

J.N. CHAUDHARY & ORS. ETC.

v.

STATE OF HARYANA & ORS.

(Civil Appeal Nos. 4854-55 of 2014 etc.)

APRIL 24, 2014

[GYAN SUDHA MISRA AND
PINAKI CHANDRA GHOSE, JJ.]

Co-operative Society:

Auction sale of land conducted in pursuance to the resolution passed by the General Body of the Co-operative Society and by duly following the procedure – Sale based on the price prevalent on the date of auction sale could not be faulted on the ground of allegations leveled on the basis of assumption and speculation of 10 members of the Society who had assailed the same by invoking writ jurisdiction – Challenge made 11 years after the sale, during which the appellant Society practically ceased to exist and all members except 10 out of 288 left – There was no illegality or infirmity in the impugned judgments passed by the courts below concurrently refusing to set aside the auction sale held 11 years ago at the instance of a Co-operative Society which was practically rendered defunct and ceased to exist.

Auction sale of land conducted in pursuance to the resolution passed by the General Body of the Co-operative Society – Challenged by handful of members – Held: In judging the functioning of a Co-operative Society or any other statutory body where the democratic process of election is adopted in pursuance to the Rule and a collective decision is taken by majority of the members of the entire body expressed in terms of a resolution passed by the General Body, then the same should not be ignored and bye-passed on challenge by a handful of members on the allegation of

A *mala fide unless the alleged malicious action is writ large on the alleged decision and is challenged by majority of the members – If a decision is taken by majority of the members of a Cooperative Society or any other body under a statute in terms of the Rule, it cannot be over-ruled by minority on the ground of mala fide or fraud unless it has passed through a strict proof of evidence – It is a well known dictum that mala fide is always easy to allege but difficult to prove as the same cannot be held as proved relying on assumption, speculation and suspicion.*

C *Writ jurisdiction: Scope of – Writ petition by members of Co-operative Society challenging auction sale 11 years later – Held: Members of the Co-operative Society opted a wrong forum by filing a writ petition in the High Court – They should have approached the civil court of competent jurisdiction where it would have had the opportunity to adduce evidence and prove all the allegations of under valuation and the alleged fraud challenging the auction sale – High Court under its writ jurisdiction ought not to have entertained the factual dispute which was of a civil nature but in the interest of justice and fairness as also equity and good conscience, the High Court entertained the dispute and to a great extent took care to scrutinize all aspects of the matter and then reached to a conclusion considering entire conspectus of the matter which cannot be held to be arbitrary, illegal or unjust in any manner.*

F **On 04.03.1994, a Cooperative Society was formed wherein 288 persons became members upto 1995-96 and contributed a sum of Rs. 7.50 crores towards the funds of the society which were to be utilized for purchase of the land. In 1996, the society purchased 10 acres of land with the funds contributed by the members for achieving its objects. At the time of formation of the society, a Managing Committee was constituted with one 'RPG' as Secretary but the same was suspended on 23.10.1996 by the then Asstt. Registrar, Cooperative Societies on the**

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allegation of financial irregularities and a Board of Administrator was appointed. However, the Deputy Registrar reinstated the Managing Committee on 30.08.1999. Subsequently, on 28.05.2000, a General Body Meeting of the Society took place in which fresh election was held and a new Managing Committee was constituted wherein 'AKM' was elected as member of the new Managing Committee and entrusted with the work of Honorary Secretary of the Society in place of the previous Secretary 'RPG'. The new Managing Committee upon inspection of records found gross irregularities by the previous Managing Committee in the purchase of land and utilization of members funds. An FIR was lodged against previous Managing Committee. On 02.06.2002 to discuss affairs of the society, a meeting was held and members were apprised that large scales and glaring misappropriation of funds took place between 1994 and 2000 and it was resolved that the only option left before the Society was to sell the land at the best possible market price so as to refund the contributions made by the members. For the purpose of ascertaining the correct market rate of the land, 'AKM' himself wrote to the Tehsildar who quoted the market rate to Rs. 40 lakhs per acre. 'AKM' wrote a letter to the Registrar, Cooperative Societies seeking permission to dispose of the land at the earliest for Rs. 4.2 crores. However, the Registrar before whom a dispute was raised regarding removal of the office bearers of the Cooperative Society suspended the new Managing Committee on account of gross irregularities as a result of which a Board of Administrators was appointed. Thereafter, on 14.01.2003, the Registrar granted permission to the Board of Administrators to dispose of the society land and a sale committee was formed for this purpose.

Meanwhile, 'AKM' and others filed a writ petition challenging the order of suspension of the new Managing

A Committee as well as the order granting permission to sell the land. During pendency of the said writ petition, Assistant Registrar on 05.09.2003 removed the new Managing Committee on account of its failure to perform its duties as per Rules and Bye-laws.

B Pursuant to the orders of Registrar dated 14.01.2003
granting permission to dispose of the society land, a
public notice was duly published. On an application
seeking an order of injunction filed by the suspended
C Managing Committee, a stay of the sale of land was
granted and auction was postponed. Thereafter, stay was
vacated and fresh date of auction was fixed. The auction
was held and the land was sold to respondent no. 7 for
Rs. 4.94 crores against the estimated market rate of about
D Rs. 4.20 crores. After the auction of the land in favour of
respondent no. 7 was complete, the writ petition which
was filed challenging the suspension of the members of
the Managing Committee wherein 'AKM' and 'AS' were
elected as Secretary and Treasurer was withdrawn and
an appeal was filed under Section 114 of the
E Cooperatives Act. The appeal was dismissed. The Single
Judge dismissed the writ petition. 'AKM' along with 37
members filed LPA. The Division Bench of the High Court
upheld the decision of the single judge. The instant
appeals were filed challenging the order of the High
F Court by the society and 10 members of the society. AKM
withdrew from the SLPs.

Dismissing the appeals, the Court

G HELD: 1. It was under the secretaryship of 'AKM' that
a General Body Meeting was convened and a resolution
was passed by the General Body to auction sale the land
recording specific reasons in the Minutes of the General
Body Meeting whereby the Honorary Secretary/'AKM'
brought out the options to the notice of the General
H Body. One of the options was to construct flats on the

land for which tender was floated and it was noted that one out of the two parties who responded to the tenders had shown interest. The second option was sale of the land which were in possession of the society free from litigation. It was in view of this decision that follow up actions were taken by the Board of Administrators under the Sales Committee, inviting proposals for the sale of the land as the Managing Committee under 'AKM' and Treasurer 'AS' was under suspension due to the alleged illegalities and irregularities. The single judge as also the Division Bench of the High Court took note of the fact that although 10.69 acres of land was claimed by the society, 14.50 were in dispute/litigation. The clear land without any dispute with the society was only around 1.69 acres. The records further indicated that 3.5 acres of land was never purchased by the society as per the then Secretary 'RPG'. The single judge also took note of the fact that this was under litigation as it was purchased by another society whose registration was in progress. Thus, if 3.5 acres were to be deducted out of 4.5 acres, only 1.1 acre was left to the society. The single Judge further noted that the land in question had been surveyed by the Government along with other vacant land with a view to clear it and the acquisition process had been set in motion. The land belonging to the society had been encircled/ surrounded by another society. Therefore, the future course of action left to the society was to dispose of the land of the society. [Paras 25 and 26] [623-D-E; 624-E; 625-D-H; 626-A]

2. The dispute regarding suspension of the Managing Committee under 'AKM' Mahindra in view of the alleged irregularities of the previous managing committee started only on 13.12.2002 and all the disputes in regard to removal and induction of the society under 'AKM' admittedly took place between 13.12.2002 and 24.11.2003. But the resolution was passed by the General Body in its

