

SH. O.P. CHOUDHRY

v.

REHABILITATION MINISTRY EMPLOYEES COOPERATIVE HOUSE
BUILDING SOCIETY AND ORS.

APRIL 2, 2003

[S. RAJENDRA BABU AND G.P. MATHUR, JJ.]

Displaced Persons (Rehabilitation and Compensation) Act, 1954—Delhi Cooperative Societies Rules, 1973—Rule 25—Allotment of plot to co-operative society—Society to provide plots for rehabilitating displaced persons—Eligibility for allotment of plots from society ascertained by the Rules, by-laws of society and agreement in a previous litigation—Allotments made in contravention of ascertained eligibility criteria—Disqualification of members—Justification of—Held: In the facts of the case disqualification justified as the allotments were not in conformity with the eligibility criteria—Demand of membership of society—Appropriateness of—Held: In the facts of the case the demand is not justified—Inter-se seniority between members—Seniority of member, who had filed application for membership earlier in point of time, altered by High Court without notice—Justification of—Held: In the facts of the case altering of seniority not justified—Expulsion of member—Subsequently expulsion order set aside—Seniority—Grant of—From subsequent date—Demand of original seniority—Held: Once the expulsion order is set aside, the member is entitled to original seniority.

Some land, out of compensation pool, comprising of evacuee property and properties acquired by Government for rehabilitating displaced persons, was allotted under Displaced Persons (Rehabilitation and Compensation) Act, 1954 to a cooperative society. The society was incorporated, with the object of providing plots and houses to the employees and ex-employees of the Ministry of Rehabilitation and its subordinate offices. Rule 25 of Delhi Cooperative Societies Rules, 1973, bye-laws of society, and a settlement arrived at during the pendency of a Special Leave Petition in an earlier litigation concerning allotment of the land, ascertained the eligibility or disqualification of a member to get a plot from the society. A member of the society who himself or herself or through his parents, husband/wife, children etc. had obtained any house or plot from the Department of Rehabilitation earlier, or a member, who

A already owned a plot or house in his own name or in the name of his wife or dependents anywhere in Delhi, was not entitled for allotment of a plot in the developed land.

B In civil appeal Nos. 2634-2635 of 2003, 2643 of 2003 and 2644 of 2003, appellant-allotees were held disqualified for allotment of plot on the ground that they were earlier allotted property from the Department of Rehabilitation.

C In Civil appeal No. 2642 of 2003, appellant was disqualified on the ground that her husband was holding property in Delhi and she repeatedly filed false affidavit to the effect that neither she nor her husband owned urban plot in Delhi.

D In Civil Appeal No. 2641 of 2003 appellant disputed that he was not given initial membership of the society despite his having deposited a sum with the Ministry of Rehabilitation. It was held that his having been admitted as a member of the society does not arise as he had not submitted a formal application for enrolment as a member of the society and the necessary affidavit. Moreover, he himself was not pursuing the litigation.

E In Civil Appeal No. 2645 of 2003, 2646 of 2003 and 6979 of 2001, 'S' had filed application for becoming member of the society prior to 'K'. Application of 'S' was also approved prior to that of 'K'. Managing Committee as well as the Administrator approved the name of 'S' as member of the society. In writ petition filed by 'K' before High Court appellant 'S' was not made party. High Court had interchanged the seniority position of 'S' and 'K' showing 'K' at serial No. 33 and 'S' at serial No. 34.

F The grievance of the appellants in Civil Appeal Nos. 2647-2649 of 2003 was that their names were not included in the draw of lots and no plots were allotted to them. They alleged that they had sent a letter to the society to do the needful. Writ petitions filed by them before High Court were dismissed.

G In Civil Appeal Nos. 2650, 2651 and 2652 of 2003, expulsion orders passed against the appellant was set aside by Courts. He deposited the entire amount demanded by the society. The claim of the appellant was that in view of the expulsion orders having been set aside, he was entitled to restoration of his original seniority. High Court fixed his seniority with

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effect from a subsequent date. Case of other appellants herein are identical. A

Allowing the appeals, the Court

HELD: 1. In view of the agreement which had been entered into between the parties and the order passed by this Court in earlier Special Leave Petition, the conditions mentioned therein are absolutely binding upon the society as the allotment of land to the society was made in pursuance to the said agreement. Earlier orders passed by this Court had the effect of modifying the order passed by the High Court and consequently it is not open to the society to act contrary to the terms of the agreement. [319-C, D] B

2. In Civil Appeal Nos. 2634-2635 of 2003, High Court was justified in allowing the writ petition filed by the society. In view of the specific conditions contained in the agreement entered into by the society in earlier Special Leave Petition, any member of the society who had obtained any house or a plot from the Department of Rehabilitation earlier, cannot again be allotted a plot. That apart as on the date when he acquired membership of the society, he was ineligible and was debarred from becoming a member thereof and further he did not file a correct affidavit. [320-A-C] C

