verified by the office of the respondent No. 2 on 27.08.1997 and the Freeze List of 300 members was forwarded to the DDA for allotment of land in the petitioner society. Pursuant to the allotment proposed on 03.06.1998, the petitioner society on 17.07.1998 deposited 35% of the cost, i.e., Rs. 2,75,41,500/- for the land in question, and the land in question was allotted to the petitioner society on 03.02.2000 in a draw of lots.

5. It is the case of the petitioner society that during the years 1999- 2000, Late Sh. R. L. Arora, the then Secretary of the petitioner society, allegedly misappropriated society funds amounting to Rs. 1. 17 Crores, in connivance with the then Treasurer of the society, Smt. Promila Sardar, which amount had been contributed by the members of the petitioner society for the purpose of allotment of land for the society. It is stated that the abovesaid office bearers allegedly utilized the funds to purchase land in Ghaziabad, U.P., on behalf of Lok Hitkari Awas Samiti Ltd., Ghaziabad, U.P., where Late Sh. R. L. 4 Hon'ble LG Arora also held the position of Secretary in addition to his role as Secretary in the petitioner society. It is stated that on 05.04.2000, the petitioner society received a Demand-cum-Allotment Letter from the DDA, demanding approximately Rs. 2.5 Crores from the petitioner society.

6. It is stated that due to insufficient funds, the petitioner society approached D.C.H.F.C5 and secured a bridge loan of Rs. 2.20 Crores to make the payment to the DDA. Consequently, a tripartite agreement was executed on 30.05.2000 between the petitioner society, DDA, and D.C.H.F.C. In 2001, upon learning of the misappropriation by the then Secretary and Treasurer, the then President of the Society, Mr. Ashok Kumar Chauhan, lodged complaints with the respondent No. 2 and the police authorities. In 2002, Late Sh. R. L. Arora, then Secretary of the Society, provided an

undertaking over a Stamp paper of Rs.50/-, pledging to repay the misappropriated amount to the petitioner society. However, as Late Sh. R. L. Arora failed to fulfil his commitment, the petitioner society filed an Arbitration Case against him for fund misappropriation and eventually the learned Arbitrator appointed by respondent No. 2 passed an Award dated 03.09.2002, thereby granting an award of Rs. 2,50,43,982/- with interest in favour of the petitioner society against Late Sh. R.L. Arora and his associates.

7. The aforesaid facts have been narrated to indicate as to the manner in which the affairs of the society had been managed by the then Members of the Managing Committee till about year 2002. It is stated that on 14.02.2003, society member Ms. Harpreet Chandok, aggrieved by the actions of the then Managing Committee, filed a writ petition⁶ before this Court and lodged a complaint with police, resulting in FIR No. 25/2003 dated 14.02.2003 at P.S. Kapashera, Delhi, against Dr. Ashok Chauhan, Late Sh. R.L. Arora, and their associates. Meanwhile, following complaints of mismanagement and fund misappropriation, the society was superseded by respondent No. 2, under Section 32(1) of the DCS Act on 17.09.2002, and Shri R. Narayanan was appointed as Administrator. Though this order was initially stayed by the Delhi Cooperative Tribunal⁷, the stay was vacated on 22.03.2003, allowing Administrator R. Narayanan to take possession of the society's records on 25.03.2003 and oversee its affairs as the respondent No.2's nominee.

8. There was a new twist to the story when in the year 2004, the Cooperative Societies Scam was brought into notice of this court by way of a writ petition titled as "Yogiraj Krishna Cooperative Society v. DDA⁸" and the CBI was directed to investigate into affairs of the defunct Cooperative Societies, which were sought to be revived based on the bogus membership and fabricated documents. However, as would be explained later on, the petitioner society was not covered in such investigation, which fact was observed vide order dated 09.07.2008 in W.P. (C) No.8726/2005.

Delhi Co-operative Housing Finance Corporation W.P.(C) 1108/2003 DCT W.P. (C) 10066/2004

9. In the meanwhile, another member of the petitioner society filed a writ petition⁹ before this Court, wherein vide order dated 26.03.2004, the following directions were passed: -

"...Administrator of the Societies is present in Court. We direct the Administrator to conduct the elections of the society. He says that list of the members has to be verified by the Registrar, Cooperative Societies. We find that there is a list of members filed along with the affidavit by the Petitioner. Mr. Munjal says that he has no objection with the list. Let the list which is a part of the record of this Court be sent to the Registrar, Cooperative Societies and Registrar, Cooperative Societies will verify the list within a period of four weeks. A direction is also issued to Registrar, Cooperative Societies to appoint the election officer. The administrator will ensure free and fair election on the society. Let election be completed within a period of two months from today. We make it clear that we allow the administrator to operate the accounts of the society. ..." (Emphasis Supplied)

10. In compliance with the aforesaid order, respondent No. 2 prepared a list of 300 society members after verifying relevant documents. This list, signed by the Administrator and two Assistant Registrars, was submitted to the Court. On 13.06.2004, elections were conducted in the society by an Election Officer appointed by respondent No. 2 based on the verified list prepared by the committee constituted by the Court. However, following the election, on 25.06.2004, a complaint was filed by one Deepak Khanna against the petitioner society, prompting an inquiry by respondent No. 2. During this inquiry, respondent No. 2 vide letter dated 08.11.2004, directed the petitioner society to refrain from enrolling members in violation of Rule 24 (2) of the DCS Act and further to suspend the contract with M/s Best Buildwell (P) Ltd., for construction besides a direction to 9 W.P.(C) 2199/2003 avoid major financial decisions until the inquiry findings were submitted.

11. On being aggrieved by the said direction, the petitioner society approached this Court by way of writ petition No. 8726/2005 and vide order dated 20.05.2008, the following directions were passed: -

"We, therefore direct the RCS to personally look into the present case of Bhagwati Cooperative Group Housing Society and submit his Report as regards the prayer for being permitted to commence construction. We cannot also be unmindful of the fact that the delay in construction is entailing increased costs for members or the future allottees and they cannot be made to suffer for misdeeds of some..."

12. Suffice to state that the aforesaid writ petition was disposed of on 27.09.2010 with an observation that should the Registrar have any grievance with the new Managing Committee, the DDA may take action in accordance with law, and it is pertinent to note that the order dated 27.09.2010 was issued post the filing of the chargesheet on 31.12.2008 in the CBI matter. It is stated that aforesaid turn of events confirms that only the prior Managing Committee was found culpable, and there were no allegations as against the new Managing Committee or society members as on that date.

13. It is stated that due to the siphoning of funds by the former Secretary, Late Sh. R.L. Arora, and the stay order dated 08.11.2004 issued by the respondent No. 2, the petitioner society was unable to continue with the construction work. Consequently, members withheld contributions, leading the petitioner society to default on loan repayments to the D.C.H.F.C, and thus, the latter, initiated arbitration for recovery, resulting in an award against the Society and freezing of its account. Aggrieved thereof, the petitioner society filed Writ Petition (C) No. 9020/2006 and vide order dated 05.10.2010, this Court directed the petitioner society to deposit Rs. 25,00,000/- with D.C.H.F.C to demonstrate their good faith. The petitioner society complied on 11.10.2010. Subsequently, recognizing the petitioner society's intent to clear dues, this Court, by order dated 08.11.2010, waived the interest and directed repayment without penalty in 11 equal monthly instalments.