A Meeting for sale of the land on 2.6.2002 when the
Managing Committee constituted under 'AKM' was duly
in place and no member of the society had raised any
grievance against the said decision that it was erroneous
or tainted in any manner and the society was duly
B represented by the Secretary and all members of the
society. The case of the Managing Committee and its
members that the Assistant Registrar illegally suspended
the Managing Committee under 'AKM' based on the
alleged irregularities of the previous Managing
C Committee under 'RPG' first of all took place on
13.12.2002 from which it is clear that when the General
Body Meeting was conducted and resolution was
passed on 2.6.2002, the Secretary of the Managing
Committee 'AKM' was duly and legally in place as
D Secretary and was removed by the Registrar of Society
only at a later stage on 05.09.2003 after which the Board
of Administrators was appointed by the Registrar and a
Sales Committee was also set up under whose
supervision the auction sale was decided to be held
under supervision of the Sales Committee. The proposed
E auction was also challenged, as an application for
injunction restraining the auction sale was filed before
the District Court where an order of injunction restraining
the auction sale was also granted by the District Court
but the said injunction was later vacated against which
F no appeal was preferred by any member of the society.
It is no doubt true and it has been contended that as no
Managing Committee was in existence at that point of
time, no appeal could be preferred against the order
vacating the injunction. However, this contention is
G clearly without substance for if the members in their
individual capacity could assail the auction sale by filing
a separate writ petition, it cannot be accepted that they
were precluded in any manner from challenging the
auction sale in case they were aggrieved and the
H subsequent challenge after seven years in 2010 clearly

appears to be an after thought at the instance of a miniscule number of members who decided to assail the auction sale clearly as a matter of gamble. [Para 27] [626-C-H; 627-A-D]

3. The resolution by the General Body of the Society to auction sale the land was taken way back on 2.6.2002 by the resolution passed in the General Body when there was dispute existing regarding the functioning of the Managing Committee and it is only after more than one year that the Secretary 'AKM' was removed by the Registrar, Co-operative Societies and since he was removed, he challenged his removal as also the decision of the General Body to auction sale the land which resolution during his tenure as Secretary was passed. In fact as long as he was the Secretary he had not merely approved the decision of the General Body to auction sale, but also the existing market price of the land. [Para 28] [627-D-F]

4. The then Secretary 'AKM' although had challenged his removal as Secretary of the Society, he never thought it appropriate to file any appeal against the order vacating the order of injunction against auction sale which he could have done as the ex-secretary if he was genuinely concerned. The matter regarding the dispute challenging the auction sale had been filed in a court of competent jurisdiction where initially an order of injunction was also passed but the same was finally vacated against which no appeal was preferred either by any member of the society or the Secretary. The order of injunction against auction sale was finally vacated but no member was conscious or vigilant to challenge the same. On the contrary, large number of members gradually withdrew the amount and walked out of the society. It is clear that for the first time in the year 2010 when a new managing committee was elected on 13.9.2010 that a decision was taken to challenge the auction sale by which time the

A existence of the society withered away when the majority
of the members out of 288 left and only 38 members
remained clearly implying that for all practical purposes
the Society ceased to retain its legal entity as the land of
the society for which contribution had been made was by
B all the 288 members and not merely 38 members. Even
out of this 38 members, only 10 members preferred LPA
before the High Court although the General Body
resolution was passed by the majority and cannot be
allowed to be overruled by 10 members only. [Para 29]
C [628-A-F]

5. The circle rate of the land at the relevant time was
Rs.12 lacs per acre and the market rate was Rs.40 lacs
per acre and as per the auction held, the price fetched in
the auction ultimately worked out to Rs.46 lacs per acre.
D The appellants had not furnished any material before any
court as to what was the market price of the undeveloped
land in the year 2003 when the auction sale was held in
pursuance to the General Body Resolution of the Co-
operative Society. In any case, this question at this stage
E is not of much relevance when the High Court has
increased the price of the land at Rs.70 lakhs per acre and
members of the society have been held entitled to refund
of their contribution amount along with 6% interest in
view of which undervaluation of the cost of the land no
F longer subsisted. It has no where been urged that at the
relevant point of time in the year 2003 when the land was
auctioned/sold, its valuation was much more than Rs.70
lakhs per acre so as to treat it prejudicial and detrimental
to the interest of the members of the society who had
G contributed for purchase of the land. [Para 30] [628-H;
629-A-C]

6. If the members of the Society by virtue of a
General Body resolution had decided to auction sale the
land during the tenure of a duly elected Secretary of the
H Society 'AKM' and for more than one year no member of

the society had any reason to challenge the same after which the Board of Administrator was appointed and the price of the land on the date of auction could not be more than Rs.70 lakhs per acre, it would be unfair and unjust to interfere with the auction sale after 11 years of its holding on the plea that the price fetched in the auction suffered from undervaluation as the same cannot be compared with the present day valuation which obviously must have grown over the years as compared to the year 2003 when the auction sale was held. The Secretary 'AKM' as also Patwari had also given out in writing and is on record which indicated that the value of the land at the relevant time which was not a developed land at the relevant time when the land was put to auction sale was not more than Rs. 40,000 per acre which cannot be doubted in absence of any material to the contrary specially when the circle rate of the land was Rs.12 lacs per acre only and the land was auction sold at Rs.46 lacs per acre approximately in the year 2003. In any case, the price of the land was already increased to Rs.70 lakhs per acre by the High Court and was ordered to be paid alongwith 6% interest and thus the Society has not been put to monetary loss on account of the sale conducted in pursuance to the resolution of the General Body which was passed during the tenure of a duly constituted Managing Committee under 'AKM'. Further, only a handful of members of the co-operative society who are now only 10 out of 288 have not withdrawn from the society by withdrawing their amount. [Para 31] [629-D-H; 630-A-B]

7. From the background, facts and circumstance of the matter, it is further clear that the members of the co-operative society had clearly opted a wrong forum by filing a writ petition in the High Court for if they expected the court to appreciate evidence and record a finding on the said disputes for setting aside the auction sale, they should have approached the civil court of competent

A jurisdiction where it would have had the opportunity to
adduce evidence and prove all the allegations of under
valuation and the alleged fraud challenging the auction
sale. In fact, the writ petition for assailing a factual dispute
ought not to have been entertained by the High Court
B under its writ jurisdiction but in the interest of justice and
fairness as also equity and good conscience, the High
Court entertained a dispute which purely was of a civil
nature since all contentions which have been raised
would have required appreciation of evidence. Yet the
C High Court to a great extent has taken care to scrutinize
all aspects of the matter in regard to the writ petition filed
by the co-operative society members who sought to
assail the auction sale clearly alleging disputed questions
of fact alleging fraud in conducting auction sale as also
valuation of the land in question which required adducing
D of evidence and the same could not have been
entertained by the High Court under Articles 226 and 227
of the Constitution except to the extent of considering
whether the order passed by the Registrar, Co-operative
Societies rejecting the challenge of removal of the
E managing committee was sustainable or not. Yet the High
Court has entered into all aspects and has then reached
to a conclusion considering entire conspectus of the
matter which cannot be held to be arbitrary, illegal or
unjust in any manner. [Para 32] [631-F-H; 632-A-C]

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8. There is yet another feature of the matter which
emerged from the fact that when the removal of 'AKM' as
a Secretary of the society was set aside, then all activities
including passing of the General Body resolution in the
meeting that were conducted during his tenure as
G Secretary of the Managing Committee cannot be held to
be illegal in any manner. Thus when the General Body
resolution was passed during the tenure of a validly
elected managing committee under Capt. 'AKM' as the
Secretary and the resolution to auction sale the land was
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passed during his secretaryship whereby the value of the land was also assessed and approved by Capt. 'AKM' himself and no allegation was levelled by any member against 'AKM' as all allegations were confined to 'AS', then the resolution of the General Body obviously could not have been faulted with specially when no appeal against the order of the Civil Court vacating the order of injunction against the auction sale was filed by any member of the society specially the appellants. The appellant-society and a handful of members now restricted to 10, have levelled allegations but mere allegation cannot be treated as a proof and if the members were in a position to assail the same which clearly would have required strict proof by way of evidence, they ought to have gone in for a civil suit and the writ jurisdiction was clearly not the appropriate remedy to establish and prove questions of fact. Yet when the single judge as also the Division Bench have meticulously examined all aspect of the matter and the same did not indicate any perversity in the conclusions drawn, it would be unfair and unjust to interfere with the same by indulging into a roving enquiry merely accepting the contentions of some of the members of the Society which are clearly based on speculation, conjecture and apprehension. The Courts, therefore, in a circumstance of this nature cannot be expected to decide such an issue on suspicion hunch or even intuition which clearly would be abstract in nature and has no place in the eye of law even before a court of fact and much less before a court under writ jurisdiction. [Para 33] [632-D-H; 633-A-D]

