

A ISHWAR NAGAR CO-OP.HOUSE BUILDING SOCIETY
v.
PARMA NAND SHARMA AND ORS.
(Civil Appeal No.9671 of 2010)

NOVEMBER 15, 2010

B [DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE,
JJ.]

Delhi Cooperative Societies Rules, 1973:

C *r.25(2) – Retrospective or prospective in effect – Held:*
D *r.25(2) operates in future, though the basis for taking action*
E *is the factum of acquiring a plot in the past – Thus, when by*
D *virtue of r.25(2), a member is deemed to have ceased to be*
D *a member of the society, the cessation operates from April*
D *2, 1973, when the rules came into force – Merely because a*
D *person who had become a member of the society at a point*
D *of time when the disqualification mentioned in r.25 was not in*
D *existence and because of the said rule would cease to be a*
E *member of the society would not necessarily mean that the*
E *said rule is retrospective – r.25(2) is not retrospective – Delhi*
E *Co-operative Societies Act, 1972 – s.97(1) – Cooperative*
E *Societies – Retrospective operation.*

F *r.25 – Applicability of, when property purchased in the*
F *name of HUF – Held: r.25(1)(c)(i) provides an exception in*
F *case of persons who are only co-sharers in the joint family*
F *property – Disqualification of membership as laid down in*
F *sub-rule (1)(c)(i) shall not be applicable in case of co-sharers*
G *of property whose share is less than 66.72 sq. m. (80 yds) of*
G *land – In the instant case, the share of the member in the*
G *purchased property was more than the prescribed limit –*
G *Thus, the said exception was not applicable to his case –*
G *Even otherwise, ownership by HUF is ownership of property*
G *by the family members and consequently the same would*

clearly fall within the prohibition and bar of allotment as contained in clause 5(a) of the lease deed – In terms of clause 5 (a) of the lease deed, the appellant society was under an obligation not to allot a residential plot to a person, who was owning a property in the city of Delhi – Therefore, it was obligatory for the Society not to allot plots of land to such persons who own any residential property either in their own name or in the name of their family member. A B

r.25 – Acquisition of separate accommodation by a member of the Cooperative Housing Society – Termination of membership by appellant-society – Validity of – Held: In the light of r.25, the action of the appellant-society would be valid if the said property was found to be a residential house – In self-assessment property tax forms filled by the member with respect to the said property, the member opposed the assessable value shown in the assessment notice on the ground that the building on the said plot was under self-occupation for residence and self professional-medical work only and was a single-unit house – The said information about the nature and status of his property was furnished by the member under his own declaration – For retaining the membership of the appellant-society, he cannot claim that the said property was used purely for commercial purpose. C D E

Delhi Co-operative Societies Act, 1972:

s.97(1) – Power of Lt. Governor under, to frame r.25(2) – Held: r.25(2) prescribes that a member would cease to be a member on incurring certain disqualifications – r.25(2) does not in any manner go beyond the ambit of rule making authority given u/s.97(1) of the Act – The object of a co-operative society is not to earn profits but to enable the members to improve their economic conditions by helping them in their pursuits – Thus, the cooperative societies which seek to obtain the land at concessional rate from the government to build houses must necessarily have a limitation that only members who are in real need of houses F G H

A *should be permitted to become members and to take the benefit of land allotment – Cooperative Societies.*

Bye-laws of Ishwar Nagar Cooperative Housing Building Society, 1962:

B *Bye-law 8(vii) – Acquisition of separate accommodation – Disqualification of member – Held: Bye-laws of the society regulate the management of the society and govern the relationship between society and members inter se – They are in the nature of Articles of Association of a company registered under the Companies Act – If they are consistent with the Act and Rules, the members are bound by them – Bye-law 8(vii) showed that purchasing a house or a plot of land for construction of a house, either in his own name or in name of any of his dependants, disqualifies a member of the society to continue as one – The said bye-law was neither inconsistent with the Bombay Cooperative Societies Act, 1925 under which the appellant society was governed nor was it contrary to Delhi Cooperative Societies Act, 1972 and the Rules framed thereunder – Therefore, a member of the society who acted in violation of the said bye law was liable to have his or her membership removed from the appellant-society – Delhi Co-operative Societies Act, 1972 – Delhi Cooperative Societies Rules, 1973 – r.25 – Bombay Cooperative Societies Act, 1925.*

F *Bye-law No. 5(i)(e) – Expression “eligible to be a member” – Interpretation of – Held: The verb “be” has two meanings, namely, to exist, and to become – Constitution of India, 1950 – Article 102(1).*

G *Cooperative Societies: Meaning and object of.*

Words and phrases: Word ‘be’ – Meaning of – Constitution of India, 1950 – Article 102(1).