14. In the said backdrop, upon completion of requisite formalities and receipt of payment for the land in question, a Lease Deed was executed by the DDA in favour of the petitioner society on

12.02.2015. Subsequently, construction commenced on 300 dwelling units for members and 107 units for the Economically Weaker Section (EWS). With the benefit of increased FAR¹⁰, the petitioner society submitted revised sanction plans to the DDA in 2011 and also applied for an extension of time¹¹ for the project completion, paying Rs. 5 Crores. The revised sanction plan was approved on 17.07.2015, with an extension of time granted until 16.07.2020, and it is stated that thereafter the construction proceeded in full swing.

15. But the decisive twist in the sordid saga arose when the trial in the CBI matter was concluded in 2017 and vide judgment dated 27.10.2017/31.10.2017¹² passed by the learned Special Judge, it was held that except two accused persons, all other accused persons ¹³, who were former members of the Managing Committee were found guilty ¹⁰ Floor Area Ratio ¹¹ EOT ¹² CBI-08/2016 ¹³ Ashok Kr. Chauhan, P.K. Sharma, Vijay Singh Lunia and A. K. Jain and sentenced for different terms vide order on sentence dated 31.10.2017. It would be apposite to reproduce the relevant portion below: -

"It has been proved on record that Public Servant A- 1014, along with A- 115, 316, 517 & 718 have conspired together to achieve the common object of getting approved the freeze list of 300 members of Bhagwati CGHS on the basis of false and forged documents for getting allotment of land to the society from the DDA at a subsidized rate."

16. It is, therefore, stated that only the four accused individuals from the former Managing Committee were found guilty of the offenses under investigation by the CBI, and that no other members from the then-freeze list have been convicted. Furthermore, the petitioner society has been enrolling new members over the past two decades to replace expelled or resigned members. It is stated that currently, the majority of the 300 members are new, and all of whom are bona fide members and bear no culpability for the past actions of the earlier members or office bearers.

17. It is stated that, however, respondent No. 2 on 18.12.2017 issued a SCN¹⁹ to the petitioner society calling upon it to explain why the freeze strength of the petitioner society should not be reduced to 150 from 300. The petitioner society submitted a reply dated 09.01.2018 to the SCN, elucidating the pertinent facts and findings to respondent No. 2, emphasizing that the learned Special Judge, CBI had not issued any directions for action in this matter inter alia also ¹⁴ Karamveer Singh - Dealing Assistant ¹⁵ Ashok Kr. Chauhan - President ¹⁶ P.K. Sharma - Member of the Society ¹⁷ Vijay Singh Lunia - Member of the society ¹⁸ A.K. Jain - Member of the Society bringing to the fore that the construction within the Society was progressing rapidly and that approximately Rs. 300 Crores of members' funds had already been invested in the project, and thus, it was canvassed that any reduction in the freeze strength of the members would jeopardize the Society's stability, potentially leading to multiple litigations and the loss of members' hard-earned money and investments.

18. It appears that prior to issuing the SCN dated 18.12.2017 to the Society, respondent No. 2's office sent a letter dated 14.12.2017 to the DDA, requesting appropriate action in the light of the judgment delivered by the learned Special Judge, CBI, on 31.10.2017. It is noteworthy that the Assistant Registrar also issued a letter on the same date to the Society, stating that, in accordance with the

CBI Court's judgment, the office of respondent No. 2 has stayed the enrolment of new members.

19. At this juncture comes another twist, and it is pertinent to note that although the construction had reached 14 floors, when on 30.04.2018, the petitioner society received a letter from the Airport Authority of India²⁰ imposing a height restriction of 253.02 meters. The petitioner society subsequently sought reconsideration from AAI, citing financial distress arising from this miscalculation by the Survey of India, which threatened their solvency. Although AAI expressed some sympathy, it declined the request due to potential threats to aircraft operations, advising the petitioner society to negotiate a 19 Show Cause Notice 20 AAI solution with its members. This height reduction resulted in financial losses for the petitioner society, as four towers had already attained maximum height and another four exceeded the newly prescribed limit. Following this restriction, the DDA issued an order on 17.09.2018 to cease construction, labelling it illegal. In response, the petitioner society submitted a representation to the DDA, clarifying that it had revised its layout plan, which was approved by the General Body Meeting. Consequently, the DDA rescinded its stop-work order via letter dated 12.10.2018.

20. Subsequently, the respondent No. 2 issued an order dated 04.10.2018, again staying the enrollment of new members based on the Judgment dated 27.10.2017/31.10.2017 by the learned Special Judge, CBI. It is the case of the petitioner society that the inability to enrol new members to replace the expelled or individuals who have resigned from the membership, has severely disrupted the petitioner society's cash flow, leading to a cessation of construction by the contractor and entailing substantial escalation costs, along with government taxes and arrears on existing members. Furthermore, the office of respondent No. 2, has failed to take any steps to verify the Society's membership list.

21. Conversely, over one and a half years subsequent to the letter dated 14.12.2017 issued by Respondent No. 2, when the DDA issued a Show Cause Notice on 24.05.2019, inquiring as to why the lease/allotment of the plot allocated to the petitioner society should not be revoked. In response, the petitioner society submitted a comprehensive reply on 04.06.2019. However, as no further communication was received from the DDA, the petitioner society subsequently filed additional replies on 17.07.2019, 26.09.2019, 03.10.2019, and 16.03.2020. In these submissions, the petitioner society elucidated pertinent facts and legal arguments, contending that the proposed cancellation of the lease/allotment would not only be unlawful but would also inflict substantial harm upon the bona fide members of the society, particularly those who have invested their hard-earned funds in the construction, which is in the final stages of completion. Hence, this petition is filed the impugned action of respondent no.1 cancelling the lease of the land allotted to the petitioner vide the order dated 30.09.2020.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

22. Learned counsel for the petitioner society urged that the DDA overlooks the established legal principle that a "Society is distinct from its members". It is urged that merely because a few former office bearers and members of the society albeit four in number acted dishonestly, in collusion with an official of respondent No. 2

during the membership verification process, does not invalidate the Lease Deed allotment to the petitioner society, pointing out that the petitioner society itself has faced no allegations of fraud or wrongdoing related to the land allotment, unlike other societies investigated by the CBI in connection with the Cooperative Societies scam.

23. Learned counsel for the petitioner society urged that the issue of a fraudulently forwarded membership list became irrelevant once the new Managing Committee, under the supervision of respondent No. 2, took charge, and thus, there was no mis-statement in obtaining the Lease Deed in 2015. It is further argued that even the CBI did not seek cancellation of the Lease Deed; and rather the CBI agreed that only those society members implicated by its investigation would be ineligible for flat allotment. Learned counsel for the petitioner society contends that the DDA failed to recognize that respondent No. 2 has acted with a pre-conceived bias and has not adhered to the relevant court orders.