9. The cumulative effect of the entire analysis based on the facts and circumstance in the light of the reasonings assigned by the Single Bench of the High Court as also the Division Bench, it would not be just and proper to interfere with the judgments and orders passed

A by the single Judge as also the Division Bench of the
 High Court holding concurrently that the auction sale
 which was in pursuance to the resolution passed by the
 General Body of the Co-operative Society based on the
 price prevalent on the date of auction sale could be
 B faulted on the ground of allegations leveled on the basis
 of assumption and speculation of 10 members of the
 society who had assailed the same by invoking writ
 jurisdiction. [Para 34] [633-E-F]

C 10. In judging the functioning of a co-operative
 society or any other statutory body where the democratic
 process of election is adopted in pursuance to the Rule
 and a collective decision is taken by majority of the
 members of the entire body expressed in terms of a
 resolution passed by the General Body, then the plea that
 D the same should be ignored and bye-passed even if the
 same has been challenged by a handful of members on
 speculative allegation and assumption contrary to the
 reasons recorded in the Minutes Books on the plea of
 mala fide, without any evidence, would be illegal and
 E arbitrary to accept being contrary to the rule unless the
 alleged malicious action is writ large on the alleged
 decision and is challenged by majority of the members.
 If a decision is taken by majority of the members of a
 Cooperative Society or any other body under a statute
 F in terms of the Rule, it cannot be over-ruled by minority
 on the ground of mala fide or fraud unless it has passed
 through a strict proof of evidence. It is a well known
 dictum that mala fide is always easy to allege but difficult
 to prove as the same cannot be held as proved relying
 G on assumption, speculation and suspicion. [Para 35]
 [633-G-H; 634-A-C]

H 11. In the instant matter existing 10 members of the
 society have practically reduced the Co-operative
 Society to a defunct society as all members except 10 out
 of 278 have finally withdrawn. Hence, the auction sale at

their instance, although the said auction sale had taken place in view of the majority support of the General Body resolution which was conducted under the supervision of the Board of Administrators appointed by the Registrar, Co-operative Society and the Sales Committee is difficult to scrap it as illegal in spite of the overwhelming material relied upon by the High Court which has upheld the auction sale. Thus, in a matter where the decision has been taken collectively by the General Body reflected in the form of a resolution passed by the General Body, it would be unjust and inappropriate to nurture a lurking doubt and keep suspecting the decision by entertaining the version of a handful who might be disgruntled or might be genuine but would be difficult to be gauged by any court so as to over-rule the General Body resolution and accept the view of the minority based on no evidence except assumption and speculation. If the instant matter is viewed meticulously, it is clearly obvious that the appellants have expected the court of writ jurisdiction to enter into the correctness and validity of the auction sale essentially by expecting the Court to draw inference without evidence that the auction sale was not bona fide as it did not fetch the desired value of the land contrary to the materials available on record. Plethora of circumstances have been related to establish the same which clearly are in the realm of conjecture and speculation, yet the Single Judge and the Division Bench have both scrutinized and considered the same and have recorded a finding against the appellants which cannot be held to suffering from perversity being contrary to the existing materials before the Court which have been relied upon. Thus, the validity and correctness of the General Body resolution in view of which the land was put to auction sale cannot be allowed to be assailed specially when the price/alleged under valuation of the land in the auction sale no longer survives as the High Court has allowed the value of the land to be increased

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A by increasing it from Rs. 40 lakhs to Rs.70 lakhs per acre
which has been ordered to be paid along with 6 %
interest. The appellants have not furnished any material
as noted by the High Court that the cost of the land in
B the year of the date of auction which is 2003 was more
than Rs.70 lakhs per acre so as to offer a cause to
interfere even if it were to be interfered in the interest of
equity, justice and fair play specially when the circle rate
of the land in the year 2003 when the auction was held
was Rs.12 lacs per acre only. Hence, the endeavour of
C the appellants that the auction sale should be set aside
and the land be revived to the society cannot be
entertained in absence of proof of mala fide contrary to
the existing materials on record on the basis of
speculation, assumption and inference urged by the
D appellants. [Paras 36 and 37] [634-D-H; 635-A-G]

12. Assuming for a while although not conceding that
the land were to be reverted to the co-operative society
for any reason whatsoever at this stage after 11 years of
the sale during which the appellant Society has practically
E ceased to exist where all members except ten out of 288
are left, it is obvious that the land cannot be reverted to
the original members who have taken their refund. In that
event, the appellant-society through a handful of
members numbering ten is bound to indulge in trading
F of the land by inducting new members quoting new rates
at their instance clearly sacrificing the very spirit of a co-
operative society as the land cannot be marketed even
by the defunct Co-operative Society at the old rate which
land had been purchased out of the contribution made
G by the erstwhile 288 members out of which only 10 are
now left into the fray who had never even objected to the
General Body Resolution approving sale of the land nor
challenged the auction sale in the year 2003 when the
auction was held. There is no illegality or infirmity in the
H impugned judgments and orders passed by the single

Bench as also the Division Bench concurrently refusing to set aside the auction sale held 11 years ago in the year 2003 at the instance of a Co-operative Society which has practically been rendered defunct and thus ceased to exist apart from the other weighty reasons, [Paras 38 and 39] [635-G-H; 636-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4854-4855 of 2014.

From the Judgment and Order dated 27.08.2010 of the High Court of Punjab & Haryana at Chandigarh in L.P.A. Nos. 215 and 216 of 2007.

WITH

C.A. Nos. 4856-4857 of 2014

P. S. Patwali, C. A. Sundaram, Narender Hooda, AAG, Ashok K. Mahajan, Rajan Mukherjee, Ashok K. Mahajan (Petitioner-In-Person), Jaladhar Das, Rashmi Virmani, Bina Gupta, Mukta Dutta, Shreyansh Mardia, Rakhi Ray, Naresh Bakshi, Dr. Monika Gusain for the Appearing Parties.

The Judgment of the Court was delivered by

GYAN SUDHA MISRA, J. 1. Delay in SLP (civil) 4758-59/2011 condoned.

2. Leave granted in both sets of special leave petitions.

3. These appeals by special leave have been preferred against the judgment and order dated 27.08.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal Nos.215 and 216 of 2007 (O&M) whereby the Division Bench of the High Court dismissed both the letters patent appeals by a common judgment and order which is under challenge herein.

4. The letters patent appeals which stood dismissed arose

A out of two writ petitions filed in the High Court before the learned
 Single Judge bearing writ petition Nos.6491/2005 and 7742/
 2005 which were filed challenging the orders dated 13.12.2002,
 05.09.2003 and 19.11.2004 in the High Court at Chandigarh
 B which were the Suspension Order, Removal Order of the
 erstwhile Committee and order of the Dy. Registrar who
 dismissed the appeal against removal. The facts stated therein
 disclosed that on 04.03.1994, a co-operative society in the
 name of Mount Everest Co-operative Group Housing Society
 C was formed and constituted under the Haryana Co-operative
 Societies Act, 1984 wherein 288 persons became members
 of the Society upto 1995-96 and contributed a total sum of
 approximately Rs.7.5 crores towards the funds of the Society
 which were to be utilised for purchase of the land. In the year
 1996, the Society purchased approximately 10 acres 4 kanals
 D 14 marlas of land in Village Wazirabad as well as Hyderpur
 Viran with the funds contributed by the members of the Society
 for achieving its objects. At the time of formation of the Society,
 a Managing Committee had also been constituted with Mr. R.P.
 Gupta as Secretary but the same was suspended on
 E 23.10.1996 by the then Assistant Registrar Co-operative
 Societies, Gurgaon on the allegations of financial irregularities
 and a Board of Administrator was appointed. However, the
 Deputy Registrar reinstated the Managing Committee of the
 society on 30.08.1999. Subsequently, on 28.05.2000, a
 F General Body Meeting of the society took place in which fresh
 election was held and a new Managing Committee was
 constituted wherein the petitioner No.1 Captain Shri A.K.
 Mahindra (since resigned during pendency of this appeal) was
 elected as Member of the new Managing Committee and later
 on was entrusted with the work of Honorary Secretary of the
 G Society in place of the previous Secretary Shri R.P. Gupta.

