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A. JITENDRANATH

v.

JUBILEE HILLS COOP. HOUSE BLD. SOC. AND ANR.

MAY 2, 2006

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[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

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Constitution of India—Article 142—Registration Act, 1908—Section 47—Provisional allotment of a plot of land made to a member by Cooperative Society—On non-payment of development charges within stipulated time, Society allotted the plot to another member—Original allottee seeking allotment of an alternative plot refused by the Society—Original allottee filed an application before Registrar, without impleading the subsequent allottee, for allotment of the original plot or an alternative plot—Registrar passed an award directing the Society to allot the original plot to the

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original allottee—Society registered the original plot in favour of subsequent allottee—Suit filed by subsequent allottee against Society, without impleading original allottee, for transfer of membership—Trial Court decreed the suit in favour of the subsequent allottee—Execution petition filed by purchaser from subsequent allottee before trial court—Original allottee also filed execution

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petition for execution of the award of the Registrar—Trial Court dismissed the execution petition of the original allottee—Appeal by original allottee before Appellate Court was allowed—High Court allowed the Revision filed by subsequent allottee holding that on registration of the sale deed, the right, title and interest shall pass on to the purchaser from the date of execution and not from the date of registration—Correctness of—Held, in

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*law, right, title or interest in property shall pass on with retrospective effect i.e. from the date of execution and not from the date of registration—Provisional allottee does not get a legal right for allotment of the plot—Award passed without impleading a necessary party is violation of principles of natural justice and is a nullity and hence the principle of **res judicata** will not apply—Courts cannot pass an order directing the Society to allot an*

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alternative plot by causing injustice to others—Hence, the Society is directed to refund the money to original allottee with 24% interest—Society also directed to pay compensation to original allottee and purchaser from subsequent allottee for making false representation before the Court.

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Father of one S and the mother of the appellant were members of first-respondent Society. The mother of the appellant died and it was not notified to the Society. The Society made a provisional allotment of a plot of land in favour of the mother of the appellant subject to payment of development charges within a stipulated date. The Society cancelled the provisional allotment since the payment was not made even after granting an extension of time. The Society allotted the plot in favour of S. The appellant thereafter communicated to the Society intimating the death of his mother and sought membership of the Society by way of transfer. The appellant requested the Society to allot alternative plot of land to him since the original plot was given to S. The Society executed a Sale Deed in favour of S for the original plot given and presented it for registration. The Society admitted the appellant as a member of the Society but declined to make allotment of plot to the appellant.

The appellant filed an application before Assistant Registrar of Cooperative Society to declare that he is entitled to allotment or original plot or allot an alternative plot. The appellant did not implead S as a party. The Society, in response to the notice of the Registrar, stated that the original plot was allotted to S and he had already constructed a house on it. On personal inspection of the site, when the Registrar found that no house was constructed on the original plot, he made an award in favour of the appellant directing the Society to allot the original plot. Pursuant to the award, the appellant paid all the amounts payable. Despite the award, the Society registered the original plot in favour of S.

The Society filed an appeal before Cooperative Tribunal challenging the award. S filed a suit against the Society before trial court since the transfer of membership was not intimated to him. S did not implead the appellant in the suit. During pendency of the suit, S transferred his right, title and interest in favour of second respondent who filed an application in the suit before the trial court and in the appeal before Cooperative Tribunal for being impleaded as a party. The trial decreed the suit in favour of the second respondent. The Tribunal dismissed the appeal of the Society for default. The second respondent filed a Revision application before High Court against the order of the Tribunal which was dismissed with a liberty reserved to the second respondent to come on record as an additional respondent if the appeal is restored.

The second respondent filed an Execution petition for executing the decree before the trial court. The appellant also filed an Execution petition

A before the trial court for executing the award of the Registrar. The trial court allowed the Execution petition of the second respondent and dismissed the execution petition of the appellant. The appellant filed an appeal before Appellate Court. The Appellate Court allowed the appeal on the ground that no valid title passed on to S as the sale deed in his favour was registered only after passing the award by the Registrar. The Second respondent filed a **B** Revision Application before the High Court. The High Court allowed the Revision application on the ground that on the date of the award of the Registrar, the sale deed was pending for registration and once it was registered, it dates back to the date of presentation of the document which was earlier to the date of the award. The High Court clarified that the appellant **C** cannot seek allotment of alternative plot and not the original plot which was found to be validity transferred.

In appeal this Court in order to do justice, asked the Society whether any plot was available for allotment to the appellant. The Society informed the Court that there was one alternative plot which could be allotted to the **D** appellant. The appellant accepted the offer and on payment of necessary amount, the Society issued an allotment letter in favour of the appellant. Several interlocutory applications then came to be filed before this Court contending that the alternative plot offered to the appellant had already been allotted to them by the Society.

E The appellant contended that under section 47 of the Registration Act, 1908 the registration of the sale deed takes effect only from the date of registration and not from the date of presentation of sale deed for registration; that he became eligible for the original plot after he was admitted as a member of the Society in place of his deceased mother; that the original plot, which **F** was allotted to his mother, could not have been allotted to S by the Society; that the Registrar should have cancelled the allotment made in favour of S and allotted the same to the appellant; that on dismissal of the appeal by the Cooperative Tribunal, the award passed by the Registrar has attained finality; that he was not impleaded as a party to the suit filed by S before the trial court and hence the decree passed in favour of the second respondent is not **G** binding on him; that the principle of *res judicata* is attracted and hence the respondents cannot question the correctness or otherwise of the award which was made prior to the registration of the deed of sale; that since an alternative plot was allotted to him, the Society must be held to have recognised the right of the appellant for allotment of plot in his capacity and hence the Society **H** must be directed to formalise the allotment of the alternative plot by execution

and registration of a sale deed in his favour. A

The Society contended that when the purported allotment of plot was made in favour of the appellant, an Administrator was incharge of the Society; and that when the affairs of the Society was taken over by the elected body, it has found out that there were several persons in whose favour directions have been issued. B

The second respondent contended that the original allotment made in favour of the mother of the appellant must be deemed to have been cancelled by the Society as the requisite payments were not made to the Society.

