

RAJ RANI & ORS. ETC.

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v.

DELHI ADMINISTRATION & ORS.

December 10, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

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Delhi Co-operative Societies Act 1972—Delhi Co-operative Societies Rules, 1973, rr. 24, 25, 30—Rules about membership—Cooperative Society—Applications—Payment of share money—Whether mandatory or directory—Mala fide allotment—Allotment with undue haste by passing persons in wanting list—Declaration as defaulters for non-payment of dues—Not submitting affidavits.

On 6-7-1971 the Lt. Governor of Delhi passed an award directing the New Friends Co-operative House Building Society Limited to pay Rs. 22 lacs to the Delhi Administration. On 9-7-1971 the Lt. Governor by a notification removed the elected Managing Committee and appointed a nominated Managing Committee under rule 56 of the Delhi Cooperative Societies Rules, 1950 framed under the Bombay Cooperative Societies Act 1925 as applied to Delhi. The term of the Managing Committee was for one year. On 23-10-1971 the nominated Managing Committee passed a resolution to make the award of the Lt. Governor a rule of the court. In December, 1971, the nominated Managing Committee passed a resolution for having direct sub-leases and in January 1972 called for more funds. In July, 1972, the Lt. Governor issued a second notification extending the term of the nominated Managing Committee by further two years.

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287 members of the Society filed writ petition No. 340 of 1972, challenging the vires of rule 56 and challenging the action of the Lt. Governor in superseding the elected Managing Committee and in extending the term of the nominated Managing Committee by a further period of 2 years. On 30-4-1973, the nominated Managing Committee issued a circular asking the members of the Society to pay certain amounts. On 6-7-1973, this Court restrained the Society and its Chairman from declaring any member a defaulter. On 13-8-1973, this Court directed that all the interim orders passed in the writ petition should be confined to the 287 petitioners. On 16-8-1973, K. V. Johar filed a writ petition in a representative capacity under Order 1 rule 8 of the C.P.C. on behalf of all the members of the Society. On 17-8-1973, the nominated Managing Committee declared 321 members as defaulters. On 21-9-1973 this Court restrained the Society from taking any steps in pursuance of the said resolution. On an application made by respondent No. 6 the stay granted in K. V. Johar's petition was vacated. However, application for vacating the stay order in Raj Rani's petition was not pursued.

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On 6-1-1974 the nominated Managing Committee declared 39 members as defaulters for non-payment of dues and 42 members as defaulters for not submitting the affidavits. On 25-1-1974 the nominated Managing Committee decided to enrol 60 new members. On 26-1-1974 a confidential letter was addressed by respondent No. 6 to the Lt. Governor seeking his approval to the enrolment of 60 new members and allotment of plots to them. On the same day the Lt. Governor gave his approval. Two C.M.Ps. were filed by the writ petitioners challenging the declaration of the members as defaulters and enrolment of 60 new members. This Court on 29-3-1971 directed that all the papers including resolutions, original applications and original allotments should be produced in the Court. This Court also restrained the nominated Managing Committee by an injunction from taking any steps in any manner. On 4-4-1974, this Court passed direction in respect of some members who were declared defaulters and who had made part payments either within the time prescribed or even beyond the time prescribed. This Court also mentioned that the allotment of plots to 60 new members who were characterised as very important persons appeared

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A to have been made in undue haste and the persons on the waiting list were not considered and that no notice was given to persons inviting applications. This Court directed that the list of 60 new members had to await final adjudication and also directed that no further steps should be taken in the case of those 60 allottees. The Court also directed that the cases of remaining 24 defaulters would be considered if it came to the conclusion that the allotment in favour of 60 new members could not be allowed to stand.-

B Rule 24 of the Delhi Cooperative Societies Rules 1973, requires a person to apply for membership in writing in the form prescribed by the Society. His application is to be approved by the Managing Committee of the Society. He has to fulfil other conditions laid down in the Act, the Rules and the Bye-laws. Rule 25 provides that a person shall not be eligible for admission as a member if he owns a residential house or a plot of land for the construction of a residential house in Delhi. Rule 30 provides that on receipt of an application for membership the Cooperative Society shall enter particulars of the application in the register of applications in the form mentioned therein. It also requires the Society to dispose of the application received as early as possible and in no case later than the expiration of a period of one month from the date of receipt of the application. Rule 30 further provides that the person whose membership has been approved by the Managing Committee of a Cooperative Society shall deposit the membership fee and the amount of qualifying shares necessary to become a member within 14 days of the passing of the resolution of the Managing Committee approving the membership of the person concerned. Bye-law 5 provides that every person seeking membership of the Society shall sign a declaration to the effect that he or his wife or any of his dependants does not own a dwelling house or a plot in Delhi.

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When the writ petitions came up for final hearing along with the C.M.Ps. on 29-8-1974 this Court appointed Shri Deb Brat Mukherjee as Chairman of the Society. The Chairman was asked to scrutinise whether any person had been either illegally brought in as a member or illegally removed having regard to the rules, the bye-laws and the regulations of the Society.

E The Chairman restored the membership of the alleged defaulters and published a tentative voters' list. The Chairman declared that out of the 60 new allottees 21 did not have applications for membership and 38 were illegally admitted and could not be included in the voters' list. The chairman said that the allotment of plots in their favour could not be upheld. 11 persons out of the 60 new allottees filed two C.M.Ps. in August 1976 praying for an injunction restraining the chairman from holding elections. These applications were filed without serving any party to the proceedings contrary to the rules and practice of the court. On 23-9-1976, the Chairman submitted his report.