5. It is the case of the petitioner/members of the Society
 that the new Managing Committee after taking charge and upon
 inspection of the records of the Society found that the earlier
 H Managing Committee had indulged in large scale malpractices

and in order to investigate the same, an internal committee was constituted to go into the land records, finances as well as other aspects of the Society. This internal committee therefore conducted an intensive enquiry and submitted report which highlighted gross irregularities by the previous Managing Committee in the purchase of land, utilisation of members fund, expenditure on account of day to day expenses and expenses incurred on land and site development etc. This audit was conducted for the period 1993 to 2001 when the Managing Committee of the society stood suspended and the Board of Administrators was in-charge of the affairs of the Society. Finally, when the audit report was submitted in March, 2002, the Managing Committee which had been constituted on 28.05.2000 with A.K. Mahindra as Secretary decided to lodge an F.I.R. against the members of the earlier Managing Committee when R.P. Gupta was the Secretary and the F.I.R. finally was lodged with the Police Station DLF, Gurgaon after which investigation was conducted and arrests were made. After investigation, charge sheet was also submitted in the criminal courts but as per the charge sheet, no allegation was found against any members of the then Managing Committee except Mr. R.P. Gupta who was a member and Honorary Secretary of the Society from its inception until the new Honorary Secretary Captain Mahindra who was petitioner No.1 and has since resigned, took over as Secretary of the Society in 2000.

6. When the new Managing Committee took over and Captain A.K. Mahindra functioned as Honorary Secretary from 28.05.2000 along with another office bearer Mr. Ashok Sharma as Treasurer, special general body meeting of the society was held on 02.06.2002 in which the affairs and conditions of the society were discussed. In the meeting, the members were apprised that large scales and glaring misappropriation of funds took place between 1994 and 2000 and it was resolved that the only option left before the Society was to sell the land at

A the best possible market price so as to refund the contributions made by the members. The General Body of the Society decided to sell off the land for several reasons recorded in the minutes which are as follows:

B (Reasons for General Body to decide for auction sale of the land)

C “(i) That 10.69 acres of land bearing Khasra Nos. 1692, 1997, 1696, 1677, 1678 and 1679 stood registered and mutated in the name of the Society which were in possession of the Society. It could be further noted that out of this land, around 9 acres (3.5 acres in Khasra Nos. 1977, 1678 and 1679 and 5.5 acres in Khasra Nos. 1692, 1696 and 1697) were under dispute/litigation in the District Court at Gurgaon and the clear and undisputed land with the society was around only 1.69 acres.

E (ii) The General Body further noted that another 4.5 acres of land marked in yellow colour bearing Khasra Nos. 1677, 1678, 1679, 1695, 1694, 1696, 1698, 21, 20 and 27 also were under dispute/litigation. It further transpired to the General Body of the Society that the land in Khasra Nos. 1977, 1678, 1679 measuring around 3.5 acres were never purchased by the co-operative societies and there were no dispute/litigation going on with the Society as this land was never the land of the Society. Thus, out of the total land measuring 4.5 acres said to be in dispute only around 1.1 acres in different Khasra Numbers was in dispute in regard to which cases were going on in the District Courts, Gurgaon. However, the Society further noted that 6 this land had been purchased by another Society namely Saraswati Kunj whose registration was in progress. The General Body of the Society further noted that these facts were available on

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record after checking/verifying various records with the revenue department with the help of Patwari/ Tehsildar and the Advocate, all of whom met a number of times. Consequently, the Society was given to understand that only a few days earlier to the General Body Meeting the land of the Society had been surveyed by the Government alongwith other vacant land with a view to acquire it i.e. the acquisition process had been set in motion. It was further noted by the General Body of the Society that in view of purchase of vacant land around Saraswati Kunj the Society of the petitioners had practically been surrounded/ encircled”

7. In view of the aforesaid considerations taken note of in the General Body meeting of the Society held on 02.06.2002, it was decided by the General Body to dispose of the land of the Society and the Honorary Secretary of the Society Captain A.K. Mahindra and Ashok Sharma, Treasurer were authorized to initiate proceedings for disposal of the land. In pursuance to the general body resolutions, a letter dated 02.07.2002 was sent to the Registrar, Co-operative Societies seeking permission to sell the land. In the meanwhile and for the purpose of ascertaining the correct market rate of the land, Captain A.K. Mahindra himself wrote a letter to the Tehsildar, Gurgaon ascertaining the correct market rate of the land to be disposed of. In response to the same, the Tehsildar, Gurgaon quoted the market rate to Rs.40 lakhs per acre by way of Endorsement dated 14.06.2002. The Honorary Secretary of the society/ Captain A.K. Mahindra then wrote a letter further on 02.07.2002 to the Registrar, Co-operative Societies, Haryana seeking permission to dispose of the land at the earliest for an amount of Rs.4.2 crores. The contents of the aforesaid letter dated 02.07.2002 written by Captain A.K. Mahindra are as follows:

A "To
The Asstt. Registrar,
Cooperative Societies
Gurgaon, Haryana

B Sub: Permission for disposal/sale of society land.

Sir,

With reference to the letter No.2298 dated

C 1.7.02 received from the office of the Dy.
Registrar, Gurgaon, we are enclosing the u/m documents :

D (a) Summary of the land as per registers and
jamabandi submitted is enclosed as desired. As
per this summary the total land with the society is
84 kanals 4 marlas, and

E (b) Rate of land in the area where the society land is
situated is Rs.40 lakhs (Rs. Forty Lakhs) per acre
as obtained from the concerned patwaris office. A
photo copy of this letter is enclosed. As per this the
total value of land is Rs.4.20 crores (Rs. Four
Crores Twenty Lakhs Only).

F Kindy grant us the necessary permission to dispose off the
land at the earliest and oblige.

Thanking you,

Sd/-A.K. Mahindra,
Hony. Secretary, Mt. Everest Coop. Group
Housing Societies Ltd."

8. However, the Registrar, Co-operative Societies before
a dispute had been raised regarding removal of the office
members of the co-operative societies passed a suspension
order on 13.12.2002 under Section 34 (2) of the Haryana Co-

operative Societies Act, 1984, suspending the new Managing Committee of the Society based on allegations of gross and serious irregularities as a result of which a Board of Administrators was appointed. Thereafter, on 14.01.2003, the Registrar, Co-operative Societies granted permission to the Board of Administrators to dispose of the society land and the Deputy Registrar, Co-operative Societies, Gurgaon formed a Sales Committee of 5 members for selling land of the Society. While granting permission for sale, respondent No.2/The Registrar, Co-operative Societies appointed the following Sales Committee of 5 members comprising inter alia of the following

- (i) Dy. Registrar, Co-operative Societies, Gurgaon,
- (ii) Inspector, Co-operative Societies, Gurgaon,
- (iii) Sub-Inspector, Co-operative Societies, Gurgaon.

9. It appears that in the meanwhile CWP No.2025 of 2003 was filed by Captain A.K. Mahindra and others challenging the order of suspension of the new Managing Committee as well as the order granting permission to sell the land. During pendency of the said writ petition, Assistant Registrar, Co-operative Societies, Gurgaon on 05.09.2003 removed the new Managing Committee under Section 34 (1) of the Haryana State Co-operative Societies Act, 1984 based on the ground that the aforesaid Managing Committee had failed to perform its duties as provided under the Act, Rules and Bye-Laws. Simultaneously and in pursuance to the orders of Registrar, Co-operative Societies dated 14.01.2003 granting permission to dispose of the Societies land, a public notice for auction of the land of the Society was published on 07.08.2003 indicating that the auction would be held on 21.08.2003. This notice was published in all the specified newspapers in regard to which a decision was taken by the General Body itself that it would be published in 'The Tribune' (English and Hindi), Amar Ujala (Hindi), Dainik Bhaskar (Hindi) and Dainik Jagran (Hindi).