Disposing of the appeals, the Court C

HELD: 1.1. No formal letter of cancellation of the plot was issued to the appellant by the Society but since the requirements as contained in letter of the Society having not been complied with, the allotment would in law, be deemed to be cancelled. Even if there had been no express cancellation of allotment of the said plot, by reason of a fresh allotment, the provisional allotment made in favour of the mother of the appellant must be held to have come to an end. The allotment of the plot in favour of the mother of the appellant was a provisional one and hence the allottee did not derive any legal right far less an indefeasible right. Such provisional allotment would have acquired permanence provided the requirements therefor were complied with. If the contention of the appellant is to be accepted that by reason of the provisional allotment made in favour of his mother, he acquired an indefeasible right only because he at a later date was admitted as a member of the Society, indisputably, S had acquired a higher right as not only the said plot was allotted in his favour but also a deed of sale was executed. [717-B-E; 718-D-E] D

1.2. Under section 47 of the Registration Act, 1908, if a deed of sale is executed although not registered, the right, title and interest in respect thereof shall pass with retrospective effect, i.e., from the date of execution thereof. E

[718-H] F

Radhakisan Laxminaryan Toshniwal v. Shridhar Ramchandra Alshi and Ors., [1961] 1 SCR 248 CB; *Kalyanasundaram Pillai v. Karuppa Mooppanar*, AIR (1927) PC 42; *Venkatasubha Shrinivas Hegde v. Subba Rama Hegde*, AIR (1928) PC 86; *K.J. Nathan v. S.V. Maruthi Rao and Ors.*, [1964] 6 SCR 727; *Nanda Ballabh Gururani v. Smt. Maqbool Begum*, [1980] 3 SCC 346; *Thakur Kishan Singh (Dead) v. Arvind Kumar*, [1994] 6 SCC 591; *Ram Saran Lall and Ors. v. Mst Domini Kuer and Ors.*, [1962] 2 SCR 474 CB and *Hiralal* G

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A *Agarwal v. Rampadarth Singh and Ors.*, [1969] 1 SCR 328 AIR (1969) SC 244, referred to.

B 1.3. Despite knowledge that the original plot has been allotted to somebody else, the appellant did not make S a party in his application before the Registrar. *Ex facie* the award being in violation of the principle of natural justice would be a nullity. *Ex facie* the Registrar acted illegally and without jurisdiction in directing the first respondent to allot the original plot. He, despite such allotment having been made in his favour, was not impleaded as a party. He was a necessary party. No award therefor could have been passed in his absence. The Registrar while exercising his judicial function had no jurisdiction to pass an order of injunction. The award, therefore, was a nullity. In this view of the matter, the principles of *res judicata* will have no application. [720-G-H; 721-A-C]

D *Haryana State Coop. Land Development Bank v. Neelam*, [2005] 5 SCC 91; *Ram Chandra Singh v. Savitri Devi and Ors.*, JT (2005) 11 SC 439 and *Balvant N. Viswamitra and Ors. v. Yadav Sadashiv Mule (Dead) Through LRS. and Ors.*, [2004] 8 SCC 706, referred to.

E 1.4. In law, only because an order of allotment has been issued in favour of the appellant herein by the Society, the same by itself would not mean that thereby the right of the others for being considered therefor or for that matter any other plot which was available for allotment could be put in jeopardy. This Court, whence proceeded to consider the matter of allotment of another plot in favour of the appellant by the Society, it had evidently in its mind that same plot may be available for allotment but by reason thereof, the right of somebody else was not meant to be nor could be affected. Even in exercise of its jurisdiction under Article 142 of the Constitution while making an attempt to do complete justice to the parties, this Court cannot pass an order which could cause injustice to others and in particular to those who are not before it. The courts of law would always see to it that while making allotment of plot by a cooperative society, no discrimination is caused amongst the members. The Cooperative Society must strictly and scrupulously follow the statutory rules as also the bye-laws framed by it. It must also act within the four corners not only of the statute and statutory rules but also the bye-laws framed by it. Whether the Appellant would be senior in the matter of allotment of plot over the others is a disputed question of fact. The Appellant as a member has a right, although not indefeasible, to be considered for allotment of a plot along with other members similarly situated. Such a right, therefore, could not have

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been taken away nor directed to be taken away by any court of law.

[722-E-H; 723-A-D]

1.5. The Society despite the knowledge that the award of the Registrar was not enforceable appears to have taken some amount from the appellant. A wrong representation was made by the Society before this Court that the alternative plot was available for allotment to the appellant. The conduct of the Society is deplorable. The Registrar of Cooperative Societies is therefore directed to initiate an enquiry against their persons concerned who were responsible for making a wrong representation before this Court and take suitable action against them in accordance with law. All amounts deposited by the appellant before the Society be refunded to him with penal interest at the rate of 24% per annum, subject, of course, to a deduction of such amount to which the Society was entitled to for admitting him as a member of the Society. The Society shall also pay a further sum of Rs. 1,00,000/- to the appellant herein by way of compensation. The Society shall also pay a sum of Rs. 1,00,000/- to the second respondent by way of compensation. [724-B-D]

CIVIL ORIGINAL JURISDICTION : Civil Appeal No. 306-307 of 2005.

From the Judgment/Order dated 13.11.2001 of the High Court of Andhra Pradesh at Hyderabad in C.R.P.No. 283 of 2000.

