

Supreme Court of India

Sriniketan Co-Operative Group ... vs Vikas Vihar Cooperative Group ... on 5 April, 1989

Equivalent citations: AIR 1989 SC 1673, (1989) 3 CompLJ 359 SC, JT 1989 (2) SC 309, 1989 (1) SCALE 1254, (1989) 3 SCC 368, 1990 (1) UJ 76 SC

Author: Natarajan

Bench: R Pathak, S Natarajan

JUDGMENT Natarajan, J.

1. SLPs are granted.

2. These appeals by special leave arise out of and are directed against a judgment of the High Court of Delhi in Civil Writ Petition No. 806 of 1986 filed by Vikas Vihar Co-operative Group Housing Society Ltd., the contesting respondent in nine out of the twelve appeals. In allowing the petition the High Court quashed a general order of allotment dated 31.3.1986 of the Ministry of Urban Development allotting 27 acres of nazul land to nine co-operative group housing societies and the individual orders of allotment dated 2.4.1986 pursuant thereto issued to the nine societies regarding the allotment of specified extents of land in their favour for construction of apartments for their members.

3. All the nine co-operative group housing societies affected by the quashing of the allotment orders have filed appeals to challenge the judgment of the High Court. Vikas Vihar Co-operative Group Housing Society Ltd. and two other societies viz. Suryakiran Co-operative Group Housing Society Ltd., and Daffodils Co-operative Group Housing Society Ltd. who were not allotted land by the Ministry of Urban Development have filed the other three appeals. Their grievance is that the High Court, while rightly quashing the impugned orders of allotment, ought to have directed the Government to make fresh allotments after taking into consideration the preferential qualifications in their favour for allotment of land to them. Some of the non-allottee societies have appeared as interveners in the appeals preferred by the nine co-operative societies who were allotted land by the Government. Having regard to the common questions involved in all these appeals, they were clubbed and heard together.

4. Some background material may be set out for having a comprehensive perspective of the issues involved in the appeals. In the year 1911, the Central Government acquired lands in and around Delhi for construction of the capital city. These lands which vested in the Government of India are known as nazul lands. These lands were utilised for construction of Government Office buildings, residential buildings for Government servants and public utilities such as markets etc. Some lands were allotted to private individuals on perpetual lease from time to time for residential and commercial use, and also to social and cultural institutions, schools, hospitals and rehabilitation schemes etc. according to the policy of the Government of India from time to time. By an order made under the Allocation of Business Rules, the administration of these lands which are properties of the Union vests in the Ministry of Urban Development. Land and Development Office is the field office of the Ministry of Urban Development to allot these land under order of the Ministry and administer the leases. Later on, some of these nazul lands were placed at the disposal of the Delhi Improvement Trust for construction of buildings for being given to the public by allotment or auction. In the year

1957, the Delhi Development Act came to be passed and in terms of the Act, the Delhi Development Authority (for short the D.D.A.) was constituted and the Delhi Improvement Trust was merged with the D.D.A. After its formation, the D.D.A. acquired large areas of lands in Delhi for being developed and thereafter allotted or auctioned to the public on lease-hold basis. In 1961, the Government of India formulated certain policies for governing the development and distribution/allotment of lands to various institutions and individuals and one of those policies was to give priority to co-operative group housing societies in the matter of allotment of land. The Government also decided to discontinue the scheme of plotted development of lands and instead to make use of the lands for construction of flats in Multi-strayed Buildings by the D.D.A. or co-operative group housing societies by allotting land to them.

5. It was also decided that due to scarcity of land in South Delhi, group housing societies would be allotted land in East and West Delhi and not land in South Delhi for the time being except to such societies for whom commitment was already made prior to 1972. It was also decided that the rate of Premium for land allotted to co-operative group housing societies would be higher in South Delhi than in East or West Delhi. Another policy decision taken was that while allotting land to the co-operative group housing societies, care should be taken to ensure that as far as possible the societies should be allotted lands nearest to the places of employment of their members. Sometime later, the Government took further note of the situation caused by the scarcity of land, particularly in South Delhi area and took an executive decision in 1972 to impose a temporary ban on further allotment of lands in South Delhi area. The temporary ban was relaxed in the year 1979 but even so it became necessary to impose restrictions during the period 1980 to 1983 on the registration of new co-operative group housing societies. Since by 1983, almost all the societies registered after 1981 had by and large been allotted lands, the ban on registration of co-operative group housing societies was lifted and an announcement regarding the same was made by the Lt. Governor of Delhi in the newspapers on 17.7.83. By reason of it, the registration of new co-operative societies was resumed and a large number of co-operative group housing societies applied for registration during the years 1983/84.