A 10. The aforesaid notice for auction of the Societies land
prompted the suspended Managing Committee to file an
application in the Court of Senior Sub-Judge on 18.08.2003
which was moved seeking an order of injunction on the Society
from holding the auction on 21.08.2003. The Sub-Judge's Court
B entertained the application and a stay of the sale of land was
passed by the Sub Judge. In view of the order of stay, an
advertisement was further published in the newspapers on
20.08.2003 for postponement of the proposed auction but a
further development took place when the interim order of the
C Sub Judge granting stay of auction was vacated as a result of
which another advertisement was issued which was published
in 'The Tribune' on 07.08.2003 wherein a fresh date of auction
for sale of the land was given for 28.02.2003 at 10 a.m. at the
Society site.

D 11. In pursuance to the aforesaid fresh date of auction, the
auction was held on 24.11.2003 whereby the land belonging
to the Society was sold to respondent No.7 for a sum of
Rs.4,94,04,125/-as against the estimated market rate of about
Rs.4.2 crores.

E 12. After the auction of the land belonging to the Society
in favour of respondent No.7 was complete, the writ petition
No.20252 of 2003 which had been filed challenging the
suspension of the members of the Managing Committee
F wherein Captain A.K. Mahindra and Ashok Sharma had been
elected as Secretary and Treasurer was withdrawn by the
petitioners/Secretary and Treasurer therein with liberty to avail
all existing and alternative remedies available to them by filing
an appeal under Section 114 of the Co-operative Societies
Act. The petitioners/Captain A.K. Mahindra and Ashok Sharma
G availed of the remedy under Section 114 by filing the appeal,
which was dismissed by the Deputy Registrar on 19.11.2004,
which was challenged by filing a writ petition No.6491 of 2005,
but was dismissed by the learned single Judge inter alia
holding as follows:

H

- (i) The suspension order dated 13.12.2002 and removal order dated 05.09.2003 of the erstwhile Committee whereby Captain A.K. Mahindra and Ashok Sharma had been appointed Secretary and Treasurer respectively had been held did not subsist because new election of the Managing Committee was held on 05.12.2004 wherein the appellant No.1 Captain A.K. Mahindra was once again inducted as a member who earlier was holding the post of Honorary Secretary as a result of the election held on 28.05.2000 and the writ petition challenging removal of Captain A.K. Mahindra and Ashok Sharma who were removed in whose place the Board of Administrators had been appointed was dismissed as infructuous as in view of induction of new Managing Committee, the orders of suspension and removal of earlier Managing Committee challenged by the writ petition did not survive as the learned single Judge was pleased to hold that when the new Managing Committee was elected, the dispute regarding adjudication of suspension of the officebearer of the earlier Managing Committee constituted as a result of the election held in 2002 were no longer sustainable. A B C D E
- (ii) The learned single Judge inter alia further held that the petitioner A.K. Mahindra had no locus to challenge the order of his removal passed by the Registrar, Co-operative Societies appointing Board of Administrators in his place or the decision of the General Body for sale of the land belonging to the society did not survive as it was only A.K. Mahindra the suspended member who had challenged the sale and no other member had come up to challenge the decision of the General Body to sell the land of the Society. F G H

- A (iii) The learned single Judge had further held that in the appeal before the Registrar against removal of the members of the Managing Committee, there was no challenge to the order of the Registrar giving permission to sell/auction was made nor the auction purchaser was impleaded as a party therein and hence, the appeal suffered from misjoinder of the necessary party and non-appealing of impugned order, debarred the suspended petitioners to challenge the same in the writ petition.
- B
- C (iv) The learned single Judge further took note of the fact that the decision to sell the land was of the General Body Society which was taken on 02.06.2002 and the said decision cannot be said to have been taken by authority constituted under the Co-operative Societies Act but was taken by the members of the Society in a General Body Meeting which had passed a resolution to dispose of the land at reasonable price and authorised Ashok Kumar and A.K. Mahindra to act in the matter and that A.K. Mahindra assessed the market value of the land as Rs.40 lakhs per acre on the basis of the information obtained from the concerned Patwari as already referred to hereinbefore.
- D
- E
- F (v) The learned single Judge was further pleased to hold that the auction sale was conducted after due permission granted by the Registrar under the supervision of the Sales Committee already referred to hereinbefore and after giving advertisement in three popular newspapers of Hindi and English before fixing the minimum rate of land at Rs.40 lakhs per acre which was the market rate at that time.
- G
- H (vi) The learned single Judge also took note of the fact that the petitioner therein did not bring on record any

document to show that the rate of land was more than Rs.40 lakhs per acre as the prevalent collector rate/circle rate of that time was Rs.12 lakhs per acre of the area whereas the Societies land in question was sold at Rs.46.25 lakhs per acre i.e. more than the market rate fixed at Rs.40 lakhs per acre. The learned single Judge recorded a categorical finding that there was neither any fraud in conducting the auction sale nor was the auction sale bad or illegal in any manner. In so far as the allocation regarding non publication of the auction notice in less expensive newspaper is concerned, it was held that this decision was also taken in the General Body Meeting of the Society itself. However, the learned single Judge enhanced the rate of land from Rs.46.25 lakhs to Rs.70 lakhs per acre which amount had himself been offered by Captain A.K. Mahindra who was the Honorary Secretary of the Society at least on the date when the resolution by the General Body was passed on 02.06.2002. The learned single Judge after hearing the contesting plea of the respective parties disposed of the writ petition taking into account the interests of the members of the Society holding that the amount of Rs.70 lakhs per acre was sufficient for eligible members.

- (vii) The learned single Judge further ordered that the difference of the amount which had come about with the increase in the cost of the land by increasing the rate from Rs.46.25 lakhs per acre to Rs.70 lakhs per acre would be paid by the respondent No.7/ auction purchaser to the Registrar, Co-operative Societies within 45 days from the date of the order i.e. 24.08.2007 with interest at the rate of 6% per annum on the amount awarded by him from the date of auction till the payment was actually made.

A (viii) It was further directed by the learned single Judge
that the amount so received from respondent No.7/
the auction purchaser would be disbursed forthwith
amongst the eligible members proportionately,
except the tainted ones, by the Registrar himself or
B by any other person authorised by him in that regard
and the share of the tainted persons would be kept
until the decision of the cases against them were
adjusted against the recovery, if any ordered against
them. It was also made clear by the learned single
C Judge that the members who had already received
their share amount would only be entitled to the
difference on account of increase of price and the
concession given by the High Court in the judgment.

D 13. The erstwhile Secretary of the Co-operative Society
Captain A.K. Mahindra who had been suspended by the
Registrar, Co-operative Society along with 37 members (38 in
all) filed letters patent appeal No.215 of 2007 before the
Division Bench of the High Court wherein the auction sale
conducted by the Board of Administrators under the supervision
E of the Sales Committee of 5 members which included Deputy
Registrar, Co-operative Societies, Gurgaon, Inspector, Co-
operative Societies, Gurgaon, Sub-Inspector, Co-operative
Societies, Gurgaon filed letters patent appeal before the
Division Bench of the High Court wherein the auction sale
F conducted by the co-operative societies in pursuance to the
order of the Registrar passed by the co-operative societies
were challenged essentially on the following grounds:

G (i) That the advertisement for auction of the land was
not published in newspapers which had a wide
circulation in an area. It was alleged that the said
notice was deliberately issued in a newspaper which
had negligible circulation in Delhi and Gurgaon,
where most of the members of the Society used to
reside.

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(ii) The land belonging to the Society was sold for a song to the respondent No.7 though it could have fetched more sale consideration in case the auction after giving due advertisement, would have been conducted. A

(iii) There was no necessity of selling the land. B

14. The learned Judges of the Division Bench who heard the letters patent appeals rejected all the contentions of the appellants and upheld the order passed by the learned single Judge holding therein that the plea regarding suppression of notice in a newspaper lacking wide circulation could not be sustained as the first advertisement regarding auction notice were published in three newspapers of wide circulation and when the first auction notice was cancelled, the second notice was published announcing the new date as the said order against the auction had been vacated and the said notice was published in the daily newspaper 'The Tribune' which is locally the most prominent newspaper in Punjab and Haryana. Hence, the Division Bench was pleased to hold that the land being situated in Haryana, the publishing of the later advertisement in 'The Tribune' cannot be held to cause any prejudice to the prospective buyers as alleged by the appellant. C D E

15. The Division Bench was further pleased to hold that the plea raised by the counsel for the appellant that there was no necessity of selling the land belonging to the Society was also not worth accepting when a conscious and considered decision was taken by the General Body vide its resolution passed on 02.06.2002, whereby a decision was taken to sell the land keeping in mind the plight of the members who were initially made to understand that in case flats were constructed a flat would cost around Rs.4 lakhs but would later stipulated that on completion of the flat, the same would cost Rs.17.50 lakhs approximately, if construction commenced on time and were to be completed within three years, whereas at the relevant point of time, flats in other adjoining societies were H

A readily available for a lower cost at Rs.12 to 13 lakhs. The Division Bench therefore was pleased to hold that the decision in the General Body Meeting was taken after considering the pros and cons of the decision to auction sale the land.