S. Muralidhar, G. Seshagiri Rao and A. Raghunath for the Appellant.

H.S. Gururaja, T.L.V. Iyer, L. Nageswara Rao, M.N. Rao, G. Ramakrishna Prasad, Y. Raja Gopala Rao, Y. Ramesh, K. Maruthi Rao, K. Radha, Anjani Aiyagari, D. Mahesh Babu and Promila for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. These appeals are directed against judgments and orders dated 13.11.2001 and 22.4.2002 passed by the High Court of Andhra Pradesh in Civil Revision Petition No. 283 of 2000 and Civil Miscellaneous Petition No. 7763 of 2002 respectively.

Jubilee Hills Cooperative House Building Society Limited, Hyderabad is a Society registered under the Andhra Pradesh Cooperative Societies Act, 1964. It had enrolled a large number of members. The father of the one Shri Anne Srinivas and the mother of the Appellant, Mrs. A. Annapurna Devi, herein were members of the said Society.

From a perusal of the bye-laws framed by the said Society, it appears that it intended to allot one plot to the family of the member concerned. The

A bye-laws contain provisions for nomination.

Bye-laws 19 to 22 which are relevant for our purpose read as under:

B “19. Every member may be declaration attested by two witnesses nominate a person or persons to whom his share or interest, shall be paid or transferred on his death. A nominee may be changed by filing a fresh declaration with the Secretary. In the absence of any nomination the amount of his share or interest shall be paid or transferred to such person as may appear to the Managing Committee to be legally entitled. In case of any doubt the Managing Committee shall call for a succession certificate and act in accordance therewith. All amounts payable to a minor shall be paid to him through his guardian.

C 20. The Society shall keep a Book wherein the names of all persons so nominated and all revocation or variation (if any) of such nomination shall be recorded within fifteen days.

D 21. All shares transferred by virtue of a nomination or by him or by legal transfer shall be transferred to the nominee or heir on his becoming a member. He shall not, however, be entitled to withdraw any such share on account of such transfer.

E 22. The nominee of a deceased member shall be made a member provided he fulfils the qualifications of membership.”

F The mother of the Appellant herein expired on 15.8.1977. It was not notified to the Society. A plot bearing No. 39 in Phase III in Jubilee Hills admeasuring 600 sq. yards was allotted in her favour. On or about 5.11.1981, a notice was circulated to the members of the society that allotment of plots would be done by way of draw of lots. A copy of the said notice was also sent to Mrs. A Annapurna Devi (since deceased). Plot No. 39 was allotted in her favour on a provisional basis by the society on 20th June, 1982. She was called upon to pay a sum of Rs. 4,003.90 within one month from the date of receipt thereof. However, as no payment was made within the stipulated period, on or about 30.9.1982, a letter was issued granting final extension of time upto 30.11.1982 to make payment. It was categorically stated therein that the provisional allotment would be cancelled and no representation in that behalf shall be entertained if no payment is made on or before 30.11.1982 for confirmation of provisional allotment of the said plot. The said amount admittedly was not paid evidently because in the meantime the mother of the G H Appellant had expired.

Shri Anne Srinivas was admitted as a member of the Society on 6.8.1983 in place of his father who was a member of the Society. Indisputably, on 16.9.1983, plot No. 39 was allotted in his favour. A

The Appellant on behalf of her mother wrote a letter on 16.3.1985 to the First Respondent herein for allotment of site in respect of membership No. 1646 stating: B

“Sub: Allotment of site for Membership 1646.

I request you kindly allot me a site in *lieu of my plot No. 39* in phase 3 which has been given to someone else. C

I had to pay to the society around Rs. 4,000/-, I am ready to pay the above amount immediately and start construction of the house if you would kindly allot me a suitable plot nearby. C

The plot 39 in phase 3 which was allotted to me was given to some one else. I was not in Hyderabad for more than 2½ years and in correspondence from you was received by me. D

When I came to the office to find out about my plot no. 39, I was told that the same has been allotted to some one else. There has been a confusion and I had not received any of your letters. I would be even grateful to you if you consider my case and allot me a suitable site to construction of the house immediately. E

Thanking you,

Yours faithfully,
For A. Anapooramma F

Son. A. Jithender Nath”

[Emphasis supplied]

In response to the said letter, the allottee was informed that due to non-payment of development charges, the said allotment had been cancelled. By a letter dated 21.6.1985, the Appellant informed the Society about the death of her mother and sought membership of the Society by way of transfer. G

On 18.3.1986, he made a representation for allotment of a new plot stating : H

A “I received your letter dated 20-9-1985. In this regard, I would like to inform you, that I have already submitted an affidavit duly notarized, and a death certificate of my mother Late Smt. A. Annapurnamma. Now, I enclose the original Affidavit No. 13820 dated 21-6-85, which is duly signed by gazetted officer.

B I request you to kindly transfer the membership to my name and please allot a new plot to me, I am ready to pay any balance due amount and I am also ready to built a house immediately.”

C Respondent No. 1—Society admitted the Appellant as a member on 28.4.1986. Despite the fact that the membership had been transferred to the Appellant, a sale deed was executed by the Society in favour of Srinivas on 7.2.1987. The said deed was also presented for registration.

D Despite having been admitted as a member of the Society, no plot admittedly was allotted to the Appellant. The Appellant made a representation for allotment of plot on 15.11.1988. The Society in terms of its letter dated 3.1.1990 declined to make any allotment in his favour. Questioning the said action on the part of the Society, the Appellant filed an application on 4.3.1990 before the Assistant Registrar of the Cooperative Society which was numbered as ARC 21 of 1990 praying for:

E “The Plaintiff, therefore, prays that this Hon’ble Court may be pleased to declare that the Plaintiff is entitled Plot No. 39 of the Defendant Society and or in the alternative:

- (a) to declare an alternative plot in the same block to an extent of 600 sq. yards and deliver vacant possession;
- F (b) An injunction be granted restraining the Defendant from allotting the plot No. 39 to any other member of the Society, pending disposal of the suit.”