3. In Civil Appeal No. 2643 of 2003, High Court rightly set aside the order passed by the Financial Commissioner and upheld the order of the Registrar. Clause 2 of the agreement entered into between the society in earlier Special Leave Petition clearly provides that no member of the society, whose parents had obtained any house or plot from the Department of Rehabilitation earlier, shall again be allotted a plot. In view of this clause in the agreement, which is binding on the society, the appellant is clearly ineligible for allotment of a plot. [320-H; 321-A] D E

4. In Civil Appeal No. 2644 of 2003, husband of the appellant could not have been allotted a plot as his mother had obtained a house from the Department of Rehabilitation earlier. The appellant having come into picture after the death of her husband as nominee member cannot have better rights than her husband. Since the husband of the appellant could not have been allotted a plot and further as the appellant did not disclose correct facts in her affidavit and gave wrong facts in her subsequent affidavit, the High Court was perfectly justified in allowing the writ petition filed by the society by which the order of the Financial F G H

A Commissioner was quashed and the order of the Registrar was restored.
[320-G, H; 321-A, B]

5. In Civil Appeal No. 2642 of 2003, High Court rightly allowed the writ petition filed by the society. It is not in dispute that a perpetual lease of a plot in Delhi was granted in favour of the husband of the appellant. It is, therefore, clear that the appellant filed false affidavits. In view of bye-law No. 5(1)(e) of the society, a person cannot be a member of the society if he or his wife or her husband (in case of a woman) or of his/her dependent owns a plot or a dwelling house in Delhi. The appellant was thus not qualified to be a member of the society and was not eligible for allotment of a plot. [322-E, F, G]

6. In Civil Appeal No. 2641, High Court rightly set aside the order passed by the Cooperative Tribunal as it had not adverted to the main issue, namely, whether the appellant had submitted any application form and necessary affidavit for enrolment as member of the society. The mere fact that some money was deposited by the appellant would not entitle him to claim membership of the society. That apart, the society had refunded the amount through a cheque when the appellant sent a letter that the money be adjusted in the account of 'O'. High Court has rightly taken the view that the appellant is not himself pursuing the matter, but it was a proxy litigation. [324-D, E, F]

7. In Civil Appeal Nos. 2645-2646 of 2003 and 6979 of 2001, High Court erred in altering the seniority of 'K' and placing his name at Sr. No. 34 instead of Sr. No. 33. That apart 'K' had not impleaded 'S' as a party to the writ petition and in his absence no order adverse to his interest could have been passed. Order passed by the High Court is modified to the extent that 'S' shall be placed at Sr. No. 33 and 'K' shall be placed at Sr. No. 34 in the seniority list. [325-G, H; 326-A]

8. In Civil Appeal Nos. 2647-2649 of 2003, the appellants only allege that they sent a letter to the society to do the needful. There was no material on record to show that the appellants took any effective steps for transfer of the membership in their names. As the appellants have not been formally inducted as members of the society, there was no occasion for including their names in the draw of lots. [326-D, E]

9. In Civil Appeal Nos. 2650, 2651 and 2652 of 2003, there is no justification for not restoring the original seniority to the appellant and

assigning seniority from a subsequent date. Once the expulsion order was set aside it has no existence in the eyes of law and cannot be taken notice of for depriving him of his original seniority. The Managing Committee of the society had also passed a resolution to the effect that the four members including the appellant may be asked to submit requisite documents and make payments of their dues as paid by other members on account of cost of land, development charges, interest etc. In this resolution nothing was said about disturbing the seniority of the appellant or assigning him seniority from a later date. The appellant having deposited the entire amount demanded by the society is entitled to restoration of his original seniority. [327-G, H; 328-A]

CIVIL APPELLATE JURISDICTION · Civil Appeal No. 2634-2635 of 2003.

From the Judgment and Order dated 28.2.2001 of the Delhi High Court in C.W.P. Nos. 1622/97 and 5158 of 1994.

WITH

C.A. Nos. of 2643, 2644, 2642, 2641, 2645, 2646, 2647-2649, 2650, 2651, 2652/2003 and 6979 of 2001.

Nidesh Gupta, Naveen Singh and Rajan Narain for the Appellant.

M.L. Lahoty, Sushil Kumar Jain and P.K. Sharma for the Respondents.

The Judgment of the Court was delivered by

G.P. MATHUR, J. Special leave granted.

These appeals are directed against a common judgment and order dated 28.2.2001 of a Division Bench of the High Court of Delhi by which large number of writ petitions were decided and, therefore, they are being decided by a common order.