B 16. In so far as the plea of the appellant emphasising that
C the land was sold at a much cheaper rate to the respondent
D No.7 and thus was prejudicial to the interest of the members
E of the Society is concerned, it recorded that the appellant
F Captain A.K. Mahindra who was representing all the appellants
G in LPA No.215/2007 had himself written a letter on 02.07.2002
H while seeking permission to sell the land to the Assistant Registrar, Co-operative Societies stating that the rate of the land in the area where the Society is situated is Rs.40 lakhs per acre, as obtained from the concerned Patwari office. Captain A.K. Mahindra had himself forwarded that letter alongwith a copy of the letter received from the concerned Patwari. In that letter which has been quoted hereinbefore, he had categorically stated that the total value of the land was based on the above rate which amounted to Rs.4.20 crores for the entire land of the Society. Even the minutes of the General Body Meeting recorded that the members themselves had resolved that the land prices in the area at the relevant time, that is in the year 2002 had gone down. In view of the rate quoted by the appellant himself in the aforementioned letter and the decision taken by the General Body in its Meeting to sell the land on the ground that the land prices were going down, no plea could be raised at that stage to say that the land was sold at a lower price. The Division Bench further took note of the fact that in any case, the rate of land was enhanced from Rs.40 lakhs to Rs.70 lakhs per acre by order of the single Judge. Besides this, when the General Body of the Society had decided to abort the venture of the flat building due to germane factors such as the pending litigation, possibility of acquisition by the Government, irregular shape of the land and the surrounding land having been purchased by another society namely Saraswati Kunj and the falling rate of land prices, it was

in the members interest to recover the investments made by them in the failed venture as quickly as possible. The appellant No.1/suspended Honorary Secretary Captain A.K. Mahindra had made enquiries himself from the Tehsildar about the prevalent market price and the Tehsildar had opined that at the relevant time while the Collector rate was Rs.12 lakhs per acre, the market rate was about Rs.40 lakhs per acre. In spite of this, the learned single Judge was pleased to enhance the rate of the land by awarding Rs.70 lakhs per acre of the land owned and possessed by the Society. Hence, the Division Bench was pleased to hold that when the appellant No.1 Captain A.K. Mahindra, the erstwhile/ suspended Honorary Secretary had himself as an office bearer sought permission to sell the land at Rs.40 lakhs per acre, he cannot be permitted to question the inadequacy of Rs.70 lakhs per acre which was awarded by the learned single Judge. Thus, the amount which was actually paid for the purchase of the land on 24.11.2003 exceeded by about Rs.70 lakhs, which was previously estimated to be Rs.40 lacs per acre as per the market rate i.e. Rs.4.2 crores vide letter dated 02.07.2002 which was written by the appellant No.1/Captain A.K. Mahindra on behalf of Mount Everest Society to the Registrar, Co-operative Society, Haryana. The learned Judges of the Division Bench thus were pleased to uphold the judgment and order passed by the single Judge relying upon the figure suggested by the appellant No.1 himself relating to the cost of land recorded hereinbefore. Consequently, the Division Bench which examined in detail the price fetched for the society land, found it to be reasonable particularly in the light of the adverse factors noticed by the General Body Meeting which prompted the General Body to pass a resolution to put the land to auction sale which have been scrutinised meticulously and extensively by the single Bench of the High Court as also the Division Bench recorded hereinbefore. In view of the aforesaid findings recorded by the Division Bench, the letters patent appeals were dismissed by the High Court and thus it was concurrently held by the single Judge as well as the Division Bench also that the auction sale

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- A could not be held to be illegal, arbitrary or suffering from the vice of surreptitious auction sale which could persuade the High Court to set it aside as the High Court examined in detail the price fetched for the society land and found it to be reasonable particularly in the light of the adverse factors noticed by the
- B General Body in the Meeting which prompted the General Body to pass a resolution to put the land to auction sale.

C 17. Feeling aggrieved with the judgment and order passed by the Division Bench dismissing the two Letters Patent Appeals, thus upholding the judgment and order of the single Judge, two appeals by way of special leave had been filed by the petitioners/appellants Mount Everest Co-operative House Building Society Ltd. and by 10 members of the Co-operative Society out of which the petitioner/appellant No.1 Capt. A.K. Mahindra withdrew himself from the special leave petitions due

D to which he now ceases to be an appellant in the appeal filed by the members.

E 18. Learned senior counsels Mr. P.S. Patwalia and Mr. C.A. Sundaram representing the appellant -members of the Mount Everest Co-operative Society and the Mount Everest Co-operative Society respectively assailed the judgment and order of the Division Bench which was pleased to uphold the judgment and order passed by the single Judge and thus upheld the auction sale in favour of the auction purchaser respondent

F No.7 inter -alia on the grounds which substantially are the same which had been urged before the High Court and were rejected concurrently by the single Judge as also the Division Bench. However, since the counsel for the parties were heard at length assailing the correctness of the judgment and order passed by the High Court, it would be appropriate in the interest of justice and fairness to the cause to recapitulate and deal with the

G same.

H 19. The principal ground of challenge to the auction sale thus are essentially two-fold. In the first place, it was submitted that the action of respondent No.3 in suspending the new

managing committee of the petitioner/appellant society under Section 34(2) of the Haryana Co-operative Societies Act, 1984 was arbitrary and illegal where no proceeding for removal of the managing committee was pending under 34(1) of the aforesaid Act and the same was done with an oblique motive to put the land of the Society to auction sale. In this context, it was also submitted that the action of the official respondents and that of the sales committee appointed by the official respondents in conducting the auction sale of the land of the society on 24.11.2003 was sham and a fraud committed on the members of the society and the public at large. It was therefore further submitted that the official respondents and the members of the sales committee had colluded in selling the land of the society at a throw away price in favour of respondent No.7 which according to the appellants has been established by the records of the auction conducted on 24.11.2003. Thus, in sum and substance, it was contended that the auction conducted on 24.11.2003 was a pre-determined affair, illegal and a sham auction sale.

20. Commenting on this part of the averment, it was submitted that it is clear from all the pleadings before the High Court raised on behalf of the Society that the Society was not duly represented for want of the office-bearers of the Society and the entire process of auction was collusive. According to the counsel, the General Body Meeting which was called by the society and the resolution which was passed therein should not have been given effect to. It was, therefore, urged that the Division Bench of the High Court erred in dismissing the Letters Patent Appeals filed by the respondents as the High Court failed to appreciate that the action of the respondents from the time i.e. suspending the Managing Committee was merely to grab the land of the petitioner/society.