G In the said proceeding, Srinivas was not impleaded as a party. He, thus, evidently had no notice thereof. The First Respondent in response to the notice issued by the Registrar allegedly stated that the said plot No. 39 has been allotted to Srinivas and he had constructed a house thereupon. Despite the same Srinivas was not impleaded.

H The Presiding Officer visited the site and found that no house was constructed and, therefore, made an award in favour of the Appellant on or about 22.4.1991 directing the Society to allot the plot No. 39 in favour of the

Appellant. Pursuant thereto or in furtherance thereof, the Appellant paid all the amounts payable therefor. It is, however, not in dispute that that despite the same, a deed of sale was registered in favour of Srinivas by the First Respondent on 13.6.1991. A

An appeal marked as CTA No. 6 of 1991 was preferred before the Third Assistant Judge, City Civil Court, Hyderabad by the First Respondent against the award. However, as the transfer of membership was not intimated to Srinivas, he filed a suit in the court of VII Assistant Judge, City Civil Court, Hyderabad which was marked as OS No. 3702 of 1992 wherein the Appellant herein was not impleaded as a party. During pendency of the said suit, Srinivas transferred his right, title and interest in favour of the Second Respondent herein by a deed of sale dated 25.7.1992. The Second Respondent thereafter filed an interlocutory application in the said CTA No. 6 of 1991 for being impleaded as a party thereat which was numbered as I.A. No. 651 of 1993. Both the proceedings were transferred to the District Cooperative Tribunal, Hyderabad, C.T.A. No. 6 of 1991 was renumbered as C.T.A. No. 130 of 1996. B
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In the meantime, the Civil Court granted a decree in the said original suit No. 3702 of 1992 on 16.10.1996 in favour of the Second Respondent.

On 30.09.1996, an appeal was preferred by the First Respondent against the award dated 22.4.1991 before the Cooperative Tribunal. The Second Respondent also filed an application for impleading himself as a party therein. By an order dated 30.09.1996, the said appeal as also the said I.A. were dismissed in default. E

The said decree passed in OS No. 3702 of 1992 was put in execution by the Second Respondent which was marked as EP No. 2 of 997. A revision application was also filed before the High Court by the Second Respondent against the order dated 30.09.1996 dismissing the appeal preferred by the First Respondent in default. F

The said revision petition was dismissed with a liberty reserved to the Second Respondent to come on record as an additional respondent if the said appeal was restored to its original file. The Appellant also filed an execution petition for executing the award dated 22.4.1991 before the Second Assistant Judge, City Civil Court, Hyderabad. An application was filed therein by the Second Respondent contending that the said execution petition was not maintainable and by an order dated 27.4.1998, the same was allowed by the G
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A executing court, holding:

B “In view of the above discussion, it is evident that the petitioner is claiming title and possession independently and not through the JDR Society and that *prima facie* the petitioner has lawful title over the disputed plot and also possession of the same and that the JDR Society had no title over the disputed plot even by the date of filing of plaint in ARC 21/90 and that therefore the petitioner cannot be dispossessed in execution of the decree in ARC 21/90. It is made clear that the question of right, title or interest in the property between the parties to this petition to the extent of their relevance for the proper adjudication of this petition alone has been considered in the light of the observation in 1992 (1) ALT 371.”

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The Appellant preferred an appeal against the said order dated 27.4.1998 in the Court of Additional Chief Judge, City Civil Court, Hyderabad which was numbered as CMA No. 163 of 1998 and by a judgment and order dated 22.12.1999, the said appeal was allowed opining that no valid title passed to the said Srinivas prior to 22.4.1991 as the sale deed in his favour was registered after passing of the award. It was observed:

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“So far as the transfer made in the name of the petitioner is concerned by the said Srinivas, it is not hit by clause ‘G’ of A.P. Cooperative Societies Act, 1964 (directions of the effective and proper functioning of the cooperative societies in the State) since, the same was passed on 3.12.1997 which is subsequent to the sale deed executed in the name of the petitioner. The petitioner obtained the sale deed from her son who is the power of attorney holder of the said Srinivas under Ex. A.9. However, this Court has arrived at a conclusion that there is no valid title passed to the said Srinivas prior to the award passed by the Tribunal on 22-4-1991. The society being a party to the said award, it ought to have stopped the registration by virtue of the award and in fact, it did not stop the same, and kept in abeyance, and allowed the document to be registered to deprive the award passed by the Tribunal. Therefore, I am of the opinion, that the learned Asst. Judge has arrived at a wrong conclusion and on the wrong premise that R.2 had no vested right in the said property, allowed the petition. Hence, it suffers from infirmities and the impugned order is liable to be set aside by allowing the appeal.”