24. Learned Counsel for the petitioner society further urged that since the petitioner society is unable to enrol new members due to respondent No. 2's order dated 04.01.2018, it has negatively impacted the cash flow, resulting in ongoing burdens for the society, such as government dues and liabilities with respect to the existing, expelled, and resigned members, as well as the contractors, which has led to additional litigation under RERA²¹. It is urged that these financial burdens would ultimately be borne by the bonafide members. It was vehemently urged that the construction is nearly complete, with approximately Rs. 315 Crores already invested by society members, many of whom are senior citizens, who have invested their hard-

earned money and retirement benefits to secure their dream dwelling units.

25. Per contra, the learned counsel for the respondent No. 2 has urged that the Lease Deed was cancelled in terms of Clause III, which permits cancellation if the deed was obtained through suppression, mis-statement, misrepresentation or fraud. It is argued that the impugned cancellation order dated 30.09.2020 is based on the judgment dated 27.10.2017/31.10.2017 by the learned Special Judge, CBI, which found that the petitioner society, in collusion with an employee of respondent No.2, dishonestly and fraudulently secured approval for 300 memberships using forged documents, resulting in the allotment by the DDA. It is vehemently contended that the DDA's decision to cancel the allotment is justified under Clause III of the lease deed, as the judgment dated 27.10.2017/31.10.2017 confirms that the membership list submitted to the DDA was compromised by fraud and misrepresentation, invalidating the basis for the allotment.

26. Learned counsel for respondent No. 2 has urged that since the judgment of the learned Special Judge, CBI, and the subsequent decision by DDA are based on findings that the petitioner society's membership was not genuine-an issue within the jurisdiction of respondent No. 2-the present writ petition raises the question of whether land allotment to a Cooperative Group Housing Society

22 can be sustained despite patent evidence of collusion between the society and respondent No. 2's office in verifying membership since the verification was a prerequisite for the recommendation made to the DDA for the land allotment. It is argued that the apparent collusion severely undermines the recommendation process by respondent No. 2 and the DDA's resulting land allotment to the petitioner society.

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27. It is further urged that the CBI Court in its judgment dated 27.10.2017/31.10.2017 categorically concluded that the membership list of the petitioner society, which was submitted to the DDA and led to the land allotment, was based on forged and fabricated documents. The investigation initiated by this Court in Yogi Raj Krishna (supra) has thus revealed that the land allotment to the petitioner society is tainted by fraud. In fact, the learned Special Judge, CBI, expressly found that the DDA allotted land to the petitioner society on the basis of a fraudulent membership list and the relevant portion of the judgment is reproduced below: -

"37. Thus, in view of the above discussion & observation and having regard to the fact and circumstances of the present case and in view of the evidence and material on record, the prosecution/CBI has proved its case beyond reasonable doubt against the accused persons: A1, A3, A5, A7 and A10 that they had entered into a criminal conspiracy with the object to cheat the office of RCS and DDA by dishonestly and fraudulently getting approved the freeze list of 300 members of Bhagwati CGHS on the basis of false and forged documents and in pursuance thereof, A10 while working as Dealing Assistant in the office of RCS, Delhi processed the file of Bhagwati CGHS for approval of freeze list of 300 members and put up false and fabricated notings and vide his said false notes and by ignoring the irregularities in the enrollment of members and in the absence of audit report on record, A10 recommended for the enhancement of membership strength of the Bhagwati CGHS from 150 to 300 without any verification of the documents of the said society. A10 also knowingly and dishonestly did not recommend for physical verification/field inspection of the members of the society, whose names were included in the freeze list, although the members mentioned in the freeze list were in fact either nonexistent or were falsely mentioned and thus A10 and fabricated list and in pursuance to the fraudulent approval of freeze list of 300 members, the land was allotted by the DDA to the Bhagwati CGHS at subsidized rates. Further, A1, A3, A5 & A7, in furtherance of the abovesaid conspiracy, prepared and signed false records/proceeding registers etc. of the management committee of Bhagwati CGHS showing resignation and enrollment of large number of members, who either denied having applied for the membership of the society or denied having resigned from the membership of the said society and the signatures/writing of these accused persons on the forged documents/record have been confirmed by the GEQD."

(emphasis supplied)

28. It is further submitted that the judgment dated 27.10.2017/31.10.2017 confirms that the petitioner society obtained the land fraudulently, as evidenced by the identical nature of the membership list submitted by respondent No. 2 to the DDA--which the learned Special Judge found fraudulent--and the initial list submitted by the petitioner society to respondent No. 2 via letter dated 28.07.2020. The petitioner society, in the same letter, also admitted that it had no records for the members on this list, clearly indicating that the list used to secure land allotment was not genuine. Additionally, it is pointed out that a comparison between this original list and the current list of members reveals that only 29 members remain the same, with at least 271 new members replaced without adhering to the procedure mandated by the DCS Act and DCS Rules, as the petitioner society admits it has no records of these membership changes.

29. Lastly, it is urged by the learned counsel for the respondent No. 2 that the petitioner society's claim that its member list is finalised is misplaced since the petitioner society has consistently failed to provide records to establish the legality of its membership. In fact, the judgment dated 27.10.2017/31.10.2017, has observed that many members were falsely recorded as enrolled or resigned from the petitioner society. It is therefore urged that consequently the respondent No. 2 has barred the petitioner from enrolling new members and requested complete membership records for verification via a letter dated 04.10.2018.

ANALYSIS AND DECISION

30. I have bestowed my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and I have meticulously perused the record.

31. First things first, it would be apposite to reproduce the impugned order dated 30.09.2020 passed by the respondent no.1/DDA which reads as under: -

"DELHI DEVELOPMENT AUTHORITY GROUP HOUSING SOCIETY VIKAS
SADAN, INA, NEW DELHI-110023 No.7(14) 1998/GH/DDA/1986
Dated:30.09.2020 To Hony. Secy./President Bhagwati CGHS Ltd.

Plot No.1A, Sector-22, Dwarka, New Delhi Subject: Cancellation of Lease Deed in
respect of Plot No.1A, Sector- 22, Dwarka, New Delhi, executed in favour of The
Bhagwati C.G.H.S.Ltd.

Sir/Madam, WHEREAS Plot No.1A, Sector-22, Dwarka, New Delhi admeasuring
total area 17001.00 Sqm was allotted to the Society in a draw of lot held on
03.02.2000, on the receipt of a final list of members of the Bhagwati CGHS Ltd.
forwarded by the office of RCS vide letter dt. 27.08.97. Demand cum allotment letter
was issued on 05.04.2000. [The main allotment file was seized by CBI]. The lease
deed was also executed by DDA on 12.02.2015 in favour of the Society.

WHEREAS a letter dt. 14.12.2017 received from Asstt. Registrar (H/Section), office of
the Registrar Co-operative Societies, Govt. of NCT of Delhi along with Judgment

dt.31.10.2017 Of Hon'ble Spl. judge of CBI Court, Rohini in Case No.CBI-08/2016 titled as CBI vs. A.K. Chauhan & Ors. (in respect of Bhagwati CGHS Ltd, Plot No.1-A, Sector-22, Dwarka, New Delhi-10078). A Show Cause Notice was issued by this office vide letter dt.24.05.2019 to the Bhagwati CGHS Ltd with a copy thereof to Asst. Registrar, RCS. The society submitted its reply through President, Bhagwati CGHS Ltd which has been found evasive/not satisfactory.