21. Elaborating on this aspect, it was further submitted that on 13.12.2002 Assistant Registrar, Co-operative Society suspended the Managing Committee when A.K. Mahindra was

A the Secretary on the basis of alleged irregularities of the
previous Managing Committee under Shri Gupta and not on
the ground of mal-functioning of the then existing Managing
Committee under Capt. A.K. Mahindra. The Committee was
thereafter illegally removed on 5.9.2003 without even fixing the
B date of hearing. Giving the sequence of events, it was stated
that in between 13.12.2002 and 5.12.2004, there was no
committee or effective society to manage the affairs of the co-
operative society since they had been suspended or removed.
At this time, a Board of Administrators was in control with Mr.
C Ashok Sharma as one of the key administrators who acted in
collusion with the auction-purchaser. It has further been
submitted that during the period of suspension/removal of the
managing committee and appointment of the Board of
Administrators which period was in between 13.12.2002 to
D 24.11.2003, the property was sought to be brought to sale
through a sham auction in collusion with the auction-purchaser
without any notice to the members of the society. Factual details
were further given out stating that the last elected secretary of
the managing committee with Capt. A.K. Mahindra as
E Secretary and 120 others filed a writ petition on 18.12.2003
challenging the suspension of the managing committee and the
sale to the respondent No.7. The society itself could not file any
case since the committee had been removed and was under
the control of the Board of Administrators whose collusive action
was being questioned. However, this writ petition had been
F withdrawn to challenge the removal before the Registrar but as
the Registrar rejected the petition challenging the removal,
another petition was filed on 26.4.2005. In the meantime, a
sham election was conducted on 5.12.2004 whereby Mr. Ashok
Sharma was elected and this was immediately challenged on
G 6.12.2004. The election was set aside and once again a Board
of Administrators was appointed on 26.9.2007. Elections were
thereafter again conducted on 13.9.2010 by the Registrar and
the present committee was elected on 13.9.2010. It has been
submitted that this was the true committee representing the
H members who were absent and in between the period of

13.12.2002 and 13.9.2010, the managing committee became non-existent which was under the control of Mr. Ashok Sharma who became the Member of the Board of Administrators and is alleged to have been controlling even the Board of Administrators. On 19.11.2010, when the new Managing Committee took over, a resolution was passed on 27.8.2010 after which Letters Patent Appeals were filed before the Division Bench which were dismissed and the same are under challenge in these appeals by way of special leave petitions.

22. On the basis of the aforesaid facts, it was contended that the society and its members were not duly represented for want of the members of the society and no General Body Meeting was called to discuss or decide the nature of the pleadings to be filed or the stand to be taken by the members. The members of the society were kept entirely in the dark between the period 13.12.2002 and 13.9.2010 and immediately upon a representative committee being elected, the society preferred the Special Leave Petitions before this Court out of which the instant appeals arise. It was further contended that the plea of the respondent that the majority of the members have no grievance is completely wrong inasmuch as only 120 members out of 288 members had taken away their payment and a substantial number of those did it under protest. The allegation, therefore, that the cause of action to pursue the matter do not survive at the instance of a few members is fit to be rejected. It had also been reiterated that the managing committee of the society was deliberately suspended to grab its land.

23. The auction-purchaser/respondent No.7 contested the aforesaid plea and first of all submitted that only 38 members before the single Judge and 10 members in Letters Patent Appeal challenged the judgment and order of the High Court passed by the Division Bench and has also given the detailed sequence of events under which the managing committee of the co-operative society was suspended and also the fact that

A the decision was taken by the Board of Administrators and the
General Body in a bona fide manner with which the respondent
No.7 had no concern. It was further contended that the decision
to sell the land was taken by the General Body of the Society
after the society decided to sell the land and recorded specific
B reasons for this by holding a General Body Meeting on
2.6.2002. At this point of time, Capt. A.K. Mahindra was the
Secretary of the Managing Committee who had challenged the
suspension of the Managing Committee and the sale before
the Registrar, had himself taken active part in the society's
C decision to sell the land who has now discreetly withdrawn
himself from the present special leave petitions. The General
Body Meeting minutes had recorded the reasons for the
General Body to approve of the auction sale indicating that it
was agreed that the society could not develop the land due to
D financial constraints as the land was agricultural land for which
license had been denied, certain areas were under disputes/
litigation, the land was not located close to the main road and
was not contiguous had multiple share holders and thus did not
command such land rates as other properties in the area and,
E therefore, a conscious well-deliberated decision was taken by
the General Body to sell the land as that was a viable and
beneficial alternative for the members to go into. However, the
auction purchaser-respondent No.7 was not in the picture at all
when the decisions were taken by the General Body way back
F in 2002.

24. Learned senior counsel for the appellants Mr. Patwalia
however countered this submission and assailed it by
submitting that even if the decision by the General Body was
taken to dispose of the land by putting it to auction sale, it was
G not that the auction could be held and the land could be sold at
a throw away price putting the society to a great loss. It was,
therefore, urged that the basic question would be whether the
auction was conducted fairly and correctly so as to get the
maximum price. According to the learned counsel a perusal of
H the auction notice and auction records would disclose that it was

not done so and the auction sale is a complete sham as the price at which the land was sold, was highly inadequate and much below the price which it ought to have fetched.

25. On a scrutiny of the sequence of events and the plea of the contesting parties on the pivotal point as to whether the decision taken to auction sale the land was bona fide or malafide, tainted with dishonest motive and whether the suspension of the Managing Committee and appointing the Board of Administrators was correct or not, it can clearly be noticed that when the managing committee under Mr. Gupta as Secretary was suspended, a new managing committee after fresh election took over, when on 5.8.2001 Capt. A.K. Mahindra became Secretary of the Managing Committee. It was under his secretaryship that a General Body Meeting was convened and a resolution was passed by the General Body to auction sale the land recording specific reasons in the Minutes of the General Body Meeting whereby the Honorary Secretary/Capt. A.K. Mahindra brought out the options to the notice of the General Body. One of the options was to construct flats on the land for which tender had been floated and it was noted that out of the two parties who responded to the tenders, one namely M/s Antriksh Engineers and Construction & Corporation had shown interest. Their main terms were as follows:

(a) that they will invest all money required to obtain CLU, development charges etc. i.e. they will invest right upto the stage where construction can begin. This will entail an expenditure of Rs.8 crores approximately.

(b) that they will refund the deposit of a limited number of members after CLU permission is received.

(c) that in lieu of the money invested they will be given 50% of FAR and;

(iv) construction rate would be Rs.850/-sq.feet which is deductible.

A It was given out for information of the members that the advantage would be that the Society would be able to move forward in achieving its aim and that limited number of members desirous of leaving Society will get their money back. In so far as the disadvantages were concerned, it was noted that it will take around 6 months to get CLU permission by which time Section 4 notice under the Land Acquisition Act may be issued for acquisition of the land which the society possessed. It was given out that a minimum period of 3 years will take before the construction was announced and before completion goes smoothly. In case, the project was undertaken, 1600 sq. feet flat would cost Rs.13.60 lakhs approximately, and assuming a member of the Society had paid Rs.4 lakhs the flat to be constructed would cost him Rs.17.50 lakhs. It was therefore deliberated that the flats at a lower rate than Rs.17.50 lakhs were readily available in Gurgaon in Jai Vayu Vihar and Rail Apartments at Rs.12 to 13 Lakhs.

D The Society therefore gave the second option to the General Body and the second option was sale of the land which were in possession of the society free from litigation. The Society noted that the land prices had gone down at the relevant time which was lower than the purchase price in the last few years when the Society had purchased the land at Rs.7.5 crores. Thus, it was noted down by the Society before the General Body that if the land belonging to the Society were to sell the land it will be unable to recover the full amount which the society has earlier invested in purchasing the land. However, a comparative assessment of the objectives were also taken note of by the society which were as follows:

- G
- (v) Will avert the danger of the land belonging to the society being acquired.
 - (vi) Will avert all the cost and uncertainties of the litigations being faced by the Society.
- H

- (vii) Members of the Society will get back around 70% of their investments. A
- (viii) Will pave the way to recover the balance amount of investments by members. B

Thus, on a comparative assessment of the land being retained by the Society and in case it was disposed of, the General Body of the Society resolved on 02.06.2002 after taking a conscious decision to dispose of the land of the Society." C

26. It was in view of this decision that follow up actions were taken by the Board of Administrators under the Sales Committee inviting proposals for the sale of the land as the Managing Committee under Captain Mahindra and Treasurer Ashok Sharma was under suspension due to the alleged illegalities and irregularities. The learned single Judge as also the Division Bench of the High Court has scrutinized and taken note of the overwhelming circumstance which weighed with the High Court. It was considered by the High Court which took note of the fact that although 10.69 acres of land was claimed by the society, 9 acres i.e. 3.5 acres in Khasra Nos. 1977, 1678 and 1679 as also 5.5 acres in Khasra Nos. 1692, 1696 and 1697 were in dispute/litigation in the District Court, Gurgaon. The clear land without any dispute with the society was only around 1.69 acres. The records further indicated that 3.5 acres of land bearing Khasra Nos. 1977, 1678 and 1679 was never purchased by the society as per the then Secretary Mr. R.P. Gupta. The learned single Judge has also taken note of the fact that this was under litigation as it was purchased by another society –Saraswati Kunj whose registration was in progress. Thus, if 3.5 acres were to be deducted out of 4.5 acres, only 1.1 acre was left to the society. The learned single Judge further noted that the land in question had been surveyed by the Government along with other vacant land with a view to clear it D E F G

A and the acquisition process had been set in motion. The land
 belonging to the society had been encircled/ surrounded by
 another society namely Saraswati Kunj. Therefore, the future
 course of action left to the society which has been recorded
 hereinbefore in detail in view of the considerations made by
 B the General Body, was to dispose of the land of the society.