6. On March 5, 1984, the Government of India took a decision as per terms set out below regarding the allotment of lands to newly registered societies in the year 1983-84 :

(i) As almost all the old societies were allotted land, the cooperative group housing societies registered in 1983-84 may be allotted land in batches.

(ii) As the land in East and West Delhi is almost exhausted, land in other areas should be considered for allotment to newly registered co-operative group housing societies.

(iii) For purposes of allotment, seniority of registration is of no relevance. The Registrar, Co-operative Societies should publish a notice calling the registered co-operative group housing societies who have completed all formalities to apply for allotment of land and land should be allotted to societies on first come first served basis.

7. Pursuant to the above decision taken by the Government, the Registrar, Co-operative Societies issued a notice in the news papers on March 10, 1984 as under :

DELHI ADMINISTRATION OFFICE OF THE REGISTRAR OF COOPERATIVE SOCIETIES COURT BUILDINGS PARLIAMENT STREET, NEW DELHI-1.

DIRECTIVES UNDER RULE 77 OF THE DELHI COOPERATIVE SOCIETIES RULES, 1973.

Notice is hereby issued for the information of the Presidents & Secretaries of all the registered Cooperative Group Housing Societies that this office has issued directives to the Group Housing Societies, that they shall not maintain any waiting list for the purpose of enrolment of members. Now all the societies which have been registered in the year 1983 onwards and the House Building Societies which have undertaken Group Housing activities are also given this directive under Rule 77 that they should not maintain any waiting list for the purpose of enrolment of members.

All the Co-operative Group Housing Societies are further directed under the said Rule that the services of Architects and Contractors should be engaged only after the approval of the general body of their society and that as per clause (2) of the annexure appended of the registered by-laws of the registered Group Housing Society, the flats constructed by them shall be allotted to their members by draw of lots in the presence of the representatives of the Cooperative Department, Delhi Administration and the Delhi Development Authority.

Sd/- (SANAT KAUL) REGISTRAR CO-OPERATIVE SOCIETIES, DELHI ADMN. DIP/Deptt. 129/84.

8. Thereafter on March 12, 1984, a notice was issued by the Registrar, Co-operative Societies inviting applications from societies for allotment of land as under :

New Delhi, March 12, 1984 ATTENTION NEWLY REGISTERED GROUP HOUSING SOCIETIES OF DELHI DDA has now intimated that they would now consider allotment of land to Group Housing Societies registered in 1983-84. Those societies who have closed their membership and desire to seek land through DDA are requested to submit their membership list and other documents to the office of the Registrar, Co-operative Societies on prescribed proforma available with the office from 20th March, 1984 onwards.

SANAT KAUL REGISTRAR Cooperative Societies Delhi Administration Old Courts Bldg., Parliament Street, New Delhi-1.

DIP/Deptt. 132/84.

A further notice came to be issued on March 20, 1984 by the Assistant Registrar, Co-operative Societies. The said notice after referring to the two earlier notices stipulated the following eligibility conditions/formalities :

1. Application for allotment by co-operative group housing societies registered in 1983-84 should be in the prescribed proforma.
2. Application (in the prescribed proforma) should be accompanied by a forwarding letter and affidavit to be signed by the President/Vice President/Secretary of the Society as per prescribed formats.
3. Affidavits of individual members not already supplied earlier also to be submitted.
4. The total membership of the societies should be in multiples of 15.
5. On submission of the list of members to the Registrar, the membership shall be frozen at that number (which may vary from 60 to 300 and be a multiple of 15). New membership is possible only against vacancies due to exclusion, transfer or resignation.

(The rationale in prescribing the total membership to be in multiples of 15 was to facilitate the allotment of land, in accordance with the norm of 1 acre of land for 60 members of a co-operative group housing society).

In response to this Notification, many societies submitted their applications for allotment of land. The Registrar of Co-operative Societies prepared a seniority list of 15 co-operative societies which had submitted their applications on the 20th and 21st of March 1984 and forwarded the same on 23rd March 1984 to the Vice Chairman, D.D.A. On 30-5-1985, the Government took physical possession of an extent of 72 acres of land in Sadiq Nagar/Andrews Ganj, South Delhi which was under the occupation of the Delhi Pinjarapole Society and with whom the Government of India was locked in a long drawn out legal battle to recover possession of the land. It is said that since at the time of taking possession of the 72 acres of land from the Pinjarapole Society the Government had already relaxed the ban on Attachment of land in South Delhi as per its decision dated 5th March 1984, the Government gave instructions to the Land and Development Officer to allot 27 acres of land from out of the 72 acres of land to 9 co-operative societies. It was in such circumstances the general order of allotment in favour of nine co-operative societies came to be passed on March 31, 1986. The said order inter alia set out the following conditions :

1. The societies shall be charged for the land at the rate of Rs. 474/- per sq. m. plus 2 1/2% as Annual Ground Rent. For the first five years, the Annual Ground Rent shall be Rs. 1/- per flat.