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The legality of the said order dated 22.12.1999 came to be questioned

by the Second Respondent herein before the High Court by filing a revision application which by reason of the impugned order dated 13.11.2001 was allowed by a learned judge of the said Court stating: A

“...The lower appellate court lost the sight of the fact that as on the date of the order of the Deputy Registrar, the deed was pending registration and once it was registered on 13-6-1991, much prior to the initiation of execution proceedings by the first respondent, it dates back to the date of presentation of the document, i.e. 7-2-1987. In such circumstances and in view of the provisions contemplated in Section 47 of the Registration Act as well as the law laid down by the Supreme Court, which was followed by other High Courts, the view taken by the lower appellate court cannot be sustained. Accordingly, the order passed by the lower appellate court is set aside. However, the right and entitlement of the first respondent *vis-a-vis* the second respondent cannot be defeated on account of the above proceedings to which he is not a party. It is, therefore, left open to the first respondent to approach the Deputy Registrar for such directions as are necessary and permissible in law in view of the development that has taken place culminating in the order of the Executing Court in E.A. No. 155 of 1997.” B C D

An application for clarification of the said order made by the Second Respondent herein was disposed of by the High Court in terms of an order dated 22.04.2002 stating: E

“The direction in the order dated 13.11.2001 in CRP No. 283 of 2000 as regards the right of the respondents to approach the Deputy Registrar for such directions, as are necessary and permissible in law are obviously for allotment of an alternative plot other than plot No. 39 phase II which was found to have been validly transferred in favour of Mr. A. Srinivas the vendor of the petitioner herein, i.e., Smt. Mina Patalay. The matter is accordingly clarified.” F

The Appellant is, thus, before us.

In view of the fact that one award was passed in favour of the Appellant herein which attained finality, rightly or wrongly, and similarly a decree having been passed in favour of the Respondent, this Court with a view to do justice between the parties on or about 10.8.2005 asked the learned counsel appearing on behalf of the First Respondent herein to produce the bye-laws, the scheme of allotment and as to whether any other plot was available which could be H

A allotted in favour of the Appellant. This Court was informed that one plot being plot No. 400, Phase III was available and the same would be allotted to the Appellant. The said offer was accepted by the Appellant. An undertaking was also given to pay the price therefor and other legal dues as and when demanded by the Society.

B Pursuant to or in furtherance of acceptance of the said offer, and payment made by the Appellant to the Society, an allotment letter was issued in his favour in respect of the said plot No. 400. However, interlocutory applications were filed by one B.M. Ramalingeswara Rao being I.A. Nos. 5-10 of 2005. The matter came up before a 3-Judge Bench presided over by Hon'ble the Chief Justice of India and in an order dated 9.9.2005 noticing the statements made in this said application that the said plot was allotted to the applicant therein in 1984, it was directed to be put up on 21.9.2005. Interlocutory applications being Nos. 11-12 were also filed by Dr. M.S. Raju wherein also notices were issued. In interlocutory applications being Nos. 13-14 by, however, while issuing notice by an order dated 8.12.2005, this Court directed:

D "Having heard learned counsel for the parties, we are of the opinion that the respondent No. 1 - Jubilee Hills Coop. House Bld. Soc. should file its responses to the interlocutory applications for impleadment filed before us. Such respondents should be filed by 12.1.2006. The President of the respondent - Society shall hand over authenticated copies of the relevant documents and shall also keep the original records with the learned counsel for the respondent - Society to enable the parties hereof to make inspection thereto. After such inspections of the Society's records are carried out, the parties before us including those who have filed applications for impleadment in these appeals would be at liberty to file their affidavits. Such affidavits should be filed by 25.1.2006."

E An application for impleadment has also been filed by one J.S. Rama Murthy being I.A. Nos. 15-16 wherein it has been stated that an award in his favour has been passed under Section 61 of the Andhra Pradesh Cooperative Societies Act, wherein it was directed :

F "Having regard to the facts, mentioned above and on considering totality of the circumstances of the case, the Respondent Society (i.e.) Jubilee Cooperative House Building Society Ltd. TA-No. 173, Hyderabad is hereby directed to allot and register a suitable plot to petitioner."

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Mr. S. Muralidhar, learned counsel appearing on behalf of the Appellant, at the outset, submitted that the order the High Court as regards interpretation of Section 47 of the Registration Act, 1908 holding that the sale deed registered in favour of the said Srinivas by the First Respondent on 13.6.1991 would be effective from 7.2.1987 is not correct being contrary to a 5-Judge Bench decision of this Court in *Ram Saran Lall and Ors. v. Mst Domini Kuer and Ors.*, [1962] 2 SCR 474. It was urged that the High Court committed a manifest error in foreclosing the Appellant's right in respect of plot No. 39 by directing him to approach the Deputy Registrar seeking for the remedies afresh.

Drawing our attention to Bye-laws 70(a) and 71, it was contended that as in terms thereof it is postulated that the lands belonging to the Respondent-Society would be divided into plots for members thereof and each member was eligible for being allotted a plot of land, the High Court acted illegally and without jurisdiction in passing the impugned judgment particularly in view of the fact that in terms of Rule 17 of the Andhra Pradesh Cooperative Societies Rules, 1964 (for short "the Rules") as also Bye-law 19 of the Society, a nomination by a member is envisaged. It was argued that as the Appellant was admitted as a member in place of his deceased mother, he became eligible for being allotted the very plot being No. 39 which could not have been allotted to the said Srinivas as no sale deed had been executed in his favour at the relevant time. Once the Appellant was admitted to the membership, in all fairness, the Registrar, Society should have cancelled the allotment made in favour of the said Srinivas and allotted the same to the Appellant. In any event, the society ought to have brought the relevant records to the notice of the Registrar so as to enable him to consider grant of alternative relief in his favour as had been prayed for.

It was further urged that by reason of the award dated 22.4.1991, the Appellant's indefeasible right on the said plot has been recognized and the appeal preferred thereagainst having been dismissed, the same attained finality. The said award, therefore, became final and binding and, thus, in terms of the Bye-laws the vested right of the Appellant therein could not have been taken away by reason of the decree passed in the suit. In any event as he was not a party in the said suit, the decree passed in favour of the Second Respondent is not binding on him. The principle of *res judicata*, the learned counsel would submit, is, thus, attracted and in that view of the matter, the Respondents herein cannot question the correctness or otherwise of the said award which was evidently made prior to registration of the deed of sale in favour of the said Srinivas. In any event, plot No. 400 having been allotted in favour of the

A Appellant, the Society must be held to have recognized the right of the Appellant for allotment of plot in his capacity as a member of the Respondent-Society. As the said plot was available for allotment, Mr. Muralidhar would submit, this Court may grant prayer (a) in favour of the Appellant by directing formalization of the allotment of the said plot by execution and registration of a sale deed in his favour.