H **Respondent no.1 was enrolled as a member of the**

appellant-cooperative society on 11.3.1961. In 1962, he purchased a property in Kailash Colony in the name of the HUF consisting of himself, his wife and children and raised construction on it. According to the appellant-society, the construction was a residence-cum-nursing home while respondent no.1 claimed it to be only a nursing home. The appellant-society terminated the membership of respondent-1 on the ground that as per rule 25(1)(c) of the Delhi Cooperative Societies Rules, 1973 upon owning another property, the appellant would not be entitled to be member of a cooperative housing society.

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The questions which arose for consideration in the instant appeal were whether Rule 25 of the Rules had a retrospective application in debarring a member of a cooperative society who enrolled as a member of the society and acquired separate property before the Rules came into force; whether bye-laws of the society could debar respondent no.1 on acquisition of a separate residential/dwelling house in Delhi; whether the property purchased in the name of HUF would debar respondent no.1 to continue as a member of the appellant-society; and whether the nature of the property purchased was residential or commercial.

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Allowing the appeal, the Court

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HELD: 1.1. A perusal of Rule 25(2) of Delhi Cooperative Societies Rules, 1973 would make it clear that after the said Rules came into force, if a member had already become subject to any disqualification specified in sub- rule (1), he would be deemed to have ceased to be a member from the date when the disqualification was incurred. In the instant case, the relevant rule was Rule 25(1)(c)(i). The said Rule also stipulated that no person shall be eligible for admission as a member of the cooperative society, if he owns a residential house or a plot

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A of land for the construction of a residential house in any
of the territory of Delhi, in his own name or in the name
of his spouse or any of his dependent children, on lease-
hold or free-hold basis. It is incorrect to say that Rule 25
was not applicable to his case as the said rule was not
B retrospective and the alleged disqualification of
purchasing the said property had incurred prior to the
adoption of the Rules. Merely because a person who had
become a member of the society at a point of time when
the disqualification mentioned in Rule 25 was not in
C existence and because of the said rule would cease to
be a member of the society does not necessarily mean
that the said rule is retrospective. The most concrete
cases wherein laws are made retrospective are those in
D which the date of commencement is earlier than
enactment, or which validate some invalid law, otherwise,
every statute affects rights which would have been in
existence but for the statute and a statute does not
become a retrospective one because a part of the
requisition for its action is drawn from a time antecedent
E to its passing. In this view of the matter, Rule 25(2) is not
retrospective. All that Rule 25(2) does is that it operates
in future, though the basis for taking action is the factum
of acquiring a plot in the past. Thus when by virtue of
Rule 25(2), a member is deemed to have ceased to be a
F member of the society, the cessation operates from April
2, 1973, when the rules came into force. [Paras 8, 12, 15]
[981-A-F; 984-A-H; 985-A; 986-D-F]

State of Maharashtra v. Vishnu Ramachandra 1961 Cri
L. J 450 – relied on.

G *Queen v. Vina* (1875) 10 Q.B 195; Re: Solicitors Clerk
(1957) 3 AH. E.R. 617 – referred to.

Craze on Statute Law 17th edition page 386, referred
to.

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1.2. Section 97(1) of the Delhi Co-operative Societies Act, 1972 gives the power to the Lt. Governor to frame rules to carry out the purposes of the Act. The specific provisions as are contained in several clause of sub-section (2) of Section 97 are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by sub section (1) of Section 97. The particular matters given in sub-section (2) only illustrate and do not exhaust all the powers conferred. The power to frame rules given under Section 97(1) of the Act is not controlled by the list mentioned in sub-section (2) and the Lt. Governor can make rules for any of the purposes of the Act. A co-operative society may be defined as a voluntary association of individuals combined to achieve an improvement in their social and economic conditions through the common ownership and democratic management of the instruments of wealth. The voluntary organizations like cooperative societies suit the needs of poor and weaker sections. The object of a co-operative society is not to earn profits but to enable the members to improve their economic conditions by helping them in their pursuits. Thus, the cooperative societies like the one in instant case which seek to obtain land at concessional rate from the government and to build houses must necessarily have a limitation that only members who are in real need of houses should be permitted to become members and to take the benefit of land allotment. In the garb of a cooperative society, a person cannot be permitted to avoid the stress of market prices and take a concessional advantage in obtaining a plot. Thus, Rule 25(2) does not in any manner go beyond the ambit of rule making authority given under Section 97(1) of the Act. [Paras 10, 11] [981-C-E; 983-G-H; 984-A-D]

Afzal Ullah v. State of Uttar Pradesh AIR 1964 SC 264;
Rohtak Hissar District Electricity Supply Co. Ltd. v. State of

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A *Utter Pradesh and Ors. AIR 1966 SC 1471* – relied on.

Row's Encyclopedia of Co-operative Societies Law in India, Vol. 2, page 1 – referred to.