F Allowing the writ petitions,

G HELD :- 1. The date of the application, prescription of time for deposit of membership fee and the amount of qualifying shares, and the filing of the requisite declaration are formalities which cannot be disregarded. The Chairman rightly came to the conclusion that the new allottees could not be treated as members. The new allottees were taken in without considering the persons on the waiting list. It was incumbent on the Society to act in accordance with clause 7 of the Lt. Governor's award. The Managing Committee took 38 persons as members unlawfully. The declaration of defaulters could not have been made except by the General Body with a special majority and with the approval of the Registrar. The nominated Managing Committee could not have functioned after 1st April 1973 in view of the provisions of s. 92 read with s. 32 of the Delhi Cooperative Societies Act 1972. In view of the award of the Lt. Governor dated 6-7-1971 the Committee had no jurisdiction to declare any member a defaulter. The act of declaration of defaulters of 6-1-1974 cannot be dis-associated from the enrolment of new allottees on 25th and 26th January 1974. The report of the chairman in restoring membership to the 108 alleged defaulters is just and correct. The circular dated 30-4-1973 issued by the nominated Managing Committee is not a notice within the meaning of

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the bye-laws of the Society and the declaration of defaulters on the basis of the circular is illegal and contrary to the bye-laws of the Society. The circular was despatched after the time for payment mentioned therein was over. No opportunity was given to a member as required by the amended bye-laws to show cause why his right to a plot would not be forfeited. The order of this court dated 6-7-1973 continued to be in force in so far as the petitioners in Raj Rani's petition are concerned. Therefore, the declaration of defaulters from amongst the petitioners in Raj Rani's petition was unjustified. The action of the nominated Managing Committee declaring defaulters was in bad faith because they wanted to confer benefits on other persons in the guise of declaration of defaulters. [381 A-B, D, E, H, 383A, D, F, 384B-E]

The Chairman rightly came to the conclusion that out of the 42 declarations of defaulters for not submitting affidavit 30 members had genuine grievances. [384-F]

The Chairman rightly held that the 4 persons whose money was lying with the Society should be made members. The Chairman also rightly held that the 4 persons whose lands had been acquired by the Society should be accepted as members. [385A-B]

The priority fixed by the Chairman about allotment of plots is just. [385-C]

[The Court with a view to ensuring that the persons mentioned in the Chairman's report should get the reliefs mentioned in the report held that those persons should make fresh applications with affidavits through the Chairman and the allotment of plots should be made in accordance with the priority laid down by the Chairman.]

ORIGINAL JURISDICTION : Writ petition No. 340 of 1972.

(Under article 32 of the Constitution of India).

P. H. Parekh and *Miss Manju Jetley*, for the petitioners in W.P. 340/72 excepting petitioner No. 59 and for petitioners in W.P. 1526/73.

Petitioner No. 59 in W.P. No. 340/72 *in person*.

Yogeshwar Prasad, S. K. Bagga, Mrs. S. Bagga and *Miss Yesh Bagga* for the petitioner in W.P. No. 286/74.

Niren De, Attorney General in writ petition 340, *Sardar Bahadur Saharya* and *Vishnu Bahadur Saharya*, for respondents Nos. 1, 3, 4, 5 and 15 in W.P. 340/72 and respondents in all the W.Ps.

K. J. John for *M/s. J. B. Dadachanji & Co.* for R.R. 2, 6, 8, 10, and 12 in W. P. 340 & 1526 and R.R. 6, 8, 9, 11 and 12 in W.P. 286/74.

S. K. Mehta, K. R. Nagaraja and *P. N. Puri* for R.R. 13-178 in W.P. 1526/73.

The Judgment of the Court was delivered by

RAY, C.J. This Court on 29 August, 1974 appointed Shri Debra-brata Mookerjee Chairman to convene, fix the date and hold the meeting of New Friends Cooperative House Building Society Ltd. referred to as the Society in accordance with the provisions of the Delhi Co-operative Societies Act, 1972. This meeting was direct-

A ed to be held for the purpose of electing the members of the New Managing Committee. The Chairman was directed to look into each and every disputed question of membership. The Chairman was further directed to decide whether the persons had been rightly or wrongly declared to be defaulters. The order further directed that if the Chairman came to the conclusion that the person had been wrongly declared to be a defaulter, the Chairman would include him or her in the list of members. The Chairman was also asked to give effect to all orders of this Court already made in regard to persons who were declared defaulters and who according to orders of this Court on payment of moneys are not and cannot be treated defaulters. The Chairman was asked to go into cases where money had been sent and not accepted. If the Chairman came to the conclusion that money had been wrongly not accepted, the Chairman would decide the same in accordance with Rules and Bye-laws of the Society. There are further details in the order dated 29 August, 1974.

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D In the order dated 29 August, 1974 Brij Mohan Malhotra was given liberty to adduce proof before the Chairman that the money was tendered within time. If the Chairman came to the conclusion that it was tendered in time, he would decide in accordance with Rules and Bye-laws of the Society.

E The Chairman was entitled to scrutinise whether any person had been either illegally brought in as a member or illegally removed, having regard to the rules, bye-laws and regulations of the Society. Inder Bir Kaur alleged that she had been illegally removed from membership. The Chairman was directed to go into the question.

The order was made in two writ petitions No. 340 of 1972 and 1526 of 1973 and in a number of miscellaneous applications.