AND WHEREAS from perusal of the Judgment dated 31.10.2017 it was observed that the Hon'ble Court has held that the list of 300 members of the Society was approved by RCS and the same was forwarded to DDA for allotment of land. The accused in the case including officer bearers of the RCS by dishonestly and fraudulently got approved the freeze list of 300 members of Bhagwati CGHS Ltd on the basis of false and forged documents. They forwarded the proceeding register of the Society and have dishonestly shown therein the enrollment as well as the resignation of various fake members although the said members were non-existent. CBI has proved its case beyond reasonable doubt against the accused persons who entered into criminal conspiracy with the object to cheat the office of RCA and DDA by dishonestly and fraudulently getting approved the freeze list of 300 members of Bhagwati CGHS Ltd on the basis of false and forged documents.

AND WHEREAS you have violated the terms and conditions mentioned in Clause III at page 5 of the lease deed provides that "xxxxxxxxxxxx or if it is discovered that this lease deed or any conveyance deed has been obtained by Suppression of any fact or by any mis-statement, mis-representation or fraud if there shall have been in the opinion of the lessor, whose decision shall be final, any breach by the lessee or by any person claiming through or under it of any of the covenants or condition herein contain and on its part be observed or performed, then and in any such cases it shall be lawful for the lessor, notwithstanding the waiver of any cause or right of re-entry upon and take position of the plot or any of the sub, leased plot and the building and the fixtures there on in respect of which any sum or rent has been in arrears, or such suppression, mistatement, mis-representation or fraud or breech has been committed and there upon this demise and everything herein contained shall cease and determined in respect of the plot so re- entered upon the lisse and to the allottee(s) shall not be entitles to any competition whatsoever nor to the return or any premium paid."

Now the competent Authority has determined the lease deed dated 12.02.2015 of plot No. 1A, section-22 Dwarka New Delhi admeasuring total area 17001.00 sqm. You are therefore directed to hand over the peaceful vacant possession of the aforesaid plot, immediately.

Asstt. Director(GH) Copy to: omitted as not relevant

32. A careful perusal of the aforesaid order would show that the cancellation of lease is primarily based on the judgment delivered in the CBI matter dated 27.10.2017/31.10.2017 and information

regarding which evidently come through respondent No.2. In order to examine the legality of the aforesaid order, it would be relevant to refer to the brief history of the various rounds of litigation and juridical orders passed with regard to the petitioner society and lay down some broad admitted facts. Evidently, a final list comprising of 300 members of the society had been submitted to the DDA by Mr. J. S. Jolly, Assistant Registrar dated 27.08.1997 and the DDA proposed the allotment of land measuring 21500 sq. meters. to the petitioner society vide letter dated 03.06.1998 subject to certain conditions under the Group Housing Scheme in Dwarka (Paponkala) Phase I and II/Northern Resident Scheme. The draw of lots took place on 03.02.2000 and the land in question was allotted. At the cost of repetition, pursuant to the directions of this Court, the CBI was directed to investigate into the affairs of various cooperative societies in the matter of allotment of land with ominous bogus membership done allegedly in collusion and in conspiracy with the officials of the DDA.

33. In the said backdrop, W.P.(C) 2199/2003 titled Pawan Rastogi v. RCS came to be filed in respect of the petitioner society and on 26.03.2004, the following order was passed: -

"Administrator of Societies in person.

Administrator of the Societies is present in Court. We direct the Administrator to conduct the elections of the society. He says that list of the members has to be verified by the Registrar, Cooperative Societies. We find that there a list of members filed along with the affidavit by the petitioner. Mr. Munjal says that he has no objection with the list. Let the list which is a part of the record of this Court be sent to the Registrar, Cooperative Societies will verify the list within a period of four weeks. A direction is also issued to Registrar, Cooperative Societies to appoint the election officer. The administrator will ensure free and fair election of the society. Let election be completed within a period of two months from today. We make it clear that we allow the Administrator to operate the accounts of the society. Renotify on 30.7.2004.

Copy of the order be given Dasti to counsel for the parties under the signature of the Court Master." {Bold portions emphasized}

34. While the verification of the list of the members submitted was underway, another direction came to be passed in the WP(C) No. 8726/2005 on 20.05.2008 to the following effect: -

"We have heard the Registrar Cooperative Societies Mr. Vohra, who is present in Court. The Registrar has outlined to us several measures which he is taking to break the impasse and sort out numerous problems that have arisen out of what may be described as the 'Cooperative Societies Scam' and their investigations. Mr. Tandon has also handed over in Court a copy of the affidavit which we have perused. Copy has been returned after perusal. Let the original be filed on record.

On perusal of the copy of affidavit, we find that the contents are rather superficial and border on the periphery. We, therefore, direct the Registrar, Cooperative Societies to personally look into the present case of Bhagwati Cooperative Group Housing Society and submit his report as regards the prayer for being permitted to commence construction. We cannot also be unmindful of the fact that delay in construction is entailing increased costs for members or the future allottees and they cannot be made to suffer for misdeeds of some. Mr. Vohra, who happens to a member of the Committee under the Chairmanship of Justice J.P. Singh, states that the Committee is working earnestly and they hope to stick to the schedule. As far as this case is concerned, a report will be submitted by Mr. Vohra within two weeks.

Renotify on 4th July, 2008." {Bold portions emphasized}

35. Evidently, the affairs of the petitioner society were also scanned during investigation by the CBI and in the same writ along with W.P.(C) No. 9020/2006, an order was passed on 04.07.2008 which reads as under: -

"Both the counsel appearing in these writ petitions on behalf of petitioners urge that the Court should grant permission for carrying out the construction in view of escalating construction costs and to safeguard and preserve the interests of the Society and its members. It is not disputed before us that in this case the Managing Committee is in place pursuant to the elections held under the supervision of the Registrar of Cooperative Society and the Administrator who had been appointed. We would like to be informed by the Registrar of Cooperative Society whether any order of winding up was passed and, if so, whether any appeal was preferred against it and the result thereof. In case the Society did not suffer from any winding up order then it would not fall in the category of defunct societies but would be an existing society and then the question of malpractice or fraud, as is alleged, which is under the investigation of CBI, has to be considered in that light. We would also like to have from the Registrar of Cooperative Societies its input on the safeguards or conditions that should be imposed in case permission for construction is to be given to the Society especially in view of outstanding loan of the Delhi Cooperative Housing Finance Corporation and the liability to be met in respect of members who have resigned. The list of dates filed by the petitioner with the writ petition does not deal with or enlighten us on the aspect as noted above. Petitioner would, therefore, file a comprehensive list of dates touching upon the question of the proceedings of winding up, if any, and the results thereof. In the meanwhile, a fresh report of the CBI be also placed on record.

A direction in this regard be issued to Mr. Harish Gulati, counsel for the CBI.

Renotify on 8th July, 2008.