2. The Bye-laws of Ishwar Nagar Cooperative Housing Building Society, 1962 came into force on 3.10.1962. The eligibility conditions for enrollment as a member of the society were provided in chapter III of the said bye-laws. Bye-law No. 8 (vii) provides for cessation of membership. A perusal to the bye-law would make it clear that on purchasing a house or a plot of land for construction of a house, either in his own name or in the name of any of his dependants, disqualifies a member of the society to continue as one. The Bye-laws of the society regulate the management of the society and govern the relationship between society and members inter se. They are similar in nature to the Articles of Association of a company registered under the Companies Act. If they are consistent with the Act and the Rules, the members are bound by them. Bye-law 8(vii) was neither inconsistent with the Bombay Cooperative Societies Act, 1925 under which the appellant society was governed nor was it contrary to Delhi Cooperative Societies Act, 1972 and the Rules framed thereunder. Therefore, a member of the society who acted in violation of the said bye-law was liable to have his or her membership removed from the appellant-society. The expression “eligible to be a member” is used in the 1962 bye-law 5(i)(e). The verb “be” has two meanings, namely, (a) to exist, and (b) to become. The former refers to the existence of state of affairs in present while the latter refers to the coming into existence of a new state of affairs. In Article 102(1) of the Constitution, the word “be” is used in the sense of “exist” as contrasted to “become”. Under Article 102(1), a person is disqualified for “being chosen as” and also for “being a member of either

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Houses of Parliament” etc. The dichotomy is between becoming a member and continuing to be a member of parliament. It is, therefore, to be concluded that even under Bye-law 5(i)(e) of Bye-laws of Ishwar Nagar Cooperative Housing Building Society, 1962, respondent no.1 was disabled from continuing to be members of the society. [Paras 16, 17, 18, 21] [986-G-H; 987-C-E, G-H; 988-A; 989-A-F]

Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban), (2005) 5 SCC 632 – relied on.

3.1. Sub-rule (1)(c)(i) of Rule 25 provides an exception in case of persons who are only co-sharers in the joint family property, in that the disqualification of membership as laid down in sub-rule (1)(c)(i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq. m. (80 yds) of land. In the instant case, the said property is admeasuring 1080 yds and there are 3 co-sharers of the property, i.e. respondent no.1 and his two children, (after the death of wife) and the share of respondent no.1 would be more than the prescribed limit. In this regard, the said exception is not applicable to the case of respondent no.1. [Para 22] [990-A-C]

3.2. Further, a perpetual lease deed with respect to the land allotted to the appellant society was executed on 06.04.1978 by the President of India through the Delhi Administration. In terms of clause 5 (a) of the said lease deed, the appellant society was under an obligation not to allot a residential plot to a person, who was owning a property in the city of Delhi. Therefore, as per terms of allotment of the land to the appellant, it was obligatory for the society not to allot plots of land to such persons who own any residential property either in their own name or in the name of their family member. When the Hindu Undivided Family of the respondent consists only of his

A own family members, namely, his wife, son and the
daughter, obviously ownership of the said property by
the Hindu Undivided Family of the respondent is
ownership of property by the family members and
consequently the same would clearly fall within the
B prohibition and bar of allotment as contained in clause 5
(a) of the lease deed. [Para 22] [990-D-E]

4. In the light of Rule 25, the action of the appellant-
society would be justified if the said property is found to
be residential house. The mere fact that respondent no.1
C had shown in affidavits and correspondences the said
property as his address would not prove that the property
is a residential house as being a doctor running a nursing
home, he had to remain invariably in his workplace for
D very long hours. However, in self-assessment property
tax forms filled by respondent no.1 with respect to the
said property, respondent no.1 opposed the assessable
value shown in the assessment notice on the ground that
the building on the said plot was a new constructed
E building and was under self-occupation for residence
and self professional-medical work only and was a single-
unit house. The respondent for the purpose of being
member of the appellant-society cannot claim the said
property used purely for commercial purpose when he
himself claimed the said property being used for
F residential purpose also. The said information about the
nature and status of his property in Kailash Colony was
furnished by the respondent under his own declaration
and by certifying that the said particulars filled in the form
are true and correct to the best of his knowledge. The
G information was relevant and material to conclude that
the said property in Kailash Colony was also used as a
residential property and, therefore, the contention for
respondent no.1 that it was exclusively a commercial
property cannot be accepted. [Para 23] [991-E-H; 992-A-
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ISHWAR NAGAR COOP.HOUSE BUILDING SOCIETY v. 975
PARMA NAND SHARMA

Case Law Reference:

AIR 1964 SC 264	relied on	Para 10	A
AIR 1966 SC 1471	relied on	Para 10	
1961 Cri L. J 450	relied on	Para 12	B
(1875) 10 Q.B 195	referred to	Para 13	
(1957) 3 AH. E.R. 617	referred to	Para 13	
(2005) 5 SCC 632	relied on	Para 17	C

CIVIL APPELLTAE JURISDICTION : Civil Appeal No. 9671 of 2010.

From the Judgment & Order dated 28.3.2008 of the High Court of Delhi at New Delhi in W.P.(C) No. 474 of 1982.