F On 6 July, 1971 the Lt. Governor passed an award directing the Society to pay Rs. 22 lakhs to the Delhi Administration. On 9 July, 1971 the Lt. Governor by a notification removed the elected Managing Committee and appointed a nominated Managing Committee under Rule 56 of the Rules made under the Bombay Co-operative Societies Act, 1925 hereinafter referred to as the Bombay Act which applied to Delhi. The term of the Managing Committee was for one year.

G On 23 October, 1971 the nominated Managing Committee passed a resolution to make the award rule of the Court. On 18 December, 1971 the nominated Managing Committee passed a resolution for having direct sub-leases. On 22 January, 1972 the nominated Managing Committee called for more funds. On 5 July, 1972 the Lt. Governor issued second notification extending the term of the nominated Managing Committee by two years.

H The Society was the subject matter of two writ petitions. 287 members of the Society filed writ petition No. 340 of 1972 hereinafter referred to as Raj Rani's petition. The members challenged

the vires of Rule 56 of the Society on the ground that the rule was ultra vires section 71 of the Bombay Act and further that the rule was bad on account of excessive delegation. The petitioners contended that action under Rule 56 could not be taken without complying with the provisions of section 46A of the Bombay Act which was applicable to Delhi at the relevant time. The petitioners also challenged some notifications on the ground that the Lt. Governor having exercised his powers once could not extend the term. In short, it was said that the power of the Lt. Governor was exhausted. The other challenges were that the notifications were not speaking order and were made malafide. The broad challenge in the petition was against the extension of term of the Managing Committee. On 29 August, 1972 Rule Nisi was issued.

On 30 April, 1973 the nominated Chairman of the Managing Committee issued a circular asking the members of the Society to pay certain amount. On 6 July, 1973 this Court restrained the Society and its Chairman from declaring any member a defaulter. On 13 August, 1973 this Court directed that all the interim orders passed in the writ petition should be confined to the petitioners in Raj Rani's petition.

On 16 August, 1973 K. V. Johar filed a writ petition in a representative capacity under Order I Rule 8 of the Code of Civil Procedure. This is writ petition No. 1526 of 1973 hereinafter referred to as Johar's petition. On 20 August, 1973 this Court issued Rule Nisi in Johar's petition.

On 17 August, 1973 the nominated Managing Committee declared 321 members as defaulters. This Court on 21 September, 1973 restrained the Society from taking any steps in pursuance of the resolution dated 17 August, 1973 against the petitioners and all other members of the Society.

On 29 November, 1973 respondent No. 6 filed an application in Johar's petition for vacating the stay order granted on 21 September, 1973. An application for vacating the stay order granted on 6 July, 1973 in Raj Rani's petition was not pursued. This Court vacated the stay granted on 21 September, 1973 in Johar's petition and granted a fortnight's time to make the requisite payment.

On 6 January, 1974 the nominated Managing Committee declared 39 members as defaulters for non-payment of dues, 42 members as defaulters for not submitting the affidavits. This was one of the controversies which formed the subject matter of the enquiry made by the Chairman.

On 25 January, 1974 the nominated Managing Committee decided to enrol 60 new members. On 26 January, 1974 a confidential letter was addressed by respondent No. 6 to the Lt. Governor seeking his approval to the enrolment of 60 new members and allotment of plots to them. On the same day, the Lt. Governor addressed a letter to respondent No. 6 giving his approval. The enrolment of

A new members on 25 January, 1974, the approval of the Lt. Governor on 26 January, 1974 and the allotment of plots to those 60 new members formed a big controversy which was also enquired into by the Chairman.

B Two Civil Miscellaneous Petitions No. 1683 and 1072 of 1974 challenging the declaration of defaulters and the enrolment of new members were filed in this Court in February, 1974. C.M.P.No. 1683 of 1974 is in Raj Rani's petition and C.M.P.No. 1072 of 1974 is in Johar's petition. This Court on 29 March, 1974 directed that all the papers including resolutions, original applications, original allotments should be produced in this Court on 4 April, 1974. This Court also restrained the Managing Committee by an injunction from taking any steps in any manner. On 4 April, 1974 this Court passed directions in respect of persons who had made part payments within the time prescribed or even beyond the time prescribed not to be treated as defaulters. This Court mentioned in its order that the allotment of plots to 60 new members who were characterised by the petitioners as very important persons appeared to have been made in undue haste and the persons in the waiting list were not considered and that no notice was given to persons inviting applications. This Court directed that the said list of 60 new members had to await final adjudication by this Court. This Court also directed that in case of 60 allottees no further steps should be taken. This Court directed that the case of 24 defaulters would be considered if it came to the conclusion that the allotment in favour of 60 new members would be treated as defaulters.

E In the order dated 4 April, 1974 petitioners No. 60, 46, 216, 171 and 165 in Raj Rani's petition who paid in part after due date were not to be treated as defaulters and they were given four weeks' time to pay the balance. It was said that if they failed to pay the balance within the time granted they would be treated as defaulters. Petitioners No. 1, 118, 43 and 287 in Raj Rani's petition were stated to have paid in full but after the due date. They were not to be treated as defaulters. It was also said that if they had not paid the full amount, they were also given four weeks' time for paying the balance, if any. If they did not pay the balance within the time granted they would be treated as defaulters.