A cooperative society known as Rehabilitation Ministry Employees Cooperative House Building Society Ltd. (hereinafter referred to as 'the Society') was formed in the year 1959. The Society was incorporated with the object of providing plots and houses to the employees and ex-employees of the Ministry of Rehabilitation and its subordinate offices. Out of compensation pool, comprising mainly of evacuee properties as well as

- A properties acquired by Government for rehabilitating displaced persons from Pakistan, some land was allotted to the society by the Department of Rehabilitation by the letter dated 26.5.1970 under the Displaced Persons (Rehabilitation & Compensation) Act, 1954. The society took steps for allotment of plots to its members and in that connection various kinds of
- B disputes regarding disqualification, eligibility, seniority, etc. of the members were raised. These disputes were decided by the Registrar, against whose decision revisions were filed, which were decided by the Financial Commissioner. The decision of the Financial Commissioner was challenged by filing writ petitions by the members of the society and in some cases by the society itself. All these writ petitions have been decided by the common
- C judgment and order dated 28.2.2001 of the High Court, which is the subject matter of challenge in the present appeals.

The eligibility of a member to get a plot from the society or his disqualification has to be examined having regard to the provisions of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as 'the Rules'),

D bye-laws of the society and an earlier litigation concerning allotment of land wherein a settlement had been arrived at during the pendency of a special leave petition in this Court. Rule 25 of the Rules which deals with disqualification reads as under :

"25. Disqualification for Membership.

- E (1) No person shall be eligible for admission as a member of a co-operative society if he-
- (a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or
- F (b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence;
- (c) in the case of membership of a housing society:-
- G (i) he owns a residential house or a plot of land for the construction of a residential house in any of the approved or unapproved colonies or other localities in the Union Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on leasehold or freehold basis provided that
- H disqualification as laid down in sub-rule (1)(c) (i) shall not be

applicable in case of persons who are only co-sharers of joint ancestral properties in congested localities (slum areas) whose share is less than 66.72 sq. metres (80 sq. yards) of land;

- (ii) he deals in purchase or sale of immovable properties either as principal or as agent in the Union Territory of Delhi; or
 - (iii) he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar.
- (2) Notwithstanding anything contained in the rules or the bye-laws of the co-operative society, 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.
- (3) A member who ceases to be a member of a co-operative society under sub-rule (2) shall not be entitled to exercise rights of membership or incur liability as member with effect from the date referred to in sub-rule (2) but as from the date he becomes a creditor of the co-operative society in respect of the amount due to him on account of paid-up share capital, deposit, cost of land deposited or any other amount paid by him to the co-operative society as its member. As from the date of his ceasing to be a member of the society under sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative society within 3 months and when the co-operative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative society.
- (4) If any question as to whether a member has incurred any of the disqualifications referred to in sub-rule (1) arises, it shall be referred to the Registrar for decision. His decision shall be final and binding on all concerned. The power of the Registrar under this rule shall not be delegated to any other person appointed to assist the Registrar. ”

The society in question is admittedly a housing society and, therefore, Rule 25(1)(c) is applicable to it. According to clause (i) of this sub-rule, no person shall be eligible for admission as a member of the society in question if he owns a residential house or a plot of land for construction of a residential house in any of the approved or unapproved colonies or other localities in the

- A Union Territory of Delhi either in his own name or in the name of his spouse or any of his dependent children on leasehold or freehold basis. The proviso appended to this sub-rule makes an exception in case of persons who are only co-sharers of joint ancestral properties in congested localities (slum areas), and whose share is less than 66.72 sq. mtrs. (80 sq. yds.) of land. Even if a person's share in joint property is less than 66.72 sq. mtrs., he would not be eligible to be a member of the housing society unless the said property is situated in congested localities (slum areas).

Apart from the rules referred to above, the bye-laws of the society also lay down certain conditions for the membership of the society. Bye-law no. 5 lays down the following qualification for being enrolled as a member :

“5(i) No person shall be a member unless:-

(a) He/she is a displaced person provided that the Managing Comn. ittee of the Society by a majority decision at a duly convened meeting shall have the right to relax this condition.

(ii) He/she is an employee or ex-employee of Ministry of Rehabilitation including its subordinate offices in Delhi/New Delhi or if posted outside wants to settle in Delhi/New Delhi after retirement.

(iii) He/she is/has been an employee of the Ministry in Delhi/New Delhi of which the Department of Rehabilitation has been a part from time to time under one Ministry of State etc;

(b) His written application for membership has been approved by a majority the Managing of Committee;

(c) His age is more than 18 years, except in the case of minor heir of a deceased member;

(d) He is not a member of any other house building society, Group Housing Society;

(e) He or his wife (or her husband in case of a women) or any of his/her dependent does not own a plot or a dwelling house in Delhi;

(f) Directly or indirectly he does not deal in purchase or sale of house or land for construction of houses either himself or through any of his dependents;

(g) He has carried out the provisions of bye-laws 11.