- (ii) The societies shall make payment of the price of land in one instalment before the possession of land is handed over to them.

9. The nine societies which were issued allotment orders and the extent of land allotted to them are as under :

Sl. No.	Name of Society	No. of Members	Extent
1.	Nav Sansad Vihar Co-operative Group Housing Society West Nizamuddin, New Delhi.	300	5.00 acres
2.	Jawaharlal Co-operative Group Housing		

Society, 142, North Avenue, New Delhi. 132 2.20 acres 3. Fakruddin Memorial Co-operative Group Housing Society 19, Akbar Road, New Delhi. 210 4.00 acres 4. Sriniketan Co-operative Group Housing Society, B-6/71 71, Safdarjang Enclave New Delhi. 180 3.00 acres 5. Hum Sub Co-operative Group Housing Society, R. No. 836-A Wing Shastri Bhawan, New Delhi. 150 2.5 acres 6. Neelanchal Co-operative Group Housing Society, 58, South Avenue, New Delhi. 90 1.50 acres 7. Sansad Vihar Co-operative Group Housing Society 1, Tyagaraj Marg, New Delhi. 135 2.25 acres 8. Dakshina Co-operative Group Housing Society, 2, Teen Murti Lane New Delhi. 259 4.30 acres 9. Priyadarshini Co-operative Group Housing Society, 907, Baba Khark Singh Marg New Delhi. 135 2.25 acres
 ----- T O T A L 27 acres

9. Within two days of issue of the general order of allotment, viz. on 2.4.86, itself individual orders of allotment were issued to the nine 2.4.86, itself, societies concerned. In compliance with the term of allotment, five societies deposited the full amount towards the cost of the land on 4.4.1986 itself and they were handed over possession of the and on 4.4.1986 itself and they were handed over possession of the land on the same day. Two societies paid the premium on 14.4.86; one society paid thereafter and one society had not paid premium till 29.4.86 These societies were not handed over possession of the land. It would appear that some of the societies had not filed individual It would appear that members within the prescribed time and the affidavits of some of the members were filed later. It is the case of the allottee societies that on possession of the land being delivered to them, they engaged themselves forthwith in fencing the allotted land, appointing watch and watch and ward staff, construction of rooms for the watch and ward staff and entrusting designing work to architects.

11. On April 14, 1986, Vikas Vihar Co-operative Group Housing Society which was one of the applicant societies and whose name was included by the Registrar in the list sent by him filed a writ petition CWP No. 806/86 in the Delhi High Court challenging the general order of allotment and the individual orders of allotment on grounds of arbitrariness, favouritism and discrimination.

12. These Contentions were refuted by the Government of India through a counter affidavit filed by Shri S.L. Tejwani, Land and Development Officer on 29-4-1986. Therein the allotments made in favour if the nine co-operative societies were justified as having been made in accordance with norms and guidelines. It was averred in the Counter affidavit that since co-operative housing societies registered in 1981 had more or less been allotted land and since there was a ban on registration of new societies till 1983, the question of allotment of land after the ban was lifted was confined to those societies which were registered in 1983 and 1984 and the allotment was made with reference to the fulfilment of the conditions prescribed by the Government for allotment of lands. It was further stated that since four of the societies mentioned in the list sent by the Registrar of Co-operative Societies satisfied the norms and requirements they were allotted land and in addition five other societies, which had applied directly to the Land and Development Officer for allotment of nazul land were also found eligible for allotment and hence an order of allotment was made in favour of those nine societies. In so far as the petitioner Vikas Vihar Co-operative Group Housing Society Ltd. was concerned, it was stated that the society was not eligible for allotment of land because of two factors viz. (1) it had been registered in 1979 itself and was not therefore one of the

societies registered in 1983/1984 after the ban was lifted and secondly the said society had been allotted 3.65 acres of land by D.D.A. on 2-2-1982 at Boddela in East Delhi and the Society had taken physical possession of the land from D.D.A. on 13.11.1984 and hence it was not entitled to seek further allotment of land. The counter affidavit also set out that the impugned allotment of land to the nine societies had not been made arbitrarily or in a discriminating manner.