G In Johar's petition S. Diwan, Virendra Singh, Dalip Singh and Hari Singh were stated to have made payments in part beyond time. Iqbal Khanna and H. Bhatia were stated to have made payments in part within time. They were all given four weeks' time from the date of the order and in default of payment within the time they would be treated so defaulters. Ten other persons in Raj Rani's petition and 14 persons in Johar's petition were said not to have paid within time. A list of 31 persons was handed up to this Court by the petitioners. These 31 persons were alleged to have been admitted as members and to have been allotted plots. It was contended that this allotment is irregular. These allotments were made on 26 January, 1974 to which reference has already been made. It was

said that the list of 31 persons would await final adjudication. Ten defaulters in Raj Rani's petition and 14 defaulters in Johar's petition aggregating 24 defaulters were to be considered at the time of final adjudication. It was said that if the allotment in respect of 31 persons could not be allowed to stand then the cases of these 24 persons would be considered.

In this back ground on 29 August, 1974 when the two writ petitions filed by Raj Rani and K. V. Johar came up for hearing this Court appointed Shri Debabrata Mookerjee as Chairman of the Society.

It may be stated here that some time in 1975 some one started a suit against the Chairman to stop the enquiry by him. The matter was brought to the notice of this Court. Some malicious and baseless allegations were made against the Chairman. Under these circumstances this Court directed notice to the respondent who filed the suit to show cause why he should not be committed for contempt. The Chairman was in the meantime asked to continue and he was directed to look into each and every matter as mentioned in the earlier orders.

The Chairman between 17 March, 1975 and 5 August, 1975 restored the membership of the alleged defaulters. On 26 April, 1976 tentative voters' list was published. On 14 May, 1976 the Chairman informed the parties that election would be held on 29 August, 1976. On 12 July, 1976 the Chairman informed the parties that the election would be held on 29 August, 1976 at Mavalankar Hall. On 27 July, 1976 the Chairman declared that of the 60 new members who had been described as very important persons 21 did not have applications for membership and 38 were not legally admitted members and could not be included in the list. The Chairman said that the allotment of plots in their favour could not be upheld. On 28 July, 1976 the list of members was published. On 17 August, 1976 there was scrutiny of the ballot papers.

On 24 August, 1976 11 persons out of the 60 persons who were enrolled members on 25 January, 1974 and allotted plots on 26 January, 1974 filed two Civil Miscellaneous praying for an order restraining the Chairman from holding the election on 29 August, 1976. These applications were held without serving any party to the proceedings contrary to the rules and practice of this Court. On 25 August, 1976 counsel for those petitioners mentioned the applications before the Court presided over by Khanna, J. asking that the applications filed might be heard. It was also mentioned without informing the parties. On 27 August, 1976 this Court further adjourned the applications.

On 29 August 1976 the meeting was held and voting took place at Mavalankar Hall.

On 23 September, 1976 the Chairman submitted his report and give copies to the parties. On 15 October, 1976 11 persons who

A had made the two applications for restraining of holding of the election filed an application for adjournment of the case for two months.

This Court cannot help observing two features. One is that an attempt was made some time in the year 1975 to restrain the Chairman from proceeding with the enquiry by filing a suit against him and making baseless allegations. It is only because this Court took

B immediate notice of the matter that the frivolous suit which had been filed in abuse of process of court was put an end to. The second is that on the eve of the election another attempt was made to restrain the Chairman from holding the election. These facts along with the attempt on the part of those 11 petitioners to keep the matter adjourned for two months indicate the persistent attitude on the part of some of these persons to mark time for some oblique purposes.

C In view of the importance of issues involved and the gravity of the situation where interest of ordinary citizens was sacrificed to meet the interest of persons of importance and influence that this Court took the aforesaid steps, in order to put an end to the litigation and the controversies.

D It was to be kept in the forefront that the Society is not yet the lessee of the Government in respect of the land which is to be allotted to the members. In Volume II in Raj Rani's petition No. 340 of 1972 appears the printed memorandum agreement to be entered into between the Society and the President of India in respect of land which will be allotted to the members of the Society. On 3 August, 1967 the Deputy Secretary, Delhi Administration wrote to the Secretary of the Society, inter alia, as follows: "I am desired to make it clear that the list of members submitted with your letter has been treated as final and no change in that list can be made without prior written permission of the Delhi Administration."

E The printed memorandum of agreement has three recitals. One of the recitals is that whereas the Society has deposited with the Chief Commissioner the sum of Rs. 41, 62, 456.61 and has further agreed to deposit with the Chief Commissioner the additional sum or sums as hereinafter provided, being the amounts agreed to be paid by the Society to the President by way of premium for the grant to the Society of the lease hereinafter mentioned which amounts, pending the grant of the said lease, are to be a security to the President for due performance by the Society of the terms of the Agreement. It is agreed between the parties, inter alia, as follows:—

F 1. The President hereby grants for a period of three years commencing from 13 February, 1973 a licence to the Society to enter upon the said land only for the purposes of making surveys and taking measurements and levels for preparing a lay-out plan.

G VIII. Upon the completion of the development of the land in accordance with the provisions contained herein and to the satisfaction of the Chief Commissioner and issue by him of a certificate to that effect

and provided that the other conditions of the Agreement have been duly observed, the President will, in consideration of the expenses incurred by the Society on the development of the land and the payment of the premium and of the yearly rent as herein provided and of the covenants on the part of the Society to be contained in the lease, grant to the Society and the Society shall accept a lease of such of the residential plots as may be determined by the Chief Commissioner in his absolute discretion.