B

Mr. H.S. Gururaja, learned senior counsel appearing on behalf of the Second Respondent, on the other hand, submitted that the allotment made in favour of the mother of the Appellant must be deemed to have been cancelled by the Society as the requisite payments therefor as demanded by the Society had not been made.

C

Mr. G. Ramakrishna Prasad, learned counsel appearing on behalf of the First Respondent - Society, urged that at the point of time when purported allotment of plot No. 400 was made in favour of the Appellant herein, the Administrator was Incharge, but the affairs of the Society having been taken over by the elected body, it has now been found out that there were several persons in whose favour directions have been issued by the Authorities/Tribunals to consider the matter relating to allotment of plots in their favour in accordance with seniority.

D

Mr. T.L.V. Iyer, Mr. M.N. Rao, Mr. L. Nageswara Rao, learned senior counsel also addressed us pressing the impleadment applications filed by different applicants. Our attention has also been drawn to an order dated 13.06.2005 passed by the Andhra Pradesh Cooperative Tribunal wherein it was directed that allotment of plots including plot no.400 should be made in accordance with the bye laws.

E

The principal question which arises for consideration in this appeal is as to whether the award passed in favour of the Appellant herein is capable of enforced in law. The said question may have to be answered in favour of the Appellant only, if the principle of *res judicata* is found to be applicable in this case.

F

The Appellant became a member of the Cooperative Society in place of his mother. As a member of a Society, nobody had a right to be allotted a plot far less a particular plot. Plot No. 39 was indisputably allotted in favour of his mother. But before the provisional allotment could fructify by making a formal allotment and executing a deed of sale in her favour, she had expired.

G

This fact was not communicated by the Appellant to the First Respondent-

H

Society for a long time. He in his letter dated 16.3.1985 accepted that he was out of Hyderabad for more than two and half years. He did not deny or dispute that in the *mean time* the Society issued several letters in the name of all allottees to deposit the development cost. A notice had also been issued to all the allottees asking them to deposit the development charges failing which the order of allotment would stand cancelled. It stands admitted that the development charges had not been deposited in respect of plot No. 39. It may be that no formal letter of cancellation of the said plot was issued but in view of the admitted position that the requirements as contained in letter dated 30.9.1982 of the First Respondent having not been complied with, the allotment would in law, be deemed to be cancelled.

An inference as regards cancellation of the said allotment must be drawn in view of the fact that plot No. 39 admittedly was allotted in favour of Mr. Srinivas. Even if there had been no express cancellation of allotment of the said plot, by reason of a fresh allotment, the provisional allotment made in favour of mother of the appellant must be held to have come to an end. The allotment of plot No. 39 in favour of the mother of the Appellant was a provisional one. By reason of such provisional allotment, the allottee did not derive any legal right far less an indefeasible right. Such provisional allotment would have acquired permanence provided the requirements therefor were complied with.

Furthermore, the Appellant in its letter dated 16.3.1985 requested for allotment of another site in lieu of plot No. 39 in Phase III as the same had been given to someone else. He was informed thereabout. He never put forward his case before the First Respondent to allot plot No. 39 in his favour upon cancellation of such allotment made in favour of Mr. Srinivas. Even in his other letters, similar requests were made. The Appellant was also aware of the fact that allotment made in favour of her mother had been cancelled due to non-payment of the development charges. He had specifically asked for allotment of another site wherefor he was even ready to make extra-payment. He had, thus, consistently been asking for allotment of a new plot. He despite such knowledge that allotment of plot No. 39 made in favour of his mother had been cancelled and subsequently made in favour of somebody else, while questioning the refusal on the part of the First Respondent herein to allot another plot in his favour and initiating the arbitration proceeding only prayed for an order of injunction restraining the Society from allotting plot No. 39 to any other member of the Society. His main prayer, however, was that an allotment of an alternative plot in the same block to the extent of

A 600 sq. yards be made and the vacant possession thereof be delivered.

It is beyond any cavil of doubt that the conduct of the First Respondent Society was not fair. When it had made an allotment in favour of Mr. Srinivas, it was obligatory on its part to disclose all the facts before the Registrar so as to enable him to arrive at an independent opinion. It failed and neglected to do so and, thus, it created all sorts of confusions.

If the contention of the Appellant is correct, that after the said award, the Society accepted the deposit of the requisite amount from the Appellant, we fail to see any reason as to why the said fact was not brought to the notice of the said Srinivas. The appeal preferred by the First Respondent against the Appellant herein was also not properly pursued. We do not know whether any application for restoration has been filed.

It may be true, as was submitted by Mr. Gururaja that the appeal was dismissed for default by the Cooperative Tribunal without giving any proper notice of transfer, but in the facts and circumstances of the case, it is not necessary to deal with the said question.

If the contention of the Appellant is to be accepted that by reason of the provisional allotment made in favour of his mother, he acquired an indefeasible right only because he at a later date was admitted as a member of the Society, indisputably, the said Srinivas had acquired a higher right as not only the said plot was allotted in his favour but also a deed of sale was executed. The Appellant does not deny or dispute about the factum of execution of sale by the First Respondent herein in favour of Shri Srinivas as far back as on 7.02.1987.

In the aforementioned situation, the effect as regards application of Section 47 of the Registration Act requires consideration. The said provision reads as under:

“47. Time from which registered document operates.—A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

In terms of the aforementioned provision, therefore, if a deed of sale is executed although not registered, the right, title and interest in respect thereof shall pass with retrospective effect, i.e., from the date of execution thereof.