13. Reference may also be made to two counter affidavits filed by Shri N. Rajgopalan, under Secretary, Ministry of Urban Development on 22-5-1986 and 31-7-1986 in C.W.P. Nos. 947/86 and 1367/86 respectively. It may be mentioned here that besides Vikas Vihar Co-operative Group Housing Society Limited, some other societies who had not been allotted land, had also filed writ petitions before the High Court and it was in two of those petitions Shri N. Rajagopalan had filed counter affidavits. In those counter affidavits also the stand taken was that the allotment of land to the nine co-operative societies had been done after due consideration of all relevant factors and that it was not correct to say that the allotment had been made arbitrarily or with a view to confer a largesse on the members of those societies. It was stated that since the land in question is nazul land the co-operative societies who had applied for land were not entitled to claim priority on the basis of the seniority of registration of the societies as such seniority will have relevance only in the case of allotment of land by the D.D.A. In the case of nazul land, it was said that it was always open to the Government to make allotments according to its discretion. In exercise of Government's discretionary powers, allotment of land in South Delhi had been made to six societies on group housing basis, viz. (1) Tara (2) Navketan (3) Kalkaji Best Friend's (4) Press Association (5) Business and Professional Women and (6) Yamuna. Besides, the Army Welfare Association had also been allotted land in Som Vihar at R.K. Puram. Since 1983 a number of societies comprised of several Members of Parliament, ex-Members of Parliament, and Legislatures, Government Servants, Professionals and Journalists were seeking allotment of land and they had made applications directly to the Government. Those applications were examined but no allotment could be made to any of those societies as sufficient land was not then available in South Delhi. Since in the year 1983-84 a piece of land measuring about 70 acres became available in South Delhi, it was decided to allot a portion of this land to co-operative group housing societies. Consequently, the Government took up for consideration the applications sent by the co-operative societies directly to the Government as well as to the Registrar. The allotment of land to the none societies had been made after due consideration of all the facts over a period of nearly two years. In so far as the fixation of the price of the land is concerned, it was stated that the price was fixed at a rate 3.5 times more than the rate fixed for lands in other parts of Delhi which were allotted to cooperative societies. The policy of Government was to charge for land at subsidised rates for co-operative societies in order to encourage group housing but even then the Government had fixed a value higher by 3.5 times for the land in South Delhi after consultation with the Financial Advisor and the Ministry of Finance.

14. Then came two counter affidavits, one filed on behalf of the Union of India in CWP No. 806/86 and the other in CWP No. 1262/86 respectively. In the former counter affidavit, Shri A.K. Goyal Deputy Land and Development Officer, Ministry of Urban Development had made certain admissions which were contrary to the averments contained in the counter affidavits filed earlier and which have been referred to above. The admissions were to the following effect; "there had to be certain accepted norms such as "first come first served basis"/completion of formality such as

collection of affidavits etc. and final verification by Registrar.".... "It appears that it was intended to follow the principle of 'first come first served'. The said norm was not disclosed to the public at large so that they could know that the land will be allotted on the basis of said criteria.".... "That in allotment of the land to the societies, the principle of first come first served was not universally applied to all the societies who have been allotted land."

15. In the counter affidavit filed in CWP No. 1262/86 by Shri U.V.L. Narsimhan, Director (Lands), Ministry of Urban Development also it was conceded "that the first come first served principle has been deviated in allotting the land to the nine societies" (para 10) and it was further stated that "it is submitted that in allotting land to the respondents 6 to 10 and 12 to 15 the norm first come served is not strictly followed.

(para 14)

16. The High Court, besides taking note of the above said admissions made in the counter-affidavits of Shri Goyal and Shri Narasimhan, called for the original records relating to the allotment of land in favour of the nine co-operative societies "for ascertainment of facts." After due consideration of the contentions of the petitioner society, the candid admission made by the Union Government that the criteria for allotment of land had not been made known to all societies and that the norms had not been universally applied and the materials contained in the file, the High Court deemed it expedient to quash the orders of allotment. The factors which weighed with the High Court for quashing the orders of allotment are as follows :

1. Soon after possession of nazul land was recovered from the Pinjarapole Society, the Ministry of Works and Housing made an allotment of land on 9.3.85 to five co-operative societies, four of them being respondents in the writ petition in which Ministers and Members of Parliament were members.

2. Originally, the proposal was to hand over the land to the DDA for purpose of allotment according to prescribed norms but curiously the proposal was given go-bye and it was decided to have the allotment done by the Ministry itself.

3. After the initial allotment to five societies (one being excluded subsequently) the allotment was made five more societies, three of them being societies in which Members of Parliament were member and one society was comprised of officers and employees of the Works and Housing Ministry.

4. A reference was made to the Finance Ministry regarding the fixation of the price of the land. Though the Finance Ministry pointed out that the price of land was fixed between Rs. 1200/- to Rs. 2000/- per sq. yard in 1981, the Housing Ministry, after a purported reference to the DDA prices, fixed the rate; at Rs. 474/- per sq. yard. However, the notional price fixed by the DDA for land in South Delhi area was Rs. 4000/- per sq. yard.