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

Reference to the Agreement is necessary to show that the Society is not yet lessee of the Government in respect of the land. This is a mere agreement for the grant to the Society of the lease. The Government refused to grant lease. Thereafter the matter was referred to the arbitration of the Lt. Governor. The Lt. Governor made an award directing the Society to pay Rs. 22,45,742/- as the balance amount representing the cost of land.

In 1972 a supplementary agreement was made between the President of India and the Society. One of the recitals in that agreement mentions that the Society has not completed the development of the land and the members of the Managing Committee resolved that the Lt. Governor of Delhi be requested to allow the members to pay their individual dues to the Administration to evacuate their sub-leases. This recital indicates that there was an attempt on the part of individual members to pay dues to the Society as well as to the Government. It can, therefore, be seen that membership of the Society and the allotment of lands are different matters.

One of the main contentions before the Chairman was in regard to membership of 60 persons. These 60 persons were admitted to membership on 25 January, 1974. The Lt. Governor approved of their membership on 26 January, 1974. The Chairman found that of these 60 persons 21 had at one time or another withdrawn their membership. 10 out of those 21 had either never applied or never paid the requisite membership fee. The result, according to the Chairman, was that the cases of 39 persons were to be considered. The Chairman noticed that "many of these 60 persons were highly placed Government officials and friends and relations of persons prominent in public life." Another allegation was that many of them happened "to be close relations or friends and members of the nominated Managing Committee."

At the meeting held on 27 July, 1976 the Chairman referred to Rules 24 and 30 of the 1973 Delhi Cooperative Societies Rules. These

A rules were under the Delhi Co-operative Societies Rules 1972 which replaced the Bombay Act 1925 in relation to the Union Territory. These rules relate to conditions to be complied with for admission to membership. Bye-law 5 of the Society Bye-laws was also referred to by the Chairman.

B Broadly stated, Rule 24 requires a person to apply in writing in the form laid down by the Society for membership. His application is to be approved by the Committee of the Society. He has to fulfil other conditions laid down in the Act, the Rules and the Bye-laws.

C Rule 25 of the Delhi Co-operative Societies Rules, 1973 provides *inter alia* that no person shall be eligible for admission as member of a co-operative society, if in the case of membership of a housing society (1) he owns a residential house or a plot of land for the construction of a residential house in any of the approved or up-approved colonies or other localities in the Union Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children on lease hold or free hold basis; (2) he deals in purchase or sale of immovable property either as principal or as agent in the Union Territory of Delhi; D or (3) he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar. Rule 25(2) provides that if a member becomes or has already become subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.

E Rule 30 deals with the disposal of application for admission of members. The rule provides that on receipt of an application for membership, the co-operative society shall enter particulars of the application in the register of applications in the form mentioned therein. The co-operative society shall dispose of an application received for admission as member as early as possible and in no case later than the expiration of a period of one month from the date of receipt of the application by the Society. In case of refusal to admit, such society shall communicate its decision together with reasons thereof. The appeal to the Registrar lies against the order for refusal to admit a member. An important feature in rule 30 is the date of receipt of application for membership because the application is to be dealt with within one month. Rule 30(4) provides that the person whose membership has been approved by the Managing Committee of a co-operative society shall deposit the membership fee, and the amount of the qualifying shares necessary to become a member, within 14 days of the passing of the resolution of the Managing Committee approving the membership of the person concerned. F G

H Bye-law 5, *inter alia*, provides that every person seeking membership of the Society shall sign a declaration to the effect that he or his wife (she or her husband) or any of his/her dependents does not own a dwelling house or plot in Delhi and that he/she is not a member of any other cooperative house building society.

Judged by these rules and considering the rival contentions of the parties the Chairman found that of the 39 cases there was only one case of N. K. Mukherjee M. No. 1526 which fulfilled the requirements of the rules and the bye-laws and the Chairman in his report declared him as having been validly accepted as member. Out of those 39 persons 20 applications did not bear any date. The date of an application, the prescription of time for deposit of the membership fee and the amount of qualifying share and the filing of the requisite declaration are formalities which could not be disregarded. The Chairman rightly came to the conclusion that out of 39 persons except N. K. Mukherjee the other 38 were not legally admitted to the membership and, therefore, they could not be treated as members.

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The Chairman in paragraphs 9 to 16 of the Report considered the cases of several persons who had been declared defaulters. He rightly came to the conclusion that 108 persons mentioned in Annexure 'C' should be restored to membership.

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The Chairman next considered whether there should be a waiting list. A list of 102 persons described as the waiting list was forwarded and endorsed by the officers of the Delhi Administration. The Chairman came to the conclusion that of the 102 persons on the list, only a few prosecuted their claims before the Chairman and the rest appeared to him to be no more interested in the membership of the Society. In an annexure marked 'G' the Chairman rightly included in the waiting list the names of such persons who could be considered.

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The Chairman said that 38 persons whose membership was cancelled by him at the meeting held on 27 July, 1976 could apply afresh so that their applications could be considered. The Chairman said that 24 persons made applications for membership. The Chairman rightly said that it would be fair to leave the consideration of the applications of these 24 persons to the new Managing Committee and that their names should be kept in a waiting list.

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The Chairman next found that the Society had received from 4 persons deposits towards the price of the land more than a decade ago but took no steps to return the moneys or to admit them to the benefit of membership. Again, there were 4 other persons whose land had been acquired by the Delhi Administration. There was an agreement which required the Society to offer membership to these persons upon their fulfilling the conditions of membership. The Chairman found that those 4 persons whose land had been acquired had made applications. The Chairman rightly came to the conclusion that these 8 persons, namely 4 from whom moneys had been received and the other 4 whose land had been acquired should be accepted as members.