P.S. Narsimha, Abhay Kumar, K. Parmeshwar, Ritesh K. Chowdhary, Tenzing Tsering, Madhumita Singh for the Appellant.

Arun Mohan, Sameer Parekh, Arvind Bhatt, Sumit Goel, Pallavi Sharma, Smita Bhargava, R.K. Gupta, Shashi Gupta, Parekh & Co., Indira Sawhney, Shweta Verma, Anil Katiyar, Sharmila Upadhyay for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. This Appeal is directed against the judgment and order dated 28/03/2008 in W.P. No. 474/1982 of the High Court of Delhi wherein the High Court allowed the writ petition filed by the respondent-1 and whereby resolution and order dated 14th January, 1978 passed by the appellant and the order of the Registrar, Cooperative Societies dated 17th May, 1978 and the order of the Deputy Registrar dated 5th November, 1981 whereby the name of the respondent-1 had been removed from

A the list of members of the appellant-society were quashed and set aside.

3. The respondent-1, Dr. Parmanand Sharma was enrolled as a member of the appellant society *vide* membership No. 35 on 11th March 1961. In 1968, he purchased a property bearing No. A-19/A, Kailash Colony, New Delhi in the name of his Hindu Undivided Family consisting of respondent-1, his wife and two minor children in 1968 and a structure was constructed thereon in 1969. According to the appellant-society, this construction is a residence-cum-nursing home, whereas respondent-1 claims it to be only a nursing home, to which question we will refer later. In this chain of events, the membership of the respondent-1 was terminated from the appellant society on the ground that the respondent-1 owned another property, i.e., 19/A, Kailash Colony, in Delhi, since as per rule 25 (1)(c) of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as "the Rules"), upon owning another property, the appellant was not entitled to be member of a Cooperative Housing Society. The respondent-1 was also expelled on 14th January 1978 from the society under section 36(1) of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as "the Act") for being a persistent defaulter, since he had not paid the dues demanded by the society. The action of the society expelling the respondent-1 was approved by the Registrar, Cooperative Societies on 17th May 1978. On 26th February 1980, an application was filed by respondent-1 under Section 60 of the Act for reference of dispute to arbitration. The reference was dismissed on 5th November, 1980. Being aggrieved, the respondent filed a writ petition before the High Court, wherein the High Court by the impugned judgment and order dated 28/03/2008 held that 19/A, Kailash Colony, Delhi was being used for running a nursing home, i.e., for a commercial purpose and therefore, that would not constitute a violation of Rule 25 of the Rules. By the said order, the HC set aside the expulsion orders.

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4. The present appeal is directed against the above A
impugned judgment and order of the High Court by way of
Special Leave Petition on which we heard the counsel
appearing for the parties at length. The learned counsel for the
appellant contended that on the ground floor of the said
property, the respondent-1 is running a nursing home and that B
he is residing on the first floor. In that view, the appellant
contended that the property was being used for residential
purposes. Counsel for the appellant also submitted that the
respondent-1 in his various correspondences, pleadings and
affidavits has shown the property as his address which is C
conclusive proof that he is residing in the said property.
Moreover, it was also contended that respondent-1 had been
unable to disclose where he was alternatively residing and no
documents had been furnished to show that the said property
was being used exclusively and solely for commercial purpose. D
In this regard, it was submitted that the user of the said property
being a resident therein, this not only violates Rule 25 of the
Rules, but also is contrary to the bye laws of the society and
the terms of perpetual lease agreement entered between Govt.
of India and the appellant society, in pursuance of which the E
respondent-1 would be entitled as being member of the
appellant-society. On the other hand, the learned counsel for the
respondent-1 refuted the claims made by the appellant
contending that the said property was used solely for a nursing
home, and since respondent-1 remained in the nursing home
for most of the time as a doctor, therefore it was solely for F
convenience's sake that he used the address to further
correspondence. This aspect, it was submitted, would not
render the property residential in any way. Further, counsel for
respondent-1 contended that the said property was purchased
in the name of the HUF, and not in respondent-1's name, and G
therefore the latter cannot be expelled from the membership of
the appellant-society. He also submitted that the respondent-1
cannot be expelled because of purchase of the said property
was facilitated before the Rules came into force in exercise of
power granted under the Delhi Cooperative Societies Act, H

- A 1972. It was further contended that at the time of acquisition of membership of the said society, the appellant's society was governed by the Bombay Cooperative Societies Act, 1925, which doesn't have any provision disqualifying a member of a cooperative society on acquisition of another property in Delhi.
- B Rule 25 has no retrospective application; therefore it was submitted that expulsion of the respondent-1 is *non est* in law.

5. After hearing the parties in detail the questions which arise in this appeal are: -

- C I. Whether Rule 25 of the Rules has a retrospective application in debarring a member of a co-operative society who enrolled as a member of the society and acquired separate property before the Rules came into force?
- D II. Whether bye laws of the society can debar the respondent-1 on acquisition of a separate residential/dwelling house in Delhi?
- E III. Whether the property purchased in the name of HUF can debar the respondent-1 to continue as a member of the appellant-society?
- IV. Whether the nature of the property purchased is residential or commercial?