Copy of the order be given dasti under the signatures of Court Master." {bold portions emphasized}

36. Further, in W.P.(C) No. 8726/2005, another order was passed on 09.07.2008 to the following effect: -

Vide our orders dated 4.7.2008 and 8.7.2008 based on the submissions made by learned counsel for Registrar Cooperative Societies and the affidavit filed, we had observed that the Society's case would be a case of an existing society and the question with regard to the fraud played would have to be in the conspectus of enrolment of memberships and their approvals and ineligible persons being made members and with regard to the award of contract and the resulted diversion of funds. Copies of orders dated 4.7.2008 and 8.7.2008 be made available to Mr. Harish Gulati so that necessary action is taken. Learned counsel for Registrar Cooperative Societies and CBI would make available their inputs in compliance with our orders dated 4.7.2008 and 8.7.2008.

Renotify on 5th August, 2008." {bold portions emphasized}

37. At this juncture, it may be reiterated that although the petitioner society had earlier been ordered to be wound up under Section 63 of the DCS Act on 25.04.1990, the said order was set aside by the Hon'ble LG on 24.08.1990 and eventually, the winding up order was withdrawn by the respondent no.2 vide order dated 12.06.1997. It is also pertinent to mention that the aforesaid direction came to be passed in the context of the request by the petitioner society to the respondent No.2 to allow it to increase the sanctioned membership strength from 150 to 300 members and at the cost of the petition. The aforesaid orders were passed in the background that there were roadblocks since the erstwhile Secretary of the petitioner society had allegedly siphoned off the funds of the society and the society was constrained to borrow loan from the D.C.H.F.C.L.

38. To sum up the history of the legal proceedings, it is manifest that although initially the present petitioner society was not under the radar of the CBI, however, at some stage, the investigation started with regard to the list of the members that was submitted through the respondent No.2 on 27.08.1997 pursuant to directions of this Court but at the same time, it was observed vide order dated 04.07.2008 that there was a new Managing Committee in place pursuant to the elections held under the supervision of the Registrar of Societies through the Administrator, and in that view of the matter, the respondent No. 2 was called upon to ensure that appropriate measures are taken to consider granting permission for construction to the society subject to certain safeguards or conditions, and for which the CBI report was called that came to be submitted on 11.08.2008 in W.P. (C) No.8726/2005 which led to the passing of the following order:-

"The sealed cover containing the status report filed by CBI was opened in Court. Mr. Harish Gulati, learned counsel for CBI drew our attention to relevant paras of the report. The same have been perused by us. Mr. Gulati submits that CBI is conscious of the stand taken by the RCS and the submissions made by Mr. V.K. Tandon that the present society would not fall under the category of wound up or defunct societies since the appeal preferred against the winding up order had been allowed by the Lieutenant Governor. The Lieutenant Governor had set aside the impugned order and remanded the case for fresh consideration. Accordingly, the conspectus and focus of investigation would be the fraud played in the enrolment of members, their verification, etc. as also observed in orders dated 04.07.2008 and 08.07.2008. In the instant case it was from 12.6.1997, the office of the Registrar began the exercise of determining the membership and freeze strength. Mr. Gulati assures that CBI is in the process of completing the investigation. S.P. CBI and the Investigating Officer are present ad they say they would need about 2 weeks' time to complete the process of investigation and seeking sanction for filing of the report under Section 173.

The S.P. CBI, who is present today, informed the court that it has been possible to contact only about 100 or so members out of 828 members of society. During the hearing a suggestion has been mooted that pending investigation by the CBI, the process of verification of the members could be commenced by the Society with the RCS. Mr. Sandeep Kumar, learned counsel for the petitioner states that the society would abide by the directions of the RCS and will follow Schedule VII of Delhi Cooperative Societies Rules, 2007. He further states that any member who is found to be implicated as a result of the CBI investigation, subject to such directions as may be given by the court, would not be eligible for allotment of a flat to be constructed. Mr. Gulati on instructions from S.P. CBI states that they have no objection to this course being followed. List the matter for directions to be given only on this aspect on 18.8.2008. The prayer with regard to permission for construction can be considered only after receiving the latest report from the CBI and further clearance from the Registrar of Cooperative Societies. The CBI report be sealed in two separate covers and be kept in both parts.

Copy of the order be given dasti to the counsel for RCS and CBI under the signatures of Court Master."

{bold portions emphasized}

39. However, at the cost of repetition, the new management also faced a setback when it received a letter dated 08.11.2014, whereby the respondent No.2 issued a direction not to enroll any member violating the Rule 23; and keep in abeyance the contract awarded to M/s Best Buildwell (P) Ltd. engaged for the construction at the site till the findings of the enquiry officer is received and restrained the petitioner society not to take any major financial decision, upon which W.P. (C) 23 Rule 24(2) of the DCS Act No.8726/2005 came to be disposed of vide order dated 27.09.2010 to the following effect:-

The petitioner society approach this court aggrieved by the letter dated 8.11.2004 issued by the Registrar Cooperative Society issuing the following directions:-

1. Not to enroll any member violating the rule 24(2) of the DCS Act, 1972.
2. Keep in abeyance the contract order awarded to M/s Best Buildwell (P) Ltd. till the time we receive the findings of the enquiry officer report and any decision taken by us in this regards.
3. You are further directed not to take any major financial decision and also not make payments except for salary of staff and day to day expenditure till the enquiry is completed and decision taken thereon ?

Learned counsel for the petitioner states that after due verification of list of members, fresh elections have been held on 19.6.2009 through the Returning Officer appointed by the Registrar, Cooperative Society. He submits that the enquiry report refers to para 2 aforesaid has also been submitted and there are no adverse findings against the petitioner.

In our considered view, much water has flown since the original grievance was made by the petitioner society and fresh elections are stated to have been held under supervision of the Returning Officer appointed by the Registrar and the new managing committee is running the affairs of the society. If the Registrar has any fresh grievance against the next managing committee, it is always open to the respondent to take action in accordance with law.

The grievance of the petitioner therefore as such really does not survive as on date.

The writ petition is accordingly stands disposed of.

The interim application does not survive for consideration and is disposed of.

Dasti to learned counsel for the petitioner."

{bold portions emphasized}

40. Subsequent to the aforesaid direction, the new Managing Committee of the petitioner society was accorded sanction for construction to be completed from 17.07.2015 to 16.07.2020 in terms of Section 12 of the Delhi Development Act, 1957, but as indicated hereinbefore came the judgment in criminal proceedings titled CBI v. A K Chauhan & Ors. (Bhagwati CGHS)²⁴. The investigation was carried out pursuant to the direction in W.P. (C) No.2199/2003, whereby a direction was issued to the respondent No.2 to verify the list of the members of the petitioner society for conducting of the election upon which a committee consisting of Mr. J S Sharma and Mr. Yogi Raj, Assistant Registrars submitted a report in 2004 recommending the list of 300 members as submitted by the society was verified and found to be genuine. Although, the list contained the name of Sh. G. S. Kalra shown as the member of the society whereas he had died on 03.08.1999.