5. The general order of allotment was made on the very same day the lay out plan was prepared for the 70 acres of land and within two days individual orders of allotment were made in favour of nine societies. It was on 4.4.86, the ban imposed in 1972 on allotment of land in South Delhi was withdrawn by a formal order but even before that the Ministry had passed allotment orders. In about 8 to 10 days time, the societies had made full payment for the land by 15-4-86 possession of the lands had been given to almost all the societies.

6. The allotment of land to housing societies ran counter to the stand taken by the Union of India before the Supreme Court for getting possession of land from the Pinjarapole Society "that they urgently needed the land for construction of general pool staff quarters and other public buildings."

7. The notings in the file indicated that the then Minister concerned was anxious to allot land only to those co-operative societies which comprised of a number of Member of Parliament but or being cautioned by the officials of the Ministry, the membership of the concerned societies was increased so as to include some more Members of Parliament and also some non-legislators so as to get over any criticism that may be levelled for allotment of land to the concerned societies.

8. Even in the matter of allotment to the favoured societies, one society was discriminated and not allotted land.

17. These adverse factors and the admissions made by Shri Goyal in the counter-affidavit were considered by the High Court to provided adequate material for the allotment orders being struck down on the ground of violation of Article 14 of the Constitution. Besides quashing the orders of allotment, the High Court observed that "the Union of India should seriously re-consider whether the land in question should be allotted to the co-operative societies at all or whether the land should be preserved for the general pool staff quarters" and in case it was decided to allot the land to co-operative societies then the allotment should be done in accordance with the norms and guidelines laid down thereof.

18. A common grievance put forth by all the nine societies in these appeals was that the High Court had made a wrong approach, even to start with, in considering the question whether the allotment of land to them suffered from the vice of arbitrariness and discrimination. It was urged that the initial poser of the High Court "as to how the land earmarked for general pool housing was allotted to the co-operative societies" was itself wrong because the land in question had been earmarked only for group housing in the Master Plan and the Zonal Plan and, not for general pool housing as construed by the High Court. It was pointed out that the High Court had wrongly come to the conclusion that the land had been earmarked for 'general pool housing' merely because in an affidavit filed before this Court for opposing the petition for stay of dispossession filed by the Delhi Pinjarapole Society, it had been loosely stated that the land had been earmarked for general pool housing. It was further urged that the High Court went wrong in concluding that the land had been given to the societies at a throw away rate viz. Rs. 474/- per sq. metre when the prevailing market rate of land was about Rs. 4000/- per sq. metre and that the Finance Ministry had also at one time pointed out that the price of land in South Delhi was fixed between Rs. 1200/- and Rs. 2000/- per sq. metre in J981 and had therefore suggested that taking into consideration the steep increase in

price of land in Delhi, it was necessary to re-determine the market rates of land all over Delhi. The learned counsel appearing for the allottee societies relied upon the counter affidavit filed by Mr. Tejwani wherein he has stated that in so far as allotment of land to co-operative societies is concerned, the policy followed was to make the allotment on a "no loss-no profit" basis. It was also pointed out that while land in other areas of Delhi had been allotted at the rate of Rs. 110/- to Rs. 125/- per sq. metre, the nine societies allotted land in South Delhi were charged Rs. 474/- per sq. metre which was 3.5 times more than the rate charged for lands in other parts of Delhi. It was furthermore stated that there were no materials on record for the High Court to hold that the prevailing rate of land in South Delhi was Rs. 4000/- per sq. metre. Reliance was also placed on the statement of Shri Rajagopalan in the counter affidavit dated May 9, 1986 that the Financial Officer as well as the Ministry of Finance had been consulted and they had recommended a rate of Rs. 474/- per sq. metre being charged for the land in question. Besides it was submitted that the policy of Government had always been to charge subsidised rates for land allotted to co-operative societies in order to encourage group housing.

19. It was then urged that the allottee societies satisfied all the norms and guidelines prescribed by the Government viz. allotment of land to co-operative group housing societies for construction of flats in multi-storeyed buildings, allotment of land to societies nearest to be places of employment of the members, seniority of registration in the case of some of the societies, early application so as to satisfy the norm of 'first come first served etc. It was therefore submitted that the order of allotment ought not have been quashed by the High Court.

20. Refuting the contentions of the allotted societies, it was urged on behalf of the non allottee societies that numerous factors in the case furnished adequate material to show that the allotment of the land by the Government had been done in a highly arbitrary and discriminatory manner and therefore the High Court was fully justified in cancelling the allotment order. It was submitted that the alleged rule of 'first come first served' was not made known to all the societies, that the said rule was not uniformly applied to all the societies and that some of the societies were given the privilege of applying directly to the Ministry for allotment of land.