F **Issue I**

- G 6. As far as applicability of Rule 25 of the Rules is concerned, the learned counsel for the appellant contended that the provisions contained in Rule 25 are applicable to all the members of the society, whether enrolled before or after the enactment of the Delhi Co-operative Societies Rules, 1973 and in view of the said rule, the respondent-1 was ineligible to continue to be a member of the society and his membership was correctly terminated in accordance with law. In contrast, the
- H learned counsel for the respondent-1 contended that at the time

of enrolment of respondent-1 and subsequent to purchasing of the property, the co-operative societies in Delhi were governed by the Bombay Co-operative Societies Act, 1925 as extended to Delhi Co-operative Societies Rules, 1950. There was no prohibition whatsoever at the relevant time for a person who was a member of the co-operative society from purchasing any property. Subsequently, on 24.4.1973, the Delhi Co-operative Societies Act and Delhi Co-operative Societies Rules, 1973 came into force and the earlier Act and the 1950 Rules stood repealed. The 1973 rules prescribed eligibility criteria for admission under the said Rule 25 and the eligibility criteria for admission are not same as required for continuation. Moreover, it was contended that Rule 25 has no retrospective application.

7. Rule 25 reads as follows: -

“Disqualification for Membership- (1) No person shall be eligible for admission as a member of a co-operative society if he –

(a) has applied to adjudicated an insolvent or is an undischarged insolvent; or

(b) has been sentenced for any offence other than 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:-
(i) owns a residential house or a plot of land for the construction of a residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale;

Provided that disqualification of membership as laid down

A in sub-rule (1)(c)(i) shall not be applicable in case of co-
sharers of property whose share is less than 66.72 sq.
metres of land; Provided further that the said
disqualification shall not be applicable in case of a person
B who has acquired property on power of attorney or through
agreement for sale and on conversion of the property from
leasehold to freehold on execution of conveyance deed for
it, if such person applies for the membership of the housing
society concerned; (Amended on 6.8.97)

C (ii) he deals in purchase or sale of immovable properties
either as principal or as agent in the national Capital
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.

D 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
disqualification specified in sub-rule (1), he shall be
deemed to have ceased to be a member from the date
E 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 memberships or incur liability as
member with effect from the date referred to in sub-rule
F (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
G ceasing to be a member or 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
H from the co-operative society.

4. If any question as to whether a member has incurred any of the disqualification 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.”

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8. A perusal to Rule 25(2) makes it clear that after the said Rules came into force, if a member has already become subject to any disqualification specified in sub rule (1), he would be deemed to have ceased to be a member from the date when the disqualification was incurred. In the present case, the rule which is to be considered is Rule 25(1)(c)(i). The said Rule also stipulates that no person shall be eligible for admission as a member of the co-operative society, if he owns a residential house or a plot of land for the construction of a residential house in any of Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease-hold or free-hold basis. The learned counsel for the respondent-1 contended that since the said rule does not come within the ambit of power given under Section 97(2) of the Act to the Lt. Governor who is empowered to make rules about the conditions to be complied with by persons applying for admission or admitted as members, the same cannot be applied to the person who have already become a member to disqualify him for the act done prior to coming into force of the Rules. Further it was also contended that the said power is limited by section 98 of the Act which repeals the earlier Act and saves the right, privileges or obligations accrued or incurred under the earlier Act repealed.

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9. The first consideration in this regard is whether Section 97 of the Act permits the Lt. Governor to make the above disputed provision of rule 25. Section 97 of the Act reads as follows:

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“97 (1) The Lieutenant Governor may, for any co-operative society or class of co-operative societies, make rules to

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A carry out the purposes of this Act.

(2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any following matters, namely... -

B(v)The conditions to be complied with by persons applying for admission or admitted as members, for the election admission of members, and for the payment to be made and the interest to be acquired before the exercise of the right of membership.”

C 10. A perusal of the aforementioned provision indicates that the power to frame rules is given by S. 97(1) to the Lt. Governor to make rules to carry out the purposes of this Act and the list of subjects mentioned in sub rule (2) is merely
D illustrative as is clear when it says that “*In particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any matters contained therein*”. It is well-settled that the specific provisions as are contained in several clause of sub-section (2) of 97 are merely restrictive
E and they cannot be read as restrictive of the generality of powers prescribed by sub section (1) of S. 97. The particular matters given in sub section (2) only illustrate and do not exhaust all the powers conferred. In that connection reference may be made to two analogous cases. First to that of *Afzal Ullah v. State of Uttar Pradesh* reported at AIR 1964 SC 264 wherein principles
F for interpreting a provision similar in objective (of the United Provinces Municipalities Act, 1916) were laid down. This Court in the said case, held:

G “13.It is now well-settled that the specific provisions such as are contained in the several clauses of Section 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by Section 298(1). If the powers specified by Section 298(1) are very wide and they take in within their scope Bye-laws
H like the ones with which we are concerned in the present

appeal, it cannot be said that the powers enumerated under Section 298(2) control the general words used by Section 298(1). These latter clauses merely illustrate and do not exhaust all the powers conferred on the Board, so that any cases not falling within the powers specified by Section 298(2) may well be protected by Section 298(1), provided, of course, the impugned Bye-law can be justified by-reference to the requirements of Section 298(1).”