(ii) 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. A

(iii) Every member on admission shall pay Rs. 5 as admission fee which shall not be refunded in any case. B

(iv) When a person's application has been accepted by the Committee and he has paid his admission fee and share money, and his membership approved by the General Body, he shall be deemed to have acquired all the rights and incurred all the obligations and liabilities of member of the society, as laid down in the Cooperative Societies Act, the Rules made thereunder and these bye-laws. C

(v) Application for admission as member and for allotment of shares shall be made to the Secretary in the form, prescribed by the society for the purpose. Every such application shall be disposed off by the Managing Committee who shall have power to grant admission or to refuse it after recording reasons for such refusal, provided, however, that any person whose application has been refused by the Managing Committee may prefer an appeal within 30 days to the Registrar, Cooperative Societies. The decision of the Registrar shall be final. D E

(vi) The Society shall not admit member one month prior to the date of his General Body."

Clause (e) of bye-law no. 5(1) lays down that no person shall be eligible to be a member, if he or his wife (or her husband in a case of a woman) or any of his/her dependent owns a plot or a dwelling house in Delhi. That apart, every person seeking membership of the society has to sign a declaration to the effect that he or his wife (she or her husband) or any of his/her dependent 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. F

The Department of Rehabilitation through a letter dated 26.5.1970 initially allotted 60 acres of land to the society subject to certain conditions. This allotment was, however, cancelled on 7.5.1979. The society challenged the cancellation order by filing Writ Petition no. 654 of 1979, which was allowed by a learned Single Judge of Delhi High Court on 1. 9. 1980 and the cancellation order was quashed. The Delhi Development Authority preferred G H

A LPA No. 254 of 1980, which was dismissed by a Division Bench of the High Court on 5.1.1981 and thereafter it preferred Special Leave Petition (Civil) No. 3762 of 1981 before this Court. During the pendency of the petition, the parties entered into a compromise under which the allotment of land was reduced to 45 acres with the further condition that the membership of the society was to be restricted to persons who were members as on 1.9.1980 in accordance with the bye-laws of the society. The Delhi Development Authority accordingly sought leave to withdraw the special leave petition in view of the agreement that had been arrived at between the parties. This Court accordingly passed an order on 6.5.1982, directing that the order passed by the Delhi High Court will stand modified in the light of the terms of the agreement between the parties which had been taken on record and the special leave petition was allowed to be withdrawn. Under the agreement, certain conditions were imposed for allotment of land and the relevant part thereof are being reproduced below :

(i) xxxxx xxxx xxxx xxxx

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(ii) No member of the Society who had himself or herself or through his parents, husband/wife, children etc. obtained any house or a plot from the Department of Rehabilitation earlier shall again be allotted a plot in the developed land.

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(iii) No member of the society who already owns a plot or a house in his own name or in the name of his wife or dependents anywhere in the Union Territory of Delhi shall be eligible for allotment of a plot in the developed land.

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(iv) The allotment of plots shall be restricted to the *bonafide* members of the Ministry of Rehabilitation Employees' Cooperative House Building Society Ltd. only as enlisted on 1.9.80, the date on which the writ petition of the society was allowed by the High Court of Delhi and in accordance with the bye-laws of the society as then prevailing. The verification with regard to the individual membership shall be done by the Registrar, Cooperative Societies who will issue a verification certificate before the allotment is actually made to an individual member.

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(v) xxxx xxxx xxxx xxxx xxxx xxxx

(vi) xxxx xxxxxx xxxxxx xxxxxx xxxxxx

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(vii) The Society shall maintain proper registers of membership and have its accounts audited from time to time as prescribed by the Registrar of Cooperative Societies. It shall submit to the Department of Rehabilitation every three months a statement in regard to the progress of development and allotment of plots to the *bonafide* members of Society in accordance with its bye-laws.”

The condition imposed in the agreement provided that no member of the society, who himself or herself or through his parents, husband/wife, children, etc. had obtained any house or plot from the Department of Rehabilitation earlier, shall again be allotted a plot in the developed land. The other condition imposed was that no member of the society, who already owns a plot or a house in his own name or in the name of his wife or dependents anywhere in the Union Territory of Delhi, shall be eligible for allotment of a plot in the developed land. In view of the agreement which had been entered into between the parties and the order passed by this Court on 6.5.1982 in Special Leave Petition (Civil) No. 3762 of 1981, the conditions mentioned therein are absolutely binding upon the society as the allotment of 45 acres of land to the society was made in pursuance to the said agreement. The orders passed by this Court on 6.5.1982 had the effect of modifying the order passed by the Delhi High Court by which the order of cancellation of allotment of land had been quashed and consequently it is not open to the society to act contrary to the terms of the agreement.

The individual cases may now be examined in the light of aforesaid provisions of Rules, bye-laws of the society and the terms of the settlement.