21. Another criticism made about the allotment of land to the nine societies was that the Ministry for Urban Development had always been saying that allotment of government land would be done only through the D.D.A. and even ten days before the impugned allotment order was made, that was the stand taken by the Government (vide letter LII-11 (438) dated 20-3-86) addressed to Maa Jvala Co-operative Group Housing Society, but all of a sudden, the Government had changed its stand and suddenly allotted land through the Ministry itself instead of through the D.D.A. and this would go to show that favouritism was shown to the nine societies. Another criticism was that the order of allotment dated 31.3.1986 had been issued in contravention of the ban order regarding the allotment of land in South Delhi as the ban had been revoked only four days later i.e. 4.4.1986. This factor was also pressed into service to impugn the allotment order on the ground of favouritism. The speed with which the allotment proceedings had taken place viz., the allotment order being passed all of a sudden on 31.3.1986, the individual orders of allotment being issued within two days thereafter, the payment of huge sums of money by the allottee societies on almost on the spot payment basis, and the immediate delivery of possession of land to five societies were also brought

into focus to substantiate the charge of discrimination levelled against the allotment order in favour of the nine societies. It was further stated that the explanation given for exclusion of societies registered prior to 1983-84 from consideration for allotment of land viz. that all the old societies had more or less been allotted land, was patently wrong because a large number of societies remained without allotment of land.

22. These criticisms were refuted by the counsel appearing for the allottee societies and they referred to various facts. It was firstly stated that though the D.D.A. after being constituted was entrusted with task of allotting land, the Government had not given up or waived its right to allot nazul land to various institutions and co-operative societies and as such the Government had not done anything unusual or illegal in allotting land to the societies through the Ministry of Urban Development instead of through the D.D.A. As regards the second criticism, it was stated that since a policy decision had been taken in 1983 that land in other areas including South Delhi should be considered for allotment to newly registered co-operative societies, the earlier ban order on allotment of land in South Delhi had become dreamingly lifted and only a formal order for lifting the ban was necessary and it came to be passed on 4.4.1986. In so far as the criticism that the allotment proceedings had been carried out with unseemly haste, it was submitted that the question of allotment was pending consideration for about two years and it was only after mature consideration the allotment order was passed. The grievance expressed by some of the societies registered prior to 1983-84 that they were not favoured with allotment of land while the societies registered later had been allotted land, was met with the answer that the Government had never committed itself to allot land to each and every society or to make allotment of land to new societies only after satisfying the claims of the older societies.

23. On a careful consideration of the matter we find that even if the contentions of the learned counsel for the affected societies are accepted, viz. that norms and guidelines for allotment of land had been prescribed, that those norms had been conformed to when land was allotted to the nine Societies, that the allotment of land was for a public purpose and that land had not been offered at a throw away price but at a rate three and a half times more than in other areas after obtaining the views of the Financial Adviser and the Finance Ministry, there are other factors which stand in the way of accepting their further contention that the allotment of land had been done in a fair and just manner and there are no grounds for quashing the allotment order on the ground of arbitrariness or discrimination.

24. The first and foremost factor affording room for a charge of arbitrariness being levelled is that the principle of 'first come first served' said to have been followed by Government in allotting the land had not been made known to all the societies and came to be known only to some of the societies. It may be that the Government had taken a decision on March 5, 1984 that for the purpose of allotment, seniority of registration would be of no relevance and the Registrar of Co-operative Societies should publish a notice calling for applications from Housing Societies on 'first come first served basis' but this decision was not made known to all the societies. It is admitted that in the public notice issued by the Registrar in the newspapers, there was no announcement that Government had taken a decision to allot land on the basis of 'first come first served'. A large number of societies were therefore not aware of the crucial criterion fixed by the Government for

making allotment of land. Consequently many societies had not realised the urgency in sending the applications to the Registrar. Even those societies which had sent their applications on the 20th and 21st of March 1984 were not aware that their claim for allotment was going to be examined on the basis of first come first served. The non-disclosure of the crucial criterion fixed by the Government for allotment of land and the jeopardy it had caused to a number of societies has been conceded by the Government of India in the counter affidavit filed by Shri A.K. Goyal. We have already referred to the relevant portion in the counter affidavit where it has been admitted that the norm of 'first come first served' was not disclosed to the public at large and consequently the societies were not put on notice that land will be allotted on the above-said basis.