This rule of interpretation was again reiterated in *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Utter Pradesh and Ors.* reported at AIR 1966 SC 1471:

“18..... Section 15(1) confers wide powers on the appropriate Government to make rules to carry out the purposes of the Act; and s. 15(2) specifies some of the matters enumerated by clauses (a) to (e), in respect of which rules may be framed. It is well-settled that the enumeration of the particular matters by sub-s. (2) will not control or limit the width of the power conferred on the appropriate Government by sub-s. (1) of s. 15; and so, if it appears that the item added by the appropriate Government has relation to conditions of employment, its addition cannot be challenged as being invalid in law. Whether or not such addition should be made, is a matter for the appropriate Government to decide in its discretion. The reasonableness of such addition cannot be questioned, because the power to decide which additions should be made has been left by the Legislature to the appropriate Government.”

11. In view of the above position, it may be deduced that the power to frame rules given under s. 97(1) of the Act is not controlled by the list mentioned in sub section (2) and the Lt. Governor can make rules for any of the purposes of the Act. A co-operative society may be defined as a voluntary association of individuals combined to achieve an improvement in their social and economic conditions through the common ownership

- A and democratic management of the instruments of wealth. (Vide *Row's Encyclopedia of Co-operative Societies Law in India*, Vol. 2, page 1) Experience has shown that voluntary organizations like cooperative societies are the best system which can suit the needs of poor and weaker sections. The
- B object of a co-operative society is not to earn profits but to enable the members to improve their economic conditions by helping them in their pursuits. Thus, the cooperative societies like the present one which seek to obtain the land at concessional rate from the government and to build houses
- C must necessarily have a limitation in that only members who are in real need of houses should be permitted to become members and to take the benefit of land allotment. In the garb of a cooperative society, a person cannot be permitted to avoid the stress of market prices and take a concessional advantage
- D in obtaining a plot. Thus Rule 25(2) does not in any manner go beyond the ambit of rule making authority given under Section 97(1) of the Act.

12. The learned counsel for the respondent-1 further contended that the Rule 25 is not applicable to the respondent-
- E 1's case as the said rule is not retrospective and the alleged 'disqualification' of purchasing the said property had incurred prior to the adoption of the Rules. We are of the considered opinion that the aforesaid contention of the learned counsel for the respondent-1 is misconceived. Merely because a person
- F who had become a member of the society at a point of time when the disqualification mentioned in Rule 25 was not in existence and because of the said rule would now cease to be a member of the society does not necessarily mean that the said rule is retrospective. "A statute is not properly called a
- G retrospective statute because a part of the requisites for its action is drawn from a time precedent to its passing". (See *Craie on Statute Law*, 17th edition page 386). Reference may also be made to *Queen v. Vina* reported at (1875) 10 Q.B 195 wherein the Statute enacted that every person convicted
- H of felony shall be for ever disqualified from selling spirits by

retail. It was held that the disqualification applied to every convicted felon irrespective of whether he was so convicted prior to or after the Act came into operation.

13. A reference may also be made to *Re: Solicitors Clerk* reported at (1957) 3 AH. E.R. 617, wherein the bone of contention revolved around that Solicitor's Act of 1956 which provided that no solicitor should employ any person who is convicted of larceny without the permission of the Law Society. The clerk in that case was convicted of larceny in 1953, while the ban was imposed in 1956. It was urged that the provisions of the 1956 Act cannot be applied to him because he was convicted before that Act came into operation. "To do otherwise, it was argued, would be to make its operation retrospective. In rejecting this contention, Lord Goddard, C.J. observed:

"In my opinion, this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past as the cause or reason for the making of the order; but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past. Accordingly, in our opinion the disciplinary committee had jurisdiction to make the order complained of"

14. Same principle was applied in *State of Maharashtra v. Vishnu Ramachandra* reported at 1961 Cri L. J 450 where Section 57 of the Bombay Police Act, 1951 authorised removal of a person from an area if he has been convicted of certain offences including theft. The Supreme Court held that

A "18. 'Section. 57 of the Bombay Police Act, 1951 does not
create a new offence nor makes punishable that which was
not an offence. It is designed to protect the public from the
activities of undesirable persons who have been convicted
of offences of a particular kind. The section only enables
B the authorities to take note of their conviction and to put
them outside the area of their activities so that the Public
may be protected against a repetition of such
activities....."