Civil Appeal Nos 2634-2635 of 2003 (@ SLP (C) Nos. 5109-5110 of 2001).

O.P. Choudhry v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.

O.P. Choudhry had been allotted a house bearing no. 8-A/7, Old Rajinder Nagar, Delhi, by the Ministry of Rehabilitation out of compensation pool. This fact was not disclosed by him, when he acquired membership of the society. Consequently, a notice was issued to him on 13.11.1991 and ultimately the dispute was referred for arbitration. The Registrar, Cooperative Societies by his order dated 22.9.1993 held that he was disqualified to be a member of the society. The Financial Commissioner allowed the revision preferred by him but the said order has been quashed by the High Court in the writ

A petition preferred by the society and he has been held to be disqualified.

The appellant, O.P. Choudhry does not dispute the fact of allotment of house bearing No. 8-A/7, Old Rajinder Nagar, Delhi, but according to him this allotment was against ancestral property claim and, therefore, it was HUF property. It is noteworthy that the appellant did not furnish the requisite affidavit to the society and concealed the fact of allotment of the aforesaid property to him when he was enrolled as a member of the society on 19. 9.1973. He disposed of the said property on 26.10.1977 and thereafter filed the requisite affidavit on 28.10.1977. In view of the specific conditions contained in the agreement entered into by the society in Special Leave Petition (Civil) No. 3762 of 1981, which have been quoted above, any member of the society who had obtained any house or a plot from the Department of Rehabilitation earlier, cannot again be allotted a plot. That apart as on the date when he acquired membership of the society, he was ineligible and was debarred from becoming a member thereof and further he did not file a correct affidavit. The High Court was, therefore, justified in allowing the writ petition filed by the society and quashing the order of the Financial Commissioner. The appeals are accordingly dismissed.

Civil Appeal No. 2643 of 2003 (@ SLP (C) No. 7713 of 2001) *Hari Singh Mongia v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.*

The society had issued a show cause notice to the appellant, Hari Singh Mongia, on 13.11.1991 to the effect that he was disqualified and was ineligible for allotment, as property No. F-25, Kalkaji, New Delhi, was allotted to his father Shri Santokh Singh Mongia against verified claim of property left by him in Pakistan. The appellant admitted the fact that his father Shri Santokh Singh had been allotted property No. F-25, Kalkaji, New Delhi. He, however, submitted that the total area of the property was 200 sq. yds. and after the death of his father the property was inherited by his mother and seven brothers and thus his share was only 25 sq. yds. The Registrar in his award dated 4.10.1993 held that the appellant had incurred disqualification but the said order was set aside in revision by the Financial Commissioner on the ground that the property had been acquired by the father of the appellant which was subsequently inherited by him. The High Court allowed the writ petition preferred by the society and quashed the order of the Financial Commissioner and held that the appellant was disqualified.

The appellant does not dispute the fact that his father had been allotted property No. F-25, Kalkaji, New Delhi, against verified claim of property left

by him in Pakistan. Clause 2 of the agreement dated 5.5.1982 entered into between the society in Special Leave Petition (Civil) No. 3762 of 1981 clearly provides that no member of the society, whose parents had obtained any house or plot from the Department of Rehabilitation earlier, shall again be allotted a plot. In view of this clause in the agreement, which is binding on the society, the appellant is clearly ineligible for allotment of a plot. The High Court rightly set aside the order passed by the Financial Commissioner and upheld the order of the Registrar. The appeal is accordingly dismissed.

Civil Appeal No 2644 of 2003 (@ SLP (C) No. 661 of 2002) *Smt. Kamlesh Kumari Bahl v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.*

The original member of the society was Shri Kewal Krishan Bahl and after his death, the appellant Smt. Kamlesh Kumari Bahl, who is his widow, was taken as a nominee member. The Registrar after inquiry found that property No. A-431 and A-432, Kalkaji New Delhi, was allotted to Smt. Vasheshran Devi, who was the mother of Shri Kewal Krishan Bahl by the Ministry of Rehabilitation out of compensation pool on account of her being a displaced person. In view of this allotment of property, Shri Kewal Krishan Bahl was not eligible for being allotted a plot. In the affidavit which was filed by the appellant on 19.9.1989, she did not disclose the fact that the mother of her husband Shri Kewal Krishan Bahl had been allotted any property by the Ministry of Rehabilitation. She filed another affidavit on 28.3.1990, wherein she stated that neither she nor her husband nor her husband's parents had been allotted any plot. The Registrar held that the appellant was disqualified but the revision preferred by the appellant was allowed by the Financial Commissioner. The High Court allowed the writ petition filed by the society, quashed the order of the Financial Commissioner and restored that of the Registrar.