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Out of 38 persons whose membership was cancelled by the Chairman on 27 July 11 applied to this Court in C.M.P. No. 2065 of 1976 for an order that admission of 124 members mentioned in

A Annexure 'C' to the petition is illegal and for further declaration of revocation of membership of 38 members as mentioned in Annexure 'B' to the said petition. These petitioners also asked for an order directing the Chairman not to proceed with the meeting of the Society and the holding of elections on 29 August, 1976.

B These 11 persons also made applications C.M.Ps. No. 8485 and 8486 for filing objections to the report of the Chairman. They wanted two months to file objections.

It should be stated here that 11 applicants wanted to prevent the holding of the meeting and the election for the purpose of prolonging litigation.

C This Court rightly did not prevent the holding of the meeting and the election. The report of the Chairman shows that the meeting as well as the election was lawfully and validly held.

These 11 persons were given full opportunity to make their submissions by way of objection to the report. Counsel appeared and made their submissions.

D These 11 persons submitted that no relief can be sought by the petitioners in the writ petitions against the Society and that Article 19 cannot now be invoked for the enforcement of rights. Their further submissions were these. On 6 January, 1974 39 persons were declared defaulters by the Managing Committee for non-compliance with the order of this Court passed on 11 December, 1973. One of those 39 defaulters made an application to this Court on 9 February, 1974 for condonation of delay and for restoration of his membership.

E The application was dismissed on 25 February, 1974. On 4 April, 1974 this Court granted four weeks' time to 15 persons out of the 39 declared defaulters and therefore the default of 24 persons was confirmed. The Chairman re-considered the cases of 24 defaulters including the one whose application was dismissed. These 11 persons submitted that their membership and allotment should have been restored. The Chairman was also in error in considering the cases of 8 persons because records were not available.

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It is significant that out of 1100 members and the several parties to the writ petitions none has taken objection to the report of the Chairman. The only persons who objected are out of the 24 persons whose membership and allotment on 26 January, 1974 was cancelled. These 24 persons have however been put by the Chairman in a waiting list.

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The membership as well as the allotment of plots to these 38 persons is rightly rejected by the Chairman. The Chairman based his finding on facts of tabulated statements prepared in the presence of counsel and parties in open public hearings. No challenge can be taken to the dates and facts. The Chairman rightly found that even if the date of the eligibility certificate is taken as the effective date of application the position cannot be otherwise. The Chairman rightly found that the records do not indicate that the payment was

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made within 14 days of the date of resolution. The Chairman rightly found that the requirement of payment is not proved and there has not been substantial compliance. The conclusion is correct and inescapable that the enrolment of 38 persons was not only rushed but was done with unseemly haste. **A**

It also appears from the report of the Chairman that persons in the waiting list were not considered before these 38 persons were enrolled as members. Reference may be made to clause (7) of the Award of the Lt. Governor which was made the rule of Court. The award is dated 6 July, 1971. Clause (7) made it incumbent on the Society to act in accordance with the award. There were some persons who were treated by the new Managing Committee as defaulters and these 38 persons were taken by the new Managing Committee unlawfully as members. **B**
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The Chairman in Annexure 'C' restored 108 persons to membership. These 108 persons had been declared defaulters by the nominated Managing Committee. This Court by order dated 29 August, 1974 required the Chairman to look into each and every disputed question of membership and to decide as to whether a member has been rightly or wrongly declared a defaulter. **D**

The nominated Managing Committee on 6 January, 1974 declared a number of persons to be defaulters. The declaration of defaulters could not have been made except by the General Body with a special majority and with the approval of the Registrar. The nominated Managing Committee could not have functioned after 1 April, 1973 in view of the provisions of section 92 read with section 32 of the Delhi Co-operative Societies Act, 1972. In view of the award of the Lt. Governor dated 6 July, 1971 the Committee had thereafter no jurisdiction to declare any member a defaulter. This Court by order dated 4 April, 1974 observed that the case of 24 defaulters would be considered if it transpired that the list of new allottees could not be allowed to stand. The act of declaration of defaulters on 6 January, 1974 cannot be dissociated from the enrolment of new allottees on 25 and 26 January, 1974. **E**
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The report of the Chairman in restoring 108 alleged defaulters to membership is just and correct. This Court by order dated 29 August, 1974 required the Chairman to look into each and every disputed question of membership and to decide whether a person has been rightly or wrongly declared a defaulter. The order further stated that if the Chairman came to the conclusion that the person has been declared to be a defaulter the Chairman will include him or her in the list of members. The report of the Chairman is lucid and direct to the point. The report noticed that there was widespread discontent as to the way in which the affairs of the Society were conducted. The report said "Allegations of favouritism, want of fairplay, mal-administration, deliberate suppression of the rights of members were freely made against the nominated Managing Committee in 1971". The Chairman noticed that there was "nothing to **G**
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A choose between the old elected Committee which was superseded and the nominated Managing Committee which came to take its place". Letters were hardly replied to. Enquiries were rarely attempted to. Cheques were hardly ever cashed in time. Sudden declarations of default were made without following the prescribed procedure laid down in the Act and the Rules.

B The nominated Managing Committee issued a circular dated 30 April, 1973 demanding Rs. 6 per sq. yard and threatened the members that in case they did not pay the said amount they would be declared defaulters. This circular is not a notice within the meaning of the bye-laws of the Society and declaration of defaulters on the basis of the circular is illegal and contrary to bye-laws of the Society.