25. The learned counsel appearing for the allottee societies sought to contend that even if the notice published by the Registrar of Co-operative societies was silent about the norm fixed by the Government, the non-allotted societies cannot make an issue of it, because the norm is contained in the rules framed for allotment of land through the D.D.A. This argument cannot advance the case of the allottee societies in any manner because of two reasons. In the first place, the allotment of land was not done by the D.D.A. but by the Ministry of Urban Development. It cannot, therefore, be said that the formula contained in the rules pertaining to allotment of land by D.D.A. should have put the societies on notice that the same rule would be followed by the Ministry of Urban Development also in selecting societies for allotment of land. The second reason is that the Government of India has not taken this stand in the counter affidavit filed by it. On the other hand, the Government of India has candidly admitted in the counter-affidavit that the criterion of 'first come first served' evolved on 5th March 1984 had not been made known to all the societies. It, therefore, follows that the allotment of land to the nine Co-operative Societies had been made without putting all the societies on notice as to what would be the basis on which their applications would be considered.

26. The second Insurmountable obstacle facing the allottee societies is that it was never made known to the applicant societies that the allotment of land would be done by the Ministry of Urban Development itself and that the Ministry would consider the applications sent through the Registrar of Co-operative Societies side by side with applications made directly to the Ministry itself. Neither in the decision taken by the Government on 5.3.1984 nor in the notice issued by the Registrar, of Co-operative Societies was there any announcement that applications made through another avenue viz. directly to the Ministry would also be taken up for consideration simultaneously with the applications received through the Registrar of Co-operative Societies. The necessary inference therefore, is that those societies which had directly applied to the Ministry had been told that their applications made earlier to the Ministry would be considered as valid applications and that there was no need for them to apply afresh through the Registrar of Co-operative Societies in response to the public notice given by him in the newspapers. In that situation, the criticism levelled by the non-allotted societies that societies having influential members like Members of Parliament, Ex-Members of Parliament and Legislatures, high placed officials etc. who had access to the Ministry had approached it directly and had been favoured with allotments to the detriment of other societies acquires significance and relevance.

27. Another factor worthy of note is that even in the application of the norm 'first come first served', the Government had not followed a uniform policy. The High Court has pointed out that initially five

societies were selected for allotment of land on the basis of 'first come first served' but subsequently one of the societies was dropped out and there is no explanation for the said society being dropped out. In addition the High Court has commented on the fact that when the Registrar had sent a list containing the names of 15 societies, the Ministry had selected only four societies for allotment of land and rejected the applications of the other societies. No explanation is forthcoming for not allotting land to those societies. As the norm of 'first come first served' had not been followed in the case of all the applicant societies, the Government of India had to concede in the counter affidavit filed by Shri A.K. Goyal that the principle 'first come first served' was not universally applied to all the societies which had been allotted land. Since all the eligible societies were not treated alike and allotted land, the High Court has held that the allotment of land had been done in an arbitrary manner. This finding cannot be said to be wrong.

28. Learned counsel for some of the allottee societies contended that since this is not a case where there were no norms at all or where the norms had been ignored in the case of all the societies but a case where the grievance is that the norms were not universally applied, the High Court should not have quashed the allotment order in toto but should have sustained the order of allotment in the case of those societies which had been allotted land in accordance with the norms. We see no merit in this contention because the Government of India has conceded the vulnerability of the allotment order on two grounds viz. (1) non-disclosure of the rule 'first come first served' to all the societies and (2) non-application of the rule of 'first come first served' to all the societies. Therefore even if it is held that the rule of 'first come first served' had been Observed in the case of some of the societies, the non-disclosure of the rule to all the societies is a vitiating factor which cannot be overcome.

29. The locus of Vikas Vihar Co-operative Society to challenge the allotment orders in question was questioned by all the nine allottee societies. Their contention was that Vikas Vihar Co-operative Society was not eligible for allotment of land in South Delhi because it was not a society registered in 1983-84 but registered in 1979 and secondly it had been allotted 3.65 acres of land in East Delhi and had taken possession of it and, as such, it was not entitled to seek a further allotment of land for its members. The reply of the Society to these contentions was that it had been allotted a worthless piece of land and that too in the hands of encroachers and hence the allotment of land to it was only a paper allotment and it was prepared to exchange that land with land allotted to any other society in any part of Delhi.

30. Two grievances were expressed by the allottee societies, one of them being that the Government of India cannot seek to indirectly achieve what it cannot directly do and, the other being that the High Court had made use of the notings in the Government file to quash the allotment order without providing access to the files to the affected societies and giving them an opportunity to contravene the adverse materials noticed in the file. We do not find any merit in either of the two contentions. Even if the Government of India had not admitted the position that the rule of 'first come first served' was not disclosed to all the societies and likewise the said rule had not been universally applied to all the societies, the lapses were so obvious they could not have escaped the notice of the High Court. It is not therefore a case where the Government had effected a cancellation of the allotment of land by a devious method. With reference to the second grievance, the High Court had perused the files only to satisfy itself if the charge of arbitrariness and discrimination levelled by Vikas Vihar Co-operative

Society was an unfounded one. The High Court had not therefore, committed any error in perusing the file or in drawing its own conclusions without making the files accessible to the allottee societies.