The material on record clearly showed that property No. A-431 and A-432, Kalkaji, New Delhi, was allotted to Smt. Vasheshran Devi, who was mother of Shri Kewal Krishan Bahl, by the Ministry of Rehabilitation out of compensation pool on account of her being a displaced person. Copies of the lease deed and the conveyance deed placed before the Registrar established the said fact and the record of Municipal Council showed that she was being assessed for property tax. In view of the aforesaid fact, Shri Kewal Krishan Bahl could not have been allotted a plot as his mother had obtained a house from the Department of Rehabilitation earlier. The appellant having come

A into picture after the death of Shri Kewal Krishan Bahl as a nominee member cannot have better rights than her husband. Since the husband of the appellant could not have been allotted a plot and further as the appellant did not disclose correct facts in her affidavit dated 19.9.1989 and gave wrong facts in her subsequent affidavit dated 28.3.1990, the High Court was perfectly justified in allowing the writ petition filed by the society by which the order of the Financial Commissioner was quashed and the order of the Registrar was restored. The appeal is accordingly dismissed.

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C Civil Appeal No 2642 of 2003 (@ SLP (C) No. 5439 of 2001) *Bhag Malhotra v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.*

D The Registrar in his award dated 12.7.1995 held that the appellant had incurred disqualification as property No. B-4/22, Safdarjung Enclave, New Delhi was owned by her husband Shri Balraj Malhotra. The Financial Commissioner has held that the husband of the appellant was holding the property as Karta of Hindu Undivided Family and his share was only to the extent of 40 sq. yds. The case of the appellant is that the property No. B-4/22, Safdarjung Enclave, New Delhi, belongs to Hindu Undivided Family and the same was allotted in lieu of a plot at Humayunpur village, which was acquired by the Government and thus she had not incurred any disqualification.

E The case of the society is that the appellant filed an affidavit on 23.1.1973 stating that neither she nor her husband owned any urban plot in the Union Territory of Delhi. She filed another affidavit on 12.9.1989 to the effect that neither she nor her husband nor any of her dependent relation including married children, during the period of her membership of the society, owned either in full or in part on leasehold or freehold basis any plot of land or a house in Delhi/New Delhi. It is not in dispute that a perpetual lease of plot No. B-4/22, Safdarjung Enclave, New Delhi, was granted in favour of the husband of the appellant on 9.3.1966. It is, therefore, clear that the appellant filed false affidavits. In view of bye-law No. 5(1)(e) of the society, a person cannot be a member of the society if he or his wife or her husband (in case of a woman) or any of his/her dependent owns a plot or a dwelling house in

G Delhi. The appellant was thus not qualified to be a member of the society and was not eligible for allotment of a plot. The High Court, therefore, rightly allowed the writ petition filed by the society and quashed the order of the Financial Commissioner. The appeal preferred by the appellant is accordingly dismissed.

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Civil Appeal No. 2641 of 2003 (@ SLP (C) No. 5242 of 2001) **A**
Gurbachan Singh v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.

The controversy raised in this appeal is about the initial membership of the appellant in the society. The appellant claims that as an employee in the Ministry of Rehabilitation, he deposited Rs. 1,605 on 7.6.1966 with one Lachman Dass, a member of the society, who received the documents and the amount on behalf of the society. An Administrator had been appointed on 29.6.1976, who made a noting that the file of appellant was blank. In pursuance of the directions issued by the High Court in a writ petition filed by the appellant, the matter was referred for arbitration. The Deputy Registrar (Arbitration), after examining Lachman Dass as well as Shri J.B. Mittal, the then Secretary of the Society, and after examining other material produced by the parties, held that the appellant had not submitted any application with necessary affidavit for enrolment as member of the society and consequently rejected his claim vide order dated 2.2.1995. The appeal preferred by the appellant was allowed by the Delhi Cooperative Tribunal on 25.5.1995 and it was directed that the appellant be treated as a valid member of the society. Against the said order, the society preferred a writ petition in the High Court, which has been allowed and the order of the Cooperative Tribunal has been quashed. **B**
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The Registrar, apart from other evidence, had also placed reliance on the circumstance that the appellant sent a letter to the society on 21.6.1983 through his colleague Om Prakash Aggarwal stating as under : **E**

“I deposited Rs. 1,600 only to the Society as advance on June 7, 1966 by cheque no. 693575 dated 20.5.1966. No plot has been allotted to me. It is requested that the said money may please be adjusted in the account of Om Prakash Aggarwal. I attach hereby the original receipt. ” **F**