41. The aforesaid criminal case was against the office bearers and the members of the petitioner society including the officials of the respondent No.2 and as many as 10 co-accused persons, who were prosecuted for committing offences under Section 120B read with Section 420/468/471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act besides the aforesaid substantive offences slapped individually. During the course of the proceedings, two of the co-accused persons died while one was discharged and the trial proceeded against seven individuals' sans the petitioner society.

42. Eventually, on appreciation of the evidence led on the record, the learned Special Judge, CBI concluded as under: -

"33. Hence, in view of the above and in view of the material and evidence on record, the prosecution/CBI has been able to establish that accused-Ashok Kumar Chauhan (A-1), Piyush Kumar Sharma (A-3), Vijay Singh Lunia (A-5) & Akshay Kumar Jain (A-7) in connivance with accused public servant i.e. Karamveer Singh (A-

10) entered into a criminal conspiracy to cheat the office of RCS and DDA by dishonestly and fraudulently getting approved the freeze list of 300 members of Bhagwati CGHS on the basis of false and forged documents. Further, it has also been proved on record that accused- Karamveer Singh (A-10), while working as Dealing Assistant in the RCS Office, Delhi processed the file of Bhagwati CGHS for approval of freeze list of 300 members and put up false and fabricated notings in furtherance of criminal conspiracy and vide his false notes and by ignoring the irregularities in the enrollment of members and in the absence of audit report on record, A10 recommended for the enhancement of the membership strength of the Bhagwati CGHS from 150 to 300 without any verification of the documents of the said society. Accused Karamveer Singh (A10) knowingly and dishonestly did not recommend for physical verification/field inspection of the members of the society whose names were included in the freeze list, although the members mentioned in the freeze list were in fact either non-existent or were falsely mentioned. In these circumstances and on the basis of his false notings, accused Karamveer Singh (A10) thus induced RCS Officials/Officers to approve the said false and fabricated freeze list of 300 members and in pursuance to the fraudulent approval of the said freeze list, the land was allotted by the DDA to the Bhagwati CGHS at subsidized rates. In addition to this, it has also been proved on record that accused Ashok Kumar Chauhan (A1), Piyush Kumar Sharma (A3), Vijay Singh Lunia (A5) & Akshay Kumar Jain (A7), in furtherance of the abovesaid conspiracy, prepared and signed false records/proceeding registers etc. of the management committee of Bhagwati CGHS showing resignation and enrollment of large number of members, who either denied having applied for the membership of the society or denied having resigned from the membership of the said society and the signatures of these accused persons on the said false record have been confirmed by the GEQD."

43. The learned Special Judge, CBI vide order dated 31.10.2017 awarded different terms of sentences to each of the convicted persons and the details of which have not been mentioned, as it would carry no relevance here. Suffice it to state that as a sequel to the aforesaid judgment in the CBI matter, the show cause notice dated 18.12.2017 was issued and the same reads as under: -

OFFICE OF THE REGISTRAR COOPERATIVE SOCIETIES GOVT. OF NCT OF DELHI OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-01 F.No.47/1112/GH/Co-op./Section-1/839 Dated 18.12.2017 C. D. No.107281698 SHOW CAUSE NOTICE Whereas, The Bhagwati Co-op. Group Housing Society Ltd. is registered vide registration No.1112/GH with this Department under the provisions of DCS Act and DCS Rules and registered bye-laws of the society and the DDA has allotted the land to the society at premises: Plot No.1-A, Sector-22, Dwarka, New Delhi-110078 And whereas, the office in the receipt of a judgment dated 31.10.2017 of Hon'ble Spl. Judge of CBI Court, Rohini, in case No.CBI-08/2016 titled as CBI Vs A. K. Chauhan & Ors (in r/o The Bhagwati CGHS Ltd. (Regn. No.1112/GH), Plot No.1-A, Sector-22, Dwarka, New Delhi-110078 whereby the accused persons has been convicted u/s-120B r/w 420/468/471 IPC & u/s- 13 (2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and further holding that the accused person entered into a criminal conspiracy with the object to cheat the office of RCS and DDA by dishonestly and fraudulently getting approved the freeze list of 300 members of Bhagwati CGHS on the basis of false and forged documents. It has been further held by the CBI Court that the accused persons as a part of criminal conspiracy have recommended for the enhancement of the membership strength from 150 to 300 without any verification of documents of the society and in pursuance to the fraudulent approval of freeze list of 300 members, the land was allotted by DDA to Bhagwati CGHS at subsidized rates.

Now, therefore, in view of the aforesaid judgment, the President/Secretary of the aforesaid society is hereby called upon to explain the reason as to why the freeze strength of the society should not be reduced to 150 from 300. The reply should reach the undersigned within 10 days of issue of this letter. It may be noted that in the event of failure to submit reply by the stipulated date, the matter will be decided without further notice as per provisions of DCS Act and Rules.

(M.G. SATHYA) ASSTT.REGISTRAR (H/SECTION-1) To, The President/Secretary, The Bhagwati Co-op. G/H Society Ltd.

Plot No.1-A, Sector-22, Dwarka, New Delhi- 110078. "

44. It is a matter of record that a reply dated 09.01.2018 was submitted by the petitioner society in which, inter alia, the long history of the litigation was explained and it was pointed out that the convicted persons had already preferred a criminal appeal before the High Court, which was sub judice and it was also brought to the fore that the findings recorded by the learned Special Judge, CBI that there were fake enrolment or designation were without any substance based on conjectures and surmises, giving no findings as to the exact numbers of fake members.

45. The respondent No.2 in fact passed another order dated 14.12.2017 whereby, inter alia, the petitioner society was restrained from enrolling new members till further orders, and eventually, on the respondent No.2 intimating the DDA about the aforesaid judgment, the impugned order dated 30.09.2020 was passed on account of information supplied by the respondent No.2 vide letter dated 04.12.2017, which is assailed in the present matter.

46. The aforesaid discussion brings to the fore that the impugned notice dated 30.09.2020 cancelled the lease dated 12.02.2015, not on the ground that construction had not been completed within the deadline i.e., 16.07.2020 in terms of the sanctioned letter dated 17.07.2015 but because of the alleged suppression of material facts from the DDA at the time of getting the lease deed executed in terms of Clause III.

47. Without further ado, a careful perusal of the impugned order dated 30.09.2020 would show that it was neither preceded by any SCN by the DDA nor any opportunity of hearing was afforded to the petitioner society against the proposed action of cancellation of the lease deed. Secondly, the cancellation was premised on the violation of the Clause III25 of the lease deed, but the said premise was without the application of mind and non-est in law for the elementary fact that a list of members had already stood verified consequent to the elections of the new committee on 19.06.2009, and subsequent to which, the sanction for construction at the site was given.

25 If the sum or sums payable towards the premium or the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calendar month next after any of the days where in the same shall have been demanded or not if it is discovered that the lease or any coveyance deed has been obtained by suppression of any fact or by any misstatement, misrepresentation or fraud or if there shall have been in the opinion of the Lessor whose decision shall be final, any breach by the Lessee or by any person claiming through or under it or any of the covenants or condition herein contained and on its parts to be observed or performed then and in any such case it shall be lawful for the lessor notwithstanding the waiver of any previous cause or right of re-entry upon the plot thereby demised and the building thereon to re-entry upon and take possession of plot hereby demised and the building and fixtures thereon in respect of which any sum or rent has been in arrear or such suppression, misstatement, misrepresentation or breach has been committed and their upon this demise and everything herein contained shall cease and determine in respect of the plot so referred upon the Lessee and the allottees shall not be entitled to any compensation whatsoever, not to the return of any premium paid.