31. On behalf of the allottee societies it was urged that there was only a sprinkling of Members of Parliament in the inner allottee societies and their number was not such as to warrant an inference that for their sake the Government had gone out of the way and allotted land to the nine selected societies. It was further submitted that even if the Government had considered the membership of the Members of Parliament as a relevant factor for allotting the land, the Government had not acted illegally because the guidelines provided for a 5% quota of plots for Members of Parliament and this quota had not been hitherto availed of by the Members of Parliament and therefore, as a compensatory measure they could have been allotted through the respective co-operative societies in which they were members. In our opinion, these matters of detail do not require examination because of the larger issues involved in the appeals, viz. non-disclosure of the criterion fixed for allotment of land to all the societies, conformity with the rule of 'first come first served' in the case of all the societies and the providing of a second avenue of application directly to the Ministry to a few societies alone sufficiently bring out the element of arbitrariness in the order of allotment passed by the Government.

32. A burden song of all the allottee societies was that if the allotment orders in their favour are quashed, their members would stand almost permanently deprived of the opportunity to own a flat in Delhi because it is next to impossible for them to seek fresh allotment of land hereafter. It was also stated that the members had invested their life-savings and many of them had even borrowed moneys to meet the cost of the land and these amounts had been lying with the Government for a number of years and it would therefore be most inequitable to tell them that they should go without a flat for their residence in Delhi. Some of the societies also stated that they had spent considerable sums of money in levelling and fencing the land and in employing watch and ward staff and architects. There is no denying the fact that the members of the nine societies would be affected by the cancellation of the allotment order but this cannot legitimise the allotment order passed by the Government in an arbitrary and discriminatory manner.

33. In the course of the arguments, it was urged on behalf of some of the allottee societies that they satisfied all the norms fixed by the Government including the norm of 'first come first served' and hence the allotment order in their favour should be sustained. In the same manner, some of the non-allotted societies put forth a contention that they also satisfied all the requirements prescribed for allotment of land and hence there should be a direction given to the Government to allot land to them. We cannot examine the merit of these contentions because the High Court left it open to the Government to consider the matter afresh, if it wants to allot the land to co-operative group housing societies. Therefore, these are matters which are to be urged before the Government, if the Government decides to make 27 acres of land available to co-operative group housing societies for construction of flats in multi-storeyed buildings.

34. In the light of the discussion contained above, we are unable to accept the contentions of the allottee societies that the High Court had erred in quashing the order of allotment. The appeals by the allottee societies have therefore to fail.

35. Coming now to the other three appeals filed by the non-allotted societies, we are of the view that they must also fail. These societies are aggrieved with the observation of the High Court that the Government may first consider whether the 27 acres of land should be reserved for the needs of the Government itself or should be allotted to cooperative group housing societies. These societies fail to see that the High Court has not forbidden the Government from allotting the land to co-operative group housing societies. Since, it is nazul land and not land acquired for housing purposes, the High Court has only pointed out that Government has an option to keep the land for its own requirements or to allot the land to co-operative societies for construction of multi-storeyed buildings for the members of the societies. As regards the further contention that the High Court must have issued direction to the Government to allot land to these three societies, it needs only pointing out that no such direction can be issued without the comparative merit of all the applicant societies being evaluated. If indeed these societies satisfied all the requirements including the norm of 'first come first served' and if the Government wishes to allot the land to co-operative housing societies, the appellants are bound to get allotment orders in their favour even without any direction from the Court. In this view of the matter, the appeals by the non-allotted societies also merit dismissal.

36. One last thing however remains to be dealt with which the High Court has not considered. Though the High Court quashed the orders of allotment in favour of the nine societies and called upon the Government to examine afresh the question of allotment if the Government wanted to give the land to co-operative societies, the High Court has not taken into consideration the question of compensating the members of the societies for the loss of interest suffered by them on their deposit amounts by reason of the cancellation of the allotment order. Since the cancellation of the allotment order has been brought about by Government's arbitrariness, the Government is duty bound to refund the amounts paid by the nine co-operative societies towards the cost of land together with interest. The Government has had the benefit of the amounts deposited by the co-operative societies towards the cost of the land for all these years and the members of the societies have suffered loss of interest. We therefore direct that in the event of the Government deciding not to allot the land to the co-operative societies or to allot the land only to the societies eligible for allotment as per norms and not to the other societies the Government should refund the amounts paid by the concerned societies together with interest at 12% per annum from the date of deposit till the date of refund.

37. In the result, the judgment of the High Court is affirmed subject to the further direction given to the Government to refund the moneys to the concerned societies together with interest at 12% per annum from the date of deposit till the date of refund. All the appeals are dismissed but there will be no order as to costs.