The society immediately refunded Rs. 1600 through cheque dated 28.6.1983 and a letter was sent to the appellant informing him that it will not be possible for the society to adjust the said amount of Rs. 1,600 in the account of Shri Om Prakash Aggarwal. The writing of the letter by the appellant is not disputed by him. The Registrar has recorded a clear finding that the appellant did not submit any application form and the affidavit as alleged by him and because he did not submit a formal application for enrolment as a member of the society and the necessary affidavit, the question **G**
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A of his having been admitted as a member of the society did not arise. He has further held that the mere deposit of Rs. 1,605 with the society did not confer upon the appellant the right of membership. The Cooperative Tribunal did not at all advert to the aforesaid finding of the Registrar but proceeded on the basis that the only controversy was about the authenticity or otherwise of the signature of Lachman Dass on the receipt dated 7.6.1966. The High Court has held that the basic issue was whether the appellant had moved a formal application for enrolment as a member of the society and had submitted the necessary affidavit and as the Tribunal had not at all considered the said aspect of the case and had not reversed the finding of the Registrar on this point, the order passed by it was liable to be set aside. The High Court has also taken notice of an additional feature of the case which showed that the appellant was not himself pursuing the matter, but it was a proxy litigation. The appellant did not file his own affidavit in reply to the writ petition filed by the society. On the contrary, the affidavit has been filed by one Shri Rajan Aggarwal son of Shri Om Prakash Aggarwal in whose favour the appellant wanted adjustment of his amount which was deposited by him. The affidavit has been filed on the basis of a power of attorney. It was on these findings that the High Court allowed the writ petition filed by the society and set aside the order passed by the Tribunal.

E Having considered the submission made by learned counsel for the parties and the material on record, we are of the opinion that the High Court rightly set aside the order passed by the Cooperative Tribunal as it had not adverted to the main issue, namely, whether the appellant had submitted any application form and necessary affidavit for enrolment as member of the society. The mere fact that some money was deposited by the appellant with Lachman Dass on 7.6.1966 would not entitle him to claim membership of the society. That apart, the society had refunded the amount through cheque dated 28.6.1983 when the appellant sent a letter that the money be adjusted in the account of Shri Om Prakash Aggarwal. The High Court has rightly taken the view that the appellant is not himself pursuing the matter and in fact it was a proxy litigation on behalf of Shri Om Prakash Aggarwal. We, therefore, do not find any ground to interfere with the order passed by the High Court. The appeal is accordingly dismissed.

H Civil Appeal No. 2645 of 2003 (@ SLP (C) No. 7599 of 2002 *S.L. Anand v. K.N. Kapoor and Ors.*, Civil Appeal No. 2646 of 2003 (@ SLP (C) No. 13674 of 2001 *S.L. Anand v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.* & Civil Appeal No. 6979 of 2001 *K.N.*

Kapoor v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors. A

The appellant Shri S.L. Anand was not made a party in the writ petition which was filed by the contesting respondent Shri K.N. Kapoor. However, in the main judgment of the High Court dated 7.12.2001 by which the writ petitions were decided the seniority position was inter-changed and Sh. K.N. Kapoor was shown at serial No. 33 while appellant S.L. Anand was shown at serial No. 34. The appellant preferred a review petition which was heard and finally disposed of by the High Court by the judgment and order dated 7.12.2001. By the said judgment a number of other review petitions were also disposed of. The operative part of the order passed on the review petition of the appellant reads as under: B

“In any case we are of the view that review application on the above ground is not permissible. We are also informed that Special Leave Petition has also been filed by the applicant before Supreme Court by which he is seeking quashing of the judgment on merits. Accordingly except taking on record the fact, as per the record of the society, that the date on which the applicant K.N. Kapoor submitted his application seeking membership of the society is 10.12.1970 and not 26.3.1971 and in case 10.12.1970 is taken as the date of his application his name will come up at Sr. No. 33 instead of Sr. No. 34, no further orders are required to be passed by us on these applications, which stand disposed of.” C

The appellant Shri S.L. Anand submitted an application for becoming a member of the society on 26.6.1970, while Shri K.N. Kapoor submitted his application on 10.12.1970. The application given by the appellant was approved by the Managing Committee of the society on 2.2.1971 and he was admitted as a member of the society and was given membership No. 630. Shri K.N. Kapoor was enrolled as member on 26.3.1971 and thereafter he deposited the share money and was given membership No. 657. The Managing Committee of the society, on a direction of the Registrar, reviewed all memberships and passed a resolution on 22.3.1974 approving the appellant amongst others as member of the society. The administrator of the society also, after consideration of the material on record, approved the name of the appellant on 9.8.1976. In view of these facts we are of the opinion that the High Court erred in altering the seniority of the appellant and placing his name at Sr. No. 34 instead of Sr. No. 33. That apart Shri K.N. Kapoor had not impleaded the appellant as a party to the writ petition and in his absence D

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A no order adverse to his interest could have been passed. The appeal preferred by the appellant is therefore allowed and the order passed by the High Court is modified to the extent that the appellant shall be placed at Sr. No. 33 and Sh. K.N. Kapoor shall be placed at Sr. No. 34 in the seniority list. So far as the appeal preferred by Sh. K.N. Kapoor is concerned we do not find any ground to take a view different from what has been taken by the High Court and the appeal preferred by him is dismissed.