C 18. An offender who has been punished may be restrained
in his acts and conduct by some legislation, which takes
notes of his antecedents, but so long as the action taken
against him is after the Act comes into force, the statute
cannot be said to be applied retrospectively."

D 15. The most concrete cases wherein laws are made
retrospective are those in which the date of commencement is
earlier than enactment, or which validate some invalid law,
otherwise, every statute affects rights which would have been
in existence but for the statute and a statute does not become
E a retrospective one because a part of the requisition for its
action is drawn from a time antecedent to its passing. Applying
that to the present case, the conclusion is inescapable, that
Rule 25(2) is not retrospective. All that Rule 25(2) does is that
it operates in future, though the basis for taking action is the
F factum acquiring a plot in the past. Thus when by virtue of Rule
25(2), a member is deemed to have ceased to be a member
of the society, the cessation operates from April 2, 1973, when
the rules came into force.

Issue II

G 16. Coming to the second question of applicability of bye-
laws, the same came into force on 3.10.1962. The eligibility
conditions for enrollment as a member of the society were
provided in chapter III of the said bye-laws. Bye-law No. 8 (vii)

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which provides for cessation of membership is reproduced is reproduced herein under: A

“8. A person ceases to be a member:

(vii) On undertaking the business of purchase and sale of houses or land for construction of houses either directly or indirectly or on purchasing a house or a plot of land for construction of houses either in his own name or in name of any of his dependants through any other source and the member shall, within one month of his undertaking the said business or purchase of a house or a plot of land shall inform the society about this.” B C

17. Perusal to above bye-law makes it clear that on purchasing a house or a plot of land for construction of a house, either in his own name or in name of any of his dependants, disqualifies a member of the society to continue as one. Bye laws of the society regulate the management of the society and govern the relationship between society and members inter se. They are of the nature of Articles of Association of a company registered under the Companies Act. If they are consistent with the Act and Rules, the members are bound by them. In *Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban)*, reported at (2005) 5 SCC 632, at page 661 : D E

“36. if the relevant bye-law of a society places any restriction on a person getting admitted to a cooperative society, that bye-law would be operative against him and no person, or aspiring member, can be heard to say that he will not be bound by that law which prescribes a qualification for his membership.” F G

18. Bye-law 8(vii) was neither inconsistent with the Bombay Cooperative Societies Act, 1925 under which the appelland society was governed nor was it contrary to Delhi Cooperative Societies Act, 1972 and the Rules framed thereunder. H

A Therefore, a member of the society who acted in violation of the said bye law was liable to have his or her membership removed from the appellant-society.

B 19. However, the learned counsel for the Respondent-1 contended that the appellant-society never communicated to the Respondent-1, as to violation of bye law 8(vii). No correspondence made by the appellant-society to the respondent 1 mentioned the said bye law 8(vii), but mentioned only the violation of bye law 5(i),(e) and Rule 25 wherein bye law 5(i)(e) prescribes to be member of the society and is not applicable to the person who has already become member before the adoption of the bye laws. Further, the learned counsel for the respondent-1 contended that during the adjudication of the Writ Petition, the appellant never raised the ground of the violation of bye law 8 (vii) and even the Special Leave Petition filed by the appellant does not mention the said bye law 8(vii) either in list of dates or in the Question of Law or in Grounds. It was only for the first time on 22.09.10 during the course of oral arguments the learned counsel for the appellant raised the said violation as a surprise. On further investigation apart from the fact that the alleged 1962 bye laws were not part of the High Court file and the copy of the bye laws relied upon, it was contended, appears to be fabricated.

F 20. If we accept the above contention of respondent-1 and keep aside the alleged bye law 8(vii) from our consideration, bye law 5(i)(e) still remains to be considered, the existence of which is also not in doubt. The violation of said bye law 5(i)(e) was also communicated to the respondent-1 by show cause notice dated 24.1.1978 and also raised as a ground in the writ petition before the High Court and in the SLP filed before this Court. The said bye law 5(i)(e) is produced hereinunder:

“5(i) Any person shall be eligible to be a member of the society, provided;

H (e) he or his wife (she or her husband incase of a woman)

or any of his/her dependents does not own a dwelling house or a plot for building a house in Delhi;" A

21. The question for our consideration is what is the meaning of the expression "eligible to be a member" used in the 1962 bye law No. 5(i)(e). The verb "be" has two meanings, namely, (a) to exist, and (b) to become. The former refers to the existence of state of affairs in present while the latter refers to the coming into existence of a new state of affairs. It is argued for the respondent-1 that the 1962 bye-law No. 5(i)(e) refers only to the eligibility of a person to become a member. On the contrary, the respondents have urged that even a person who is already a member ceases to be eligible to continue as a member if he does not satisfy bye-law 5(i)(e). That is to say, if a person after becoming a member of the society purchased a dwelling house in Delhi, then he is not eligible to be a member in the sense that he is not eligible to continue to be a member of the society under the said bye-laws. As against the contention of the respondent-1 that bye-law 5(i)(e) does not apply to existing members, it may be pointed out that in Article 102(1) of the Constitution also the word "be" is used in the sense of "exist" as contrasted to "become". Under Article 102(1) a person is disqualified for "being chosen as" and also for "being a member of either Houses of parliament" etc. The dichotomy there is between becoming a member and continuing to be a member of parliament. It is therefore, to be concluded that even under the 1962 bye-law No. 5(i) (e) the respondent-1 were disabled from continuing to be members of the society. B
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Issue III