The question is no longer *res integra* in view of a large number of decisions of Privy Council as also this Court including *Kalyanasundaram Pillai v. Karuppa Mooppanar*, AIR (1927) PC 42, *Venkatasubba Shrinivas Hegde v. Subba Rama Hegde*, AIR (1928) PC 86, *Radhakisan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi and Ors.*, [1961] 1 SCR 248, *K.J. Nathan v. S.V. Maruthi Rao and Ors.*, [1964] 6 SCR 727, *Nanda Ballabh Gururani v. Smt. Maqbool Begun*, [1980] 3 SCC 346 and *Thakur Kishan Singh (Dead) v. Arvind Kumar*, [1994] 6 SCC 591.

We would hereinafter notice a few decisions.

In *Radhakisan Laxminarayan Toshniwal* (supra), a Constitution Bench of this Court has clearly held:

“It was then submitted that the sale deed had as a matter of fact, been executed on February 1, 1944; but respondent Sridhar brought the suit not on the cause of action arising on the sale dated February 1, 1944, but on the transaction of April 10, 1943, coupled with that of April 24, 1943, which being mere contracts of sale created no interest in the vendee and there was no right of pre-emption in Respondent 1 which could be enforced under the Code. Mr Chatterji urged that it did not matter if the sale took place later and the suit was brought earlier but the suit as laid down was one to pre-empt a sale of April 1943 when, as a matter of fact, no sale had taken place. If respondent Sridhar had based his right of pre-emption on the basis of the sale of February 1, 1944, the appellant would have taken such defence as the law allowed him. The defence in regard to the conversion of the land from agricultural into non-agricultural site which negatives the right of pre-emption would then have become a very important issue in the case and the appellant would have adduced proper proof in regard to it. The right of pre-emption is a weak right and is not looked upon with favour by courts and therefore the courts could not go out of their way to help the pre-emptor.”

The aforementioned decision has consistently been followed by this Court. Strong reliance has been placed by Mr. Muralidhar on *Ram Saran Lall* (supra). It is interesting to note that in that case the decision of the earlier Constitution Bench of this Court in *Radhakisan Laxminarayan Toshniwal* (supra) was not brought to the court’s notice. Hon’ble the Chief Justice B.P. Sinha was a party to both the decisions. His Lordship, therefore, presumably was aware of the distinctive features of both the cases.

A In *Ram Saran Lall* (supra), the Constitution Bench of this Court was considering a different question, namely, in the light of the provision relating to pre-emption what would constitute a complete sale, as would appear from the following:

B “...We will assume that the learned Attorney-General’s construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. *It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered.* The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. *The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale.* A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946.....”

E [Emphasis supplied]

The said decision, therefore, does not in any way support the contention of Mr. Muralidhar; rather runs counter thereto.

F We may notice that in *Hiralal Agrawal v. Rampadarth Singh and Ors.*, [1969] 1 SCR 328 : AIR (1969) SC 244 this Court made similar observations. Therein this Court was considering the question as to whether an application for pre-emption which was filed before the registration of the deed, although, cognizance in relation thereto was taken thereafter, would be valid.

G Despite knowledge, that plot No. 39 has been allotted to somebody else, the Appellant did not make the said Srinivas a party in his application before the Registrar. *Ex facie* the award being in violation of the principles of natural justice would be a nullity.

H We have, furthermore, noticed hereinbefore the prayers made by the

Appellant in the said arbitration proceedings. In view of prayer (a) which was the main prayer *ex facie* the Registrar acted illegally and without jurisdiction in directing the First Respondent to allot plot No. 39. The First Respondent made it clear that the plot in question had been allotted in favour of the said Srinivas. The question as to whether he raised constructions thereupon or not was immaterial. He despite such allotment having been made in his favour was not impleaded as a party. He was a necessary party. No award therefor could have been passed in his absence. In any event, so far as plot No. 39 is concerned, the only prayer made by the Appellant was an order of injunction. The Registrar while exercising his judicial function had no jurisdiction to pass such an order of injunction in view of prayer (a) made in the application.

The said award, therefore, was a nullity. In this view of the matter, the principles of *res judicata* will have no application. [See *Haryana State Coop. Land Development Bank v. Neelam*, [2005] 5 SCC 91, *Ram Chandra Singh v. Savitri Devi and Ors.*, JT (2005) 11 SC 439] An order which was passed by an authority without jurisdiction need not be set aside, being a nullity, it in the eyes of law never existed. [See *Balvant N. Viswamitra and Ors. v. Yadav Sadashiv Mule (Dead) Through LRS. and Ors.*, [2004] 8 SCC 706]

Furthermore, the said award was put in execution. The Executing Court in view of title passed in favour of the said Srinivas and consequent acquisition of title by him in terms of the deed of sale executed by him in favour of the Second Respondent herein was entitled to enter into the question as to whether the said award was capable of being executed. As the High Court rightly found that the Second Respondent has acquired a valid title with effect from a date prior to making of the award, the same became inexecutable. If the said award was not capable of being executed, the remedy of the Appellant evidently lies to ventilate his grievance as regards allotment of plot by initiating a different proceeding.

It is true that even in the suit filed by the Second Respondent herein against the First Respondent being OS No. 3702 of 1992 the Appellant was not impleaded as a party. The decree passed, therefore, may not be binding on the Appellant. For the self-same reasons we have assigned hereinbefore, the said decree may not operate as a *res judicata* but we have to consider the matter from a different angle. The Second Respondent did not enforce the decree as against the Appellant herein where as the award, in view of the peculiar facts and circumstances of this case, was required to be enforced by the Executing Court as against the Second Respondent besides the First

A Respondent herein and in that view of the matter the Second Respondent in law could file an appropriate application not only for his impleadment but also to show that the award is not enforceable in law.