C Further the said circular was despatched after the time for payment mentioned therein was over. No opportunity was given to a member as required by the amended bye-laws to show cause why his right to a plot would not be forfeited for non-payment of deposit. Figures of alleged dues were not mentioned in the circular in most of the cases.

D In view of the award of the Lt. Governor dated 6 July, 1971 the nominated Managing Committee could not declare any member to be a defaulter. Further the order of this Court dated 6 July, 1973 continued to be in force, in so far as the petitioners in Raj Rani's petition are concerned. The declaration of defaulters from amongst the petitioners in Raj Rani's petition was unjustified. The action of the Managing Committee declaring defaulters was in bad faith because

E they wanted to confer benefits on other persons under the guise of declaration of defaulters.

This Court in the order dated 4 April, 1974, observed that the cases of 24 defaulters would be considered if it transpired that the list of allottees on 26 January, 1974 could not be allowed to stand. The Chairman has rightly dealt with the cases of 24 defaulters in view of his right conclusion that the allotments on 26 January, 1974 were bad.

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The Chairman considered the cases of 42 persons who had been declared defaulters. The Chairman rightly came to the conclusion that 30 persons had genuine grievances and he accepted them as members on their submitting fresh affidavits with a view to putting an end to all controversies whether they filed affidavits of not.

G It was admitted before the Chairman that all these persons had filed their affidavits originally while seeking membership. The question was whether they filed any fresh affidavits as required by the subsequent direction of the Delhi Development Authority. Some of the members contended before the Chairman that they filed amended affidavits. Some members contended that in spite of their request to give the proforma of the amended affidavit the nominated Managing Committee did not give the proforma of the affidavit. Under these circumstances the Chairman rightly accepted the contentions of 30 out of the 42 persons.

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The Chairman rightly held that 4 persons whose money was lying with the Society should be made members. The Chairman also rightly held that 4 persons whose lands had been acquired by the Society should be accepted as members. A

The Chairman in paragraph 37 of the report has indicated that the new Managing Committee should fix priorities in the order mentioned in sub-paragraph (a) to (e). These in sub-paragraphs (a) to (b) belong to classes of members in whose favour there was specific allotment as early as the year 1957. Due communication was made to them about the specific allotment of plots. They were persons who had paid more than Rs. 17,000. They were declared defaulters for non-payment of Rs. 3000 or less by the nominated Managing Committee as late as the year 1974. The Chairman rightly put persons in sub-paragraphs (a) and (b) in order of priority. B
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Persons in sub-paragraph (c) in paragraph 37 of the Chairman's report comprise those who were declared defaulters round about the year 1962-63. The amounts paid by persons in sub-paragraph (c) are less than the amounts paid by persons in sub-paragraphs (a) and (b). There was no specific allotment of plots in favour of persons mentioned in sub-paragraph (c). Persons in sub-paragraph (c) therefore cannot claim priority over persons in sub-paragraphs (a) and (b). In sub-paragraph (c) only one person objected regarding priority. The other 47 persons accepted their places in sub-paragraph (c). This also shows the justness of the report. D

Subject to the following directions, the report of Mr. D. Mookerjee dated 23 September, 1976 is accepted and confirmed. E

1. The Managing Committee of the New Friends Co-operative Society Ltd. (hereinafter called "the new Managing Committee") elected at the meeting held on 29 August, 1976 shall assume charge with effect from the date of this order.

2. The new Managing Committee shall send to all persons referred to in sub-paragraphs (a) to (e) of paragraph 37 of Mr. Mookerjee's report, through Mr. Mookerjee, a letter stating that membership fee and the amount of qualifying share necessary to become a member of the Society and also copies of this order as well as the appropriate forms of application for membership of the Society and of the affidavits to be sent by the applicants to the new Managing Committee within one month from the date of this order. F
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3. Each person referred to in sub-paragraphs (a) to (e) of paragraph 37 shall, if he desires to have any plot allotted to him, apply for membership of the Society. All such applications for membership of the Society shall be sent to Mr. Mookerjee within 30 days from the date of receipt of the documents referred to in the next preceding paragraph hereof. If any application is not received by Mr. Mookerjee within the said period, or if the affidavit referred to in the next preceding paragraph is not enclosed with the application, or if any application or affidavit be found by Mr. Mookerjee to be H

A not in compliance with the form of the application and the affidavit sent to the applicant, Mr. Mookerjee shall reject such application. Such rejection by Mr. Mookerjee shall be final.

B 4. All applications for membership along with affidavits, found by Mr. Mookerjee to be in order, will be forwarded by Mr. Mookerjee to the new Managing Committee upon the expiry of the said period of 30 days. Mr. Mookerjee will make a list of the persons whose applications are so forwarded by him to the new Managing Committee.

C 5. The new Managing Committee shall convene a meeting of the Committee within 30 days from the receipt of the applications along with the affidavits sent by Mr. Mookerjee to the new Managing Committee as aforesaid and pass a resolution accepting all such applicants for membership as members of the Society.

D 6. The new Managing Committee shall convey to Mr. Mookerjee its said resolution within 14 days of the passing of such resolution and shall send to Mr. Mookerjee at least as many copies of the resolution as the number of persons who are admitted as members of the Society by virtue of that resolution. Mr. Mookerjee will thereafter send a copy of the said resolution to each of the applicants who is admitted as a member of the Society by virtue of the said resolution.