22. The next argument for the learned counsel for the respondent-1 was that the said property was purchased in the name of HUF and not by respondent-1 in his personal capacity. Whereas the learned counsel for the appellant contended that the Rule 25 is applicable to the respondent-1 irrespective of G

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A the fact that the said property is purchased in the name of HUF. We have considered these arguments in the light of the Rule 25. Sub-rule (1)(c)(i) of the rule 25 provides an exception in case of persons who are only co-sharers in the joint family property, in that disqualification of membership as laid down
B in sub-rule (1)(c)(i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq. m. (80 yds) of land. In the present case, the said property is admeasuring 1080 yds and there are 3 co-sharers of the property, i.e. respondent-1 and his two children, (after the death of wife) and
C the share of the respondent-1 would be more than the prescribed limit. In this regard, the aforesaid exception is not applicable to the respondent-1's case. There is one more angle, which was specifically placed before us and requires our consideration. A perpetual lease deed with respect to the land
D allotted to the appellant society was executed on 06.04.1978 by the President of India through the Delhi Administration. A copy of the said perpetual lease deed executed with the appellant society is placed on record. Our specific attention was drawn to clause No. 5 (a) of the said lease deed, which
E reads as follows:

“5(a). The lease shall sublease within one year from the date of execution of these present, such time and on such premium and yearly rent as may be fixed by the lessor, one residential plot to each of its members who or whose wife/
F husband or any of his/her dependent relatives including unmarried children does not own, in full or in part, on freehold or leasehold bases, any residential plot or house in the urban areas of Delhi, New Delhi or Delhi cantonment, and who may be approved by the chief
G commissioner.”

The appellant society was, therefore, under an obligation not to allot a residential plot to a person, who was owning a property in the city of Delhi. Therefore, as per terms of allotment of the land to the appellant it was obligatory for the society not
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to allot plots of land to such persons who own any residential property either in their own name or in the name of their family member. When the Hindu Undivided Family of the respondent consists only of his own family members, namely, his wife, son and the daughter and therefore obviously ownership of the said property by the Hindu Undivided Family of the respondent is ownership of property by the family members and consequently the same would clearly fall within the prohibition and bar of allotment as contained in clause No. 5 (a) of the lease deed.

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Issue IV

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23. The last submission made by respondent-1 is that the said property is being used only for the purpose of running a nursing home, i.e., for a commercial and not residential purpose. The learned counsel for the appellant-society refuted the same contending that the nursing home was located only on the ground floor of the property and the other floors are being used for residential purpose and the same appears from the various correspondences and affidavits made by the respondent-1 wherein he has shown the said property as his residence. In light of Rule 25, the action of the appellant-society would be justified if the said property is found to be residential house in the light of documents on record. The mere fact that the respondent-1 has shown in affidavits and correspondences the said property as his address doesn't prove that the property is a residential house as being a doctor running a nursing home, he had to remain invariably in his workplace for very long hours. However, the Annexure P-12 and P-13 are respectively self-assessment property tax forms filled by the respondent-1 with respect to the said property and an objection letter written by the respondent-1 against the assessment notice issued by the Municipal Corporation with respect to the said property. In Annexure P-12, while assessing the tax of the property, the respondent-1 has shown the property as used for residential and self-occupied purpose only. In Annexure P-13, the respondent-1 opposed the assessable value shown in the

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- A assessment notice on the ground that the building on the said plot is a new constructed building and is under self-occupation for residence and self professional-medical work only and is a single-unit house. The respondent for the purpose of being member of the appellant-society cannot claim the said property
- B used purely for commercial purpose when he himself claimed the said property being used for residential purpose also. It should also be indicated that the aforesaid information about the nature and status of his property in Kailash Colony were furnished by the respondent under his own declaration and by
- C certifying that the said particulars filled in the form are true and correct to the best of his knowledge. The respondent No. 1 has also appended his signature to the said declaration by signing it on 27/06/2006. These informations are relevant and material to come the conclusions that the aforesaid property in Kailash
- D Colony was also used as a residential property and therefore the contention of the counsel for the respondent no. 1 that it is exclusively a commercial property cannot be accepted.

E 24. We have considered the facts and circumstances of the case, and analysed the arguments put forth by both parties to buttress their stand. For the reasons that we have considered herein and mentioned above, we find that the arguments raised by respondent-1 are without merit, and the appeal therefore, is to be allowed.

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Appeals allowed.