The High Court's judgment, therefore, is unassailable albeit for additional reasons stated hereinbefore.

B

We may at this stage notice that Mr. Muralidhar categorically stated that his client does not press for allotment of plot No. 39 and he would be satisfied if some other plot is allotted in its favour. This brings us to consideration to the question of allotment of plot No. 400.

C

The question which now arises for consideration is that what would be the effect of allotment of plot No. 400 in Phase III by the First Respondent during pendency of the proceedings before this Court. We have noticed hereinbefore that this Court, while asking the learned counsel appearing on behalf of the First Respondent, was of the opinion that interest of justice may

D

be subserved if some plot which was available for allotment could be directed to be allotted in favour of the Appellant herein. A representation was made, which now turns out to be wrong, on behalf of the First Respondent that the plot No. 400 was available for allotment. It was in that situation, the offer of

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the First Respondent as regard allotment of the said plot to the Appellant was accepted. The Appellate paid a huge sum therefor. The said amount has also been appropriated by the First Respondent. However, in law only because an order of allotment has been issued in favour of the Appellant herein by the First Respondent, the same by itself would not mean that thereby the right of the others for being considered therefor or for that matter any other plot which was available for allotment could be put in jeopardy. This Court whence

F

proceeded to consider the matter of allotment of another plot in favour of the Appellant by the First Respondent, it had evidently in its mind that same plot may be available for allotment but by reason thereof, the right of somebody else was not meant to be nor could be affected. Even in exercise of its jurisdiction under Article 142 of the Constitution while making an attempt to do complete justice to the parties this Court cannot pass an order which could

G

cause injustice to others and in particular to those who are not before it. The correctness or otherwise of the contentions raised by the impleaded parties, thus, need not be gone into. We must, however, place on record that our attention has been drawn to the fact that several proceedings as regard allotment of plot at the hands of the society are pending adjudication before several forums. Even a direction has been issued by a Cooperative Tribunal

H

as regard allotment of plot No. 400. It goes without saying that the courts of

law would always see to it that while making allotment of plot by a cooperative society, no discrimination is caused amongst the members. The Cooperative Society having been formed for the purpose of allotment of plots to its members must strictly and scrupulously follow the statutory rules as also the bye-laws framed by it. It must also act within the four corners not only of the statute and statutory rules but also the bye-laws framed by it. In terms of the extant law, seniority rule would govern the matter of allotment of land amongst the members of the Society. This Court is not in a position to determine the *inter se* dispute, if any, even as regard the seniority amongst the members. In fact this Court has not been called upon to do so nor in view of the *lis* between the parties we can go thereinto. Whether the Appellant would be senior in the matter of allotment of plot over the others is a disputed question of fact. Such disputed question of fact, as and when any occasion arises therefor, must be gone into and adjudicated upon by an appropriate forum. The Appellant as a member has a right, although not indefeasible, to be considered for allotment of a plot along with other members similarly situated. Such a right, therefore, could not have been taken away nor directed to be taken away by any court of law.

We, therefore, are of the opinion that interest of justice would be subserved if the First Respondent is directed to consider the question of allotment amongst its members upon strict compliance of the extant rules including its bye-laws wherefor cases of all persons eligible therefor must be considered.

It goes without saying that in the event of any dispute or difference as regard entitlement to be allotted a plot between the parties, they would be at liberty to initiate such proceedings or ventilate their grievances before such forums as is permissible in law.

This brings to the fore another question *viz.* as to whether, in view of the conduct of the First Respondent, the Appellant should be monetarily compensated. We think so. The First Respondent despite the knowledge that the award dated 22.4.1991 was not enforceable appears to have taken some amount from the Appellant. It compelled the Appellant to fight litigations before various forums. The Appellant also had to initiate an execution proceeding for execution of the award passed by the Registrar. It succeeded at least before one court. Even before this Court, a wrong representation was made by the First Respondent that plot No. 400 was available for allotment to the Appellant. The said representation was turned to be wrong. As we are not in a position to consider the correctness or otherwise of one representation

A or the other by the First Respondent herein as also the contentions raised by the impleaded parties, we are of the opinion that the conduct of the First Respondent is deplorable. It being a Society was obligated to render all assistance to this Court so as to enable it in turn to render a decision in accordance with law. It could not have made any mis-representation before us. We are not bothered as to whether at the relevant point of time the First Respondent was represented by an Administrator or an elected body. It was admittedly being represented who could do so before us in law.

C We, therefore, direct the Registrar of the Cooperative Society to initiate an enquiry against the persons concerned who were responsible for making a wrong representation before us and take suitable action against them in accordance with law. We further direct that all amounts deposited by the Appellant before the First Respondent be refunded to him with penal interest at the rate of 24% per annum, subject, of course, to deduction of such amount to which the First Respondent was entitled to for admitting him as a member of the Society. The First Respondent shall also pay a further sum of Rs. D 1,00,000/- (Rupees one lakh only) to the Appellant herein by way of compensation. The First Respondent shall also pay a sum of Rs. 1,00,000/- (Rupees one lakh only) to the Second Respondent by way of compensation. Such payments be made to them within a period of four weeks from date. The First Respondent shall be at liberty to recover the amount of interest as also E the amount of compensation directed to be paid to the Appellant herein from such persons who may be found responsible therefor.

F For the foregoing reasons, these appeals are dismissed, subject, however, to the aforementioned observations and directions. The parties shall, however, in the facts and circumstances of the case pay and bear their own costs throughout.

In view of our views aforementioned, it is not necessary for us to pass any separate order on the interlocutory applications. They are disposed of accordingly.

B.S.

Appeals disposed of.