Civil Appeal Nos. 2647-2649 of 2003 (@ SLP (C) No. 7602-04 of 2002) *Suresh Chand and Ors. v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.*

C The grievance of the appellants Suresh Chand and others is that their names were not included in the draw of lots held on 14.12.1988 and 23.6.1989 and no plot has been allotted to them. The High Court repelled the claim of the appellants and further directed that the society was not required to retain their names in the seniority list and further it was at liberty to take appropriate steps for removal of their names from the list of members. The writ petition filed by the appellants was dismissed.

D The appellants Suresh Chand and Ramesh Chand are sons of Puran Chand. Puran Chand died on 1.1.1985 and thereafter his widow Smt. Karunawati became a member and her membership was approved by the Registrar. Smt. Karunawati also died on 22.1.1995. The appellants only allege that they sent a letter on 14.2.1995 to the society to do the needful. There was no material on record to show that the appellants took any effective steps for transfer of the membership in their names. As the appellants have not been formally inducted as members of the society, there was no occasion for including their names in the draw of lots. We do not, therefore, find any error in the judgment of the High Court. The appeals are accordingly dismissed.

E Civil Appeal No. 2650 of 2003 (@ SLP (C) No. 17365 of 2002) *Ram Niwas Gupta v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.*, Civil Appeal No. 2652 of 2003 (@ SLP (C) No. 17366 of 2002) *K.L. Rathi and Anr. v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.* and Civil Appeal No. 2652 of 2003 (@ SLP (C) No. 17368 of 2002) *Uma Shankar Saxena (d) by LR. v. Rehabilitation Ministry Employees Cooperative House Building Society and Ors.*

H The controversy raised in all the three appeals is identical and, therefore,

they are being dealt with together. For convenience sake, facts of only one appeal are being mentioned. The appellant Ram Niwas Gupta was enrolled as a member of society on 14.2.1970 and his membership was approved in the resolution passed on 22.3.1974. The appellant and 35 others were given a notice of expulsion on 23.5.1974 which was challenged. The arbitrator gave an award on 14.7.1982 holding that expulsion of all the 36 members including the appellant was invalid. The appeal preferred by the society was dismissed by the Delhi Co-operative Tribunal on 20.6.1984 and the writ petition preferred against the said order was also dismissed by the High Court on 8.3.1985. During this period fresh notices were given by the society to the appellant and others alleging that they had committed default in payment of the amount. The General Body thereafter passed a resolution expelling the appellant and three others which was approved by the Registrar by an order dated 9.8.1985. The appellant preferred an appeal under Section 76 of the Delhi Cooperative Societies Act before the Lieutenant Governor which was allowed on 7.8.1986 and the resolution passed by the society for expulsion of the appellant and three others was set aside. Feeling aggrieved by the decision of the Lieutenant-Governor the society preferred Writ Petitions No. 1129 to 1132 of 1987 which were dismissed by the High Court on 11.5.1990. The Special Leave Petitions filed by the society were dismissed by this Court on 20.12.1990. Thereafter, the Managing Committee of the society passed a resolution on 3.6.1991 resolving that the four members including the appellant be asked to submit the requisite documents and make payment of their dues as paid by other members on account of the cost of land, development charges and interest etc. The amount was deposited by the appellant on 10.6.1991. Thereafter the Registrar issued a letter dated 31.8.1992 clearing the membership of the appellant. The grievance of the appellant is that the expulsion orders passed against the appellant having been set aside, he is entitled to restoration of his original seniority. The High Court fixed the seniority of the appellant with effect from a subsequent date i. e. 14.12.1980 which is the date on which the society passed a general residuary resolution. We find force in the contention of the appellant that the expulsion notice and the resolutions passed by the society against him having been set aside by the competent authority and the challenge made to it by the society by filing a writ petition in the High Court and then SLP in this Court having been rejected, there is no justification for not restoring the original seniority to the appellant and assigning seniority from a subsequent date i. e. 14.12.1980. Once the expulsion order was set aside it has no existence in the eyes of law and cannot be taken notice of for depriving him of his original seniority. The Managing Committee of the society had also passed a resolution on 3.6.1991

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- A** to the affect that the four members including the appellant may be asked to submit requisite documents and make payments of their dues as paid by other members on account of cost of land, development charges and interest etc. In this resolution nothing was said about disturbing the seniority of the appellant or assigning him seniority from a later date. The appellant having deposited the entire amount demanded by the society, is entitled to restoration of his original seniority. All the aforesaid appeals are accordingly allowed and the judgment of the High Court is modified to the extent that the appellants' original seniority shall be restored.
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K.K.T.

Appeals allowed.