Provided that notwithstanding anything herein contained herein to the contrary, the lessor may without prejudice to this right re-entry as aforesaid and in his absolute discretion waive or condone breaches temporarily or otherwise, on receipt of such amount and on such terms and condition as may be determined by him and may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of 6% per annum.

48. Unhesitatingly, it has been rightly urged by the learned counsel for the petitioner society that although some of the office bearers of the erstwhile Managing Committee faced criminal prosecution for fabrication of the list of members, who inter alia submitted forged documents in

respect of some fictitious members, at the same time in view of the directions passed by this Court, the list of members stood verified on 13.06.2004 and later on after the new Managing Committee coming to power after election that was held on 19.06.2009.

49. All said and done, it is significant to mention that during the course of pendency of the instant proceedings before this Court, an order dated 09.05.2023 was passed by the learned predecessor Judge of this Court whereby the following order came to be passed "5. The Court has heard the learned Counsel for the Petitioner briefly.

6. At this juncture, learned Counsel for the Petitioner submits that so far as concerns his prayer (b) in the Petition, the Respondent No.2, i.e., the Registrar, Cooperative Societies, may return with instructions qua the issue on verification of members of the Petitioner Society. The prayer (b) reads as follows:

"b) Issue a Writ in the nature of Mandamus or any other appropriate Writ directing the Respondent No. 2 to verify the existing List of genuine members of the Petitioner Society, within a time bound manner, so that allotment of flats can accordingly done in favour of the respective bonafide members of the Society"

6.1 In this regard, let an Affidavit be filed by Respondent No.2 within a period of two weeks.

7. List the matter on 31.05.2023 at 4:00 PM."

50. Suffice to state, pursuant thereto, a report dated 16.04.2024 has been placed on the record by the respondent No.2 to the effect that a list of 208 eligible members as per sub clause 17 of Schedule VIII of the DCS Rules, 2007 out of the list of 213 members submitted by the petitioner society were found genuine and 5 members were not included in the list of eligible/verified members due to their non- appearance for verification despite repeated notices.

51. This Court finds merit in the plea that the petitioner society was not implicated in the aforesaid criminal proceedings launched by the CBI against the erstwhile office bearers of the Managing Committee, and there is no iota of the finding in the judgment dated 27.10.2017/31.10.2017 that all the members of the society were bogus. Furthermore, there is no indication that any of the erring office bearers or members of the Managing Committee has been found to eligible and included in the list of 208 members that was submitted vide order dated 16.04.2024 by the Assistant Registrar, Section 1 (G/H) on directions of this Court.

52. At the cost of the repetition, it was the list of members that was submitted on 27.08.1987 which was the substratum of the investigation and prosecution launched by the CBI against the erstwhile members; and by all measures the list of 300 members had been verified in terms of direction dated 26.03.2004 in W.P (C) No.2199/2003, which was placed before the Court for consideration by the Administrator. The most surprising aspect is that the DDA after one-and-a-half-year of the letter dated 14.12.2017 decided to issue the impugned SCN to cancel the lease in term of letter dated 24.05.2019 to which a reply dated 04.06.2019 was filed and not considered. Be that as it may, what

is patently brought to the fore is that right from 29.10.2009 till 17.09.2020, the petitioner society had been diligently and consistently following up the verification of its members with the respondent No. 2 for allotment of the flat, which had not been completed by the respondent No.2 until the directions of this Court dated 09.05.2023.

CONCLUSIONS

53. The sum and substance of the aforesaid discussion brings to the fore that the misdeeds and criminal acts of the four accused members of the petitioner society, who were apparently in collusion with the official of respondent No. 2, cannot be countenanced as a decisive factor so as to prejudice the right and interest of the petitioner society, which is a body incorporate in terms of Section 43 of the DCS Act. There is no denial to the fact that the petitioner society has so far invested more than 300 crores in the ongoing project and almost 90% of the construction work is complete. It is a humongous financial loss besides mental & psychological torture to its bonafide members, as well as to the other stakeholders. It goes without saying that the findings rendered by the criminal court on the matter are not even binding in civil matters like the instant one, for which reference can be invited to decision by the Supreme Court in the case of Iqbal Singh Marwah vs. Meenakshi Marwah²⁶, wherein it was held that:

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one 26 (2005) 4 SCC 370 proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras* [1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16) "15. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice

should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

54. Similarly, in the case of *K.G. Premshanker v. Inspector of Police*²⁷, the Supreme Court held that since a civil court's judgment is not binding on a Criminal Court, a Criminal Court's judgment is also not binding on a Civil Court. This decision overturned the judgment in *V.M. Shah v. State of Maharashtra*²⁸, which previously held that the findings of a Criminal Court could be superseded by those of a civil court.

55. At the cost of repetition, the bonafide and genuine members of the Society cannot be vicariously held responsible for the criminal acts and misdeeds of few of its officer bearers, who stood convicted in the aforesaid CBI case, particularly when as explained above during the course of relevant writ proceedings it was brought out that a new Managing Committee had been constituted after elections held under the overall supervision and monitoring of respondent No.2 and the list of members stood verified and finally 208 numbers of members were found to be genuine members of the Society in terms of report dated 16.04.2024.

56. In reaching the aforesaid view that the genuine members and the petitioner society cannot be held vicariously responsible for the misdeeds of the convicted persons in the CBI matter, reliance can be placed on the decision in the case of *DDA v. Human Care Medical Charitable Trust*²⁹ by this Court, wherein the lease was cancelled by the DDA for repeated delays on the part of the office bearers/members 27 (2002) 8 SCC 87 28 (1995) 5 SCC 767 of the Managing Committee in completing the construction. In the said context, it was held as under: -

"28. Such being the factual position, the irresistible conclusion which emerges is that appellant DDA failed to justify its action of cancelling the allotment of land in question in favour of the society. The legal principles which we have succinctly culled out from the impugned judgment are correct. A society is distinct from its members. If a person gives money to a society by way of a donation or even a loan and is inducted as a member of the society does not mean that the members of the society who were managing the society when the society acquired an asset have sold that asset to the person who after giving donation is inducted as a member in the society. It happens most often that a person who gives a substantial money to a society, desiring to ensure that the funds are better utilized is inducted as a member in a society. It may also happen that existing members may resign. An allegation that this

is a camouflage for sale of the asset of the society would require proof of money reaching the coffers of the members who walk out."