E 7. On receipt of the said communication from Mr. Mookerjee each person who has been admitted as member of the Society by virtue of the said resolution shall, within 14 days from the receipt of the communication from Mr. Mookerjee, pay to Mr. Mookerjee by Bank Draft (drawn in favour of "New Friends Co-operative House Building Society Ltd.") an amount including the membership fee and the amount of qualifying share necessary to become a member of the Society. Mr. Mookerjee will thereafter forward the Bank Drafts to the new Managing Committee.

F 8. Regarding the allotment of plots, the suggestions of Mr. Mookerjee contained in sub-paragraphs (a) and (b) of paragraph 37 of his report will be given effect to by the new Managing Committee, subject to the availability of plots and subject also to each person referred to in the said two sub-paragraphs and to whom any plot is allotted complying with the direction contained in the preceding paragraph 7 hereof and further subject to each such person paying his full share of the money payable to the Delhi Development Authority under the Supplementary Agreement entered into between the President of India and the Society on 1 February, 1972 by a Bank Draft drawn in favour of the Delhi Development Authority".

H 9. The allotment of plots among persons referred to in sub-paragraphs (a) and (b) of paragraph 37 of Mr. Mookerjee's report shall be in the order of priority mentioned there and already earmarked for them. If plots which are already earmarked for persons in sub-paragraphs (a) and (b) are not available then there will be allotments to those persons by draw of lots first among those in sub-

paragraph (c) and thereafter among those in sub-paragraph (b). Mr. Mookerjee will prepare a list of persons to whom plots are so allotted and send copies of the list of the new Managing Committee and the Delhi Development Authority and inform the persons to whom such allotments are made.

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10. Each person referred to in the said sub-paragraphs (a) and (b) of paragraph 37 and to whom any plot is allotted shall, within 14 days from the receipt of the communication from Mr. Mookerjee as referred to in paragraph 6 hereof, enquire from the Delhi Development Authority as to the sum payable by him to the Delhi Development Authority as aforesaid and upon receipt of the reply from the Delhi Development Authority pay the sum to the latter by a Bank Draft within 15 days from the date of the receipt of the reply. In default of such payment the allotment to him will stand cancelled. In the event of any such cancellation allotment may be made to the next person if any, in this sub-paragraph.

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11. Thereafter, if any plot or plots remain to be allotted the allotment or allotments shall strictly be in accordance with the order of priority laid down in paragraph 37 of Mr. Mookerjee's report. Such allotments shall be made by Mr. Mookerjee by means of draw of lots first among the persons referred to in sub-paragraph (c) thereafter among those in sub-paragraph (d) and thereafter among those in sub-paragraph (e) of paragraph 37 of his report. Mr. Mookerjee will prepare a list of persons to whom the plots are so allotted and send copies of the list to the new Managing Committee and the Delhi Development Authority and inform the persons to whom such allotments are made. Any person referred to in sub-paragraphs (c), (d) and (e) of Mr. Mookerjee's report who is allotted any plot shall within 14 days from the receipt of the communication from Mr. Mookerjee to the effect that a particular plot has been allotted to him enquire from the Delhi Development Authority as to the sum payable by him to the Delhi Development Authority as aforesaid and upon receipt of the reply from the Delhi Development Authority pay the sum to the latter by a Bank Draft within 15 days from the date of the receipt of the reply. In default of such payment the allotment to him will stand cancelled. In the event of any such cancellation, allotment may be made to next person, if any, in that sub-paragraph.

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12. Each allotment of plot, referred to in this order, shall be in accordance with the application of each applicant for membership referred to in paragraph 3 hereof, that is to say, will not be entitled to any allotment of any land, the area whereof is different from the area mentioned in his application form.

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13. If any person referred to in any of the sub-paragraphs of paragraph 37 of Mr. Mookerjee's report has already paid any money to the Society and proves such payment to Mr. Mookerjee, the money so paid and proved shall be appropriated towards payment of the amounts mentioned in paragraphs No. 7, 8 and 11 hereof.

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- A** 14. Upon allotment of land to any person mentioned in this Report each allottee shall pay to the Society a sum of Rs. 1,000/- within one month from the date of such allotment as and by way of costs relating to these proceedings. In default of payment of such sum, the allotment to such person shall stand cancelled. In the event of any such default, the procedure laid down in paragraph 10 and 11 hereof shall be followed. To sum up. In the event of any such default the allotment may be made to the next person, if any, in the sub-paragraph group of the defaulting persons and thereafter to the next sub-paragraph group of persons.

No lease shall be granted to any allottee until and unless all directions contained in this order are fully complied with by him.

- C** The Society shall pay to Mr. Mookerjee a further sum of Rs. 45,000/- as his remuneration for the work done by him so far. The Society shall also pay Mr. Mookerjee a further sum of Rs. 5,000/- for the work to be done by him under this order and also such further sum or sums as he may intimate to the new Managing Committee as extra expenses, including remuneration for his staff, postage etc. for the work to be done under this order. Mr. Mookerjee's Personal Assistant Mr. Jain will be paid Rs. 300/- per month.

This order shall not apply to such members of the Society who have already obtained leases from the President of India.

This order will govern only the affairs of this Society and will not be a precedent for the affairs of any other co-operative society.

- E** Some persons have deposited monies with the Registrar of this Court. The Registrar may hand over the money to the Society.

Writ Petition No. 340 of 1972, 1526 of 1973 and 286 of 1974 and all proceedings in these writ petitions are disposed of accordingly.

All parties will pay and bear their own costs.

P.H.P.

Petitions allowed.