57. Another judgment that has been relied upon is Narender Kr. Jain & Ors. v. Govt. of NCT of Delhi & Ors.³⁰ by the Division Bench of this Court dated 09.05.2011, wherein it was held as under: -

"16. It is well settled in law that a body corporate has a different connotation and meaning in law. The body corporate is not merely a body of persons. Section 43 of the Act stipulates that a cooperative society is a body corporate and hence, the statute confers on it a distinctive legal status. In this context we may profitably refer to Halsbury's Laws of England, 4th Edition, Volume IX wherein in paragraph 1201, the term "Corporation" has been described as under:-

"1201. Corporation and unincorporation associations corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. There are many associations and bodies of persons that are not corporation. Some of these, such as registered friendly societies, may be quasi-corporations, as they have some of the usual attributes of corporations, such as the possession of a name in which they may sue or be sued, and the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions. Partnerships are not usually regarded as quasi-corporations, although if carrying on business in England or Wales, they may sue and sued in the firm name. Subject to the exceptions mentioned above, unincorporated associations cannot sue or be sued in their own name nor (unless their purposes are charitable) can property be held for their purposes otherwise than by virtue of a contract between the members for the time being. The Crown has power by letters patent to grant to any company or body of persons associated together for any trading or other purposes, although not incorporated, any privileges which, according to the rules of common law, it would be competent the Crown to grant to any such company or body of persons in and by any charter or incorporation. Such letters patent may provide that actions by or against the company or body of persons shall be carried on in the name of one or two officers to be appointed for that purpose and may limit the individual liability of the members."

In paragraph 1202 in the said volume there has been a classification of "Corporation" into two classes, namely, "Corporation aggregate" and "Corporation sole". "Corporation aggregate" has been explained in paragraph 1204 which is as under: -

"1204. Meaning of Corporation aggregate. A Corporation aggregate has been defined as a collection of individuals united into one body under a special domination, having perpetual succession under an artificial form, and vested by the policy of the law with

the capacity of acting in several respect as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence."

In paragraph 1205 there has been further explanation of "Corporation aggregate" which we may usefully reproduce:

"1205. Composition and capacity. A Corporation aggregate may be either a mere body, composed of constituent parts no one of which differs essentially from another or it may be a body with a head or other distinct member, the existence of which is essential to the vitality, so to speak, of the body as a whole. A Corporation aggregate has only one capacity, namely its corporate capacity; so that a conveyance to a corporation aggregate can only be to it in its corporate capacity."

In paragraph 1206 "Corporation sole" has been explained. It reads as under: -

"1206. Definition, capacity and presumption of due appointment. A Corporation sole is a body politic having perpetual succession, constituted in a single person who in right of some office or function a capacity to take, purchase, hold and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alienate) real property, and now, it would seem, also to take and hold personal property, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous; that is, there may be and often are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy, or on one in existence in whom the corporation resides and is visibly represented.

Unlike a Corporation aggregate, a Corporation sole has a double capacity namely, its corporate capacity and its natural or individual capacity; so that a conveyance to a corporation sole may be in either capacity.

A Corporation sole appears now to be capable of taking personality in succession. The occupant of a corporation sole is presumed to have been duly in possession of his office until the contrary is proved."

On a fair scrutiny of the aforesaid paragraphs it is plain as duty that in the characteristics of Corporation, concept of its continuity and distinct entity are inhered. In paragraph 1209 of the said volume it has been explained that the Corporation is a distinct juristic entity. It is worthwhile to reproduce the same.

"1209. Corporation a distinct entity. The nature of a corporation may be shown by contrasting it, as a legal conception, with the individuals in which it resides. In law the individual corporators, or members, or which it is composed are something wholly different from the corporation itself; for a corporation is a legal person just as much as an individual. If a man trusts a corporation, he trusts that legal person, and must look to its assets for payment; he can only call upon individual members to contribute if the Act or charter creating the corporation has so provided. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation, and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess but a nominal interest in its property, or hold their interest in trust for him. Notice to an individual who happens to be a member of a corporation aggregated but has no authority to receive notices is not equivalent to notice to the corporate body; and where an action is maintainable by and in the name of a corporation, it cannot be maintained by individual members of the corporation. After the dissolution of a corporation the members, in their natural capacities, can neither recover debts which are due to the late corporation nor be charged with debts contracted by it."

In paragraph 1211 it has been stipulated that a name is essential to a "Corporation" and in the case of a Corporation created by grant of charge or by Special Act the name must be either expressed in the grant or the Act or implied from the nature of it.

In this context, we may refer with profit to a decision rendered by the Constitution Bench of the Apex Court rendered in the case of Daman Singh v. State of Punjab, AIR 1985 SC 973 wherein their Lordships, after referring to the case of Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi (AIR 1962 SC 458) (supra) and scanning Section 30 of the Punjab Cooperative Societies Act, 1961, held as under:-

"6. We have already extracted S.30 of the Punjab Act which confers on every registered cooperative society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot, therefore, be the slightest doubt that a cooperative society is a corporation as commonly understood....."

17. From the scheme of things, it is evident that the cooperative society has been conferred the privilege of a body corporate. A society which is a body corporate has a different status. An officer of a co-operative society includes a member of a committee. The submission of the learned counsel for the petitioner is that instead of fixing personal responsibilities, to include every officer is over inclusive and defeats the purpose of classification. We really fail to appreciate the aforesaid submission canvassed at the Bar. The officer has been given a meaning under the dictionary clause which is in consonance with the purpose of the Act. It includes a member of a committee of a society. A committee of a cooperative society has been assigned a different responsibility. In this

context, we may profitably refer to Rule 60(1) of the Delhi Co-operative Societies Rules, 2007 which stipulates as follows: -

"60. Meetings of the Committee (1) A committee of a co-operative society shall exercise all the powers of the co-operative society, discharge all the duties as may be specified in its bye-laws by means of resolutions passed at its meetings. No resolution shall be passed by circulation to the members of its committee."

58. In view of the foregoing discussion, this Court has no hesitation in holding that the cancellation of the lease deed dated 12.02.2015 in respect of the plot of land allotted to the petitioner society vide impugned order dated 30.09.2020 is arbitrary and without the application of mind, and thus, cannot be sustained in law. FINAL DIRECTIONS:

59. In view of the foregoing discussion, the present writ petition deserves to be allowed, thereby passing the following directions:

(a) the impugned order dated 30.09.2020 passed by the respondent No.1, thereby cancelling the lease deed dated 12.05.2015 of the petitioner society is hereby set-aside and quashed; and

(b) the petitioner society under the overall supervision and monitoring of the respondent No.2 shall be at liberty to initiate process of allotment of the residential units to the members whose credentials have been verified in the list of 208 members in terms of report dated 16.04.2024 placed on the record, which exercise be conducted in a time bound manner within a period of three months in accordance with the law; and

(c) the petitioner society is also given liberty to initiate process of allotment of the remaining 92 residential flats in the Society under the overall supervision and monitoring of the respondent No.2, in a time bound manner not later than six months to one year in accordance with the law; and lastly

(d) the petitioner society shall also be allowed to complete the pending construction work at the site in a time bound manner, and if need be, they can approach the respondent No.1/DDA for extension of time for completion of construction, and on preferring such application, a reasonable time shall be accorded by the respondent No.1/DDA in accordance with the law.

60. With the above observations, the present petition stands decided accordingly. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

NOVEMBER 07, 2024 Ch/Sadiq