27. Insofar as the dispute regarding suspension of the
 Managing Committee under Captain A.K. Mahindra in view of
 the alleged irregularities of the previous managing committee
 is concerned, it had started only on 13.12.2002 and all the
 C disputes in regard to removal and induction of the society under
 Capt. A.K. Mahindra admittedly took place between
 13.12.2002 and 24.11.2003. But it is an equally undisputed
 factual position that the resolution was passed by the General
 Body in its Meeting for sale of the land on 2.6.2002 when the
 D managing committee constituted on 5.8.2001 under Capt. A.K.
 Mahindra was duly in place and no member of the society had
 raised any grievance against the said decision that it was
 erroneous or tainted in any manner and the society was duly
 represented by the Secretary and all members of the society.
 E The case of the managing committee and its members that the
 Assistant Registrar illegally suspended the managing
 committee under Capt. A.K. Mahindra based on the alleged
 irregularities of the previous managing committee under Mr.
 Gupta, first of all took place on 13.12.2002 from which it is clear
 F that when the General Body Meeting was conducted and
 resolution was passed on 2.6.2002, the Secretary of the
 Managing Committee Capt. A.K. Mahindra was duly and legally
 in place as Secretary and was removed by the Registrar of
 Society only at a later stage on 05.09.2003 after which the
 G Board of Administrators was appointed by the Registrar and
 a Sales Committee was also set up under whose supervision
 the auction sale was decided to be held under supervision of
 the Sales Committee. It may further be noted that the proposed
 auction was also challenged as an application for injunction

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restraining the auction sale was filed before the District Court where an order of injunction restraining the auction sale was also granted by the District Court but the said injunction was later vacated against which no appeal was preferred by any member of the society. It is no doubt true and it has been contended that as no Managing Committee was in existence at that point of time, no appeal could be preferred against the order vacating the injunction. However, this contention is clearly without substance for if the members in their individual capacity could assail the auction sale by filing a separate writ petition, it cannot be accepted that they were precluded in any manner from challenging the auction sale in case they were aggrieved and the subsequent challenge after seven years in 2010 clearly appears to be an after thought at the instance of a miniscule number of members who decided to assail the auction sale clearly as a matter of gamble

28. As already noted, the resolution by the General Body of the Society to auction sale the land was taken way back on 2.6.2002 vide the resolution passed in the General Body when there was dispute existing regarding the functioning of the Managing Committee and it is only after more than one year that the Secretary – Mahindra was removed by the Registrar, Co-operative Societies and since he was removed, he challenged his removal as also the decision of the General Body to auction sale the land which resolution during his tenure as Secretary was passed. In fact as long as he was the Secretary he had not merely approved the decision of the General Body to auction sale, but also the existing market price of the land and only when he was removed from the post of Secretary, he started questioning the auction sale held under the supervision of the Board of Administrators as also the decision to auction sale of the land conveniently ignoring that the same had been approved by the General Body Resolution during his tenure as Secretary when there was no dispute regarding the Society's functioning.

A 29. It may further be noted that the then Secretary Capt.
Mahindra although had challenged his removal as Secretary of
the Society, he never thought it appropriate to file any appeal
against the order vacating the order of injunction against
B auction sale which he could have done as the ex-secretary if
he was genuinely concerned. The matter regarding the dispute
challenging the auction sale had been filed in a court of
competent jurisdiction where initially an order of injunction was
also passed but the same was finally vacated against which
C no appeal was preferred either by any member of the society
or the Secretary. The order of injunction against auction sale
was finally vacated but no member was conscious or vigilant
to challenge the same. On the contrary, large number of
members gradually withdrew the amount and walked out of the
D society. It is clear that for the first time in the year 2010 when a
new managing committee was elected on 13.9.2010 that a
decision was taken to challenge the auction sale by which time
the existence of the society withered away when the majority
of the members out of 288 left and only 38 members remained
E clearly implying that for all practical purposes the Society
ceased to retain its legal entity as the land of the society for
which contribution had been made was by all the 288 members
and not merely 38 members. Even out of this 38 members, only
10 members preferred Letters Patent Appeal before the High
F Court although the General Body resolution was passed by the
majority and cannot be allowed to be over ruled by 10 members
only.

30. Much emphasis has been laid on the valuation of the
land as it has been alleged that the land was auctioned/sold at
a much lower price than was capable of fetching which remains
G unsubstantiated in absence of any evidence in this regard as
to what were the market price of the undeveloped land in the
surrounding areas. On the contrary, it could be noted that the
circle rate of the land at the relevant time was Rs.12 lacs per
H acre and the market rate was Rs.40 lacs per acre and as per
the auction held, the price fetched in the auction ultimately

worked out to Rs.46 lacs per acre. The appellants had not furnished any material before any court as to what was the market price of the undeveloped land in the year 2003 when the auction sale was held in pursuance to the General Body Resolution of the Co-operative Society. In any case, this question at this stage is not of much relevance when the High Court has increased the price of the land at Rs.70 lakhs per acre and members of the society have been held entitled to refund of their contribution amount along with 6 % interest in view of which undervaluation of the cost of the land no longer subsists. It has no where been urged that at the relevant point of time in the year 2003 when the land was auctioned/sold, its valuation was much more than Rs.70 lakhs per acre so as to treat it prejudicial and detrimental to the interest of the members of the society who had contributed for purchase of the land.

31. Thus, if the members of the Society by virtue of a General Body resolution had decided to auction sale the land during the tenure of a duly elected Secretary of the Society A.K. Mahindra and for more than one year no member of the society had any reason to challenge the same after which the Board of Administrator was appointed and the price of the land on the date of auction could not be more than Rs.70 lakhs per acre, it would be unfair and unjust to interfere with the auction sale after 11 years of its holding on the plea that the price fetched in the auction suffers from undervaluation as the same cannot be compared with the present day valuation which obviously must have grown over the years as compared to the year 2003 when the auction sale was held. In this context, it may also be noted that the Secretary Capt. Mahindra as also Patwari had also given out in writing and is on record which indicates that the value of the land at the relevant time which was not a developed land at the relevant time when the land was put to auction sale was not more than Rs. 40,000 per acre which cannot be doubted in absence of any material to the contrary specially when the circle rate of the land was Rs.12 lacs per acre only and the land was auction sold at Rs.46 lacs per acre

A approximately in the year 2003. In any case, the price of the land has already been increased to Rs.70 lakhs per acre by the High Court and has been ordered to be paid alongwith 6 % interest and thus the Society has not been put to monetary loss on account of the sale conducted in pursuance to the resolution of the General Body which was passed during the tenure of a duly constituted Managing Committee under Captain Mahindra. It is further clear that only a handful of members of the co-operative society who are now only 10 out of 288 and have not withdrawn from the society by withdrawing their amount, expects that all the following aspects and circumstance of the case should be brushed aside which are as follows :

(i) The fact that the General Body Meeting was held on 2.6.2002 on which date there was no dispute regarding the functioning of the managing committee;

(ii) Resolution of the General Body Meeting was passed unanimously on 2.6.2002 approving the decision to auction sale the land when the Society was functioning under a duly constituted Managing Committee and had not been suspended. The suspension of the Secretary of the Society was much later after more than a year in 2003 and during this period the resolution of the General Body was never challenged by any member.

(iii) The constitution of the Board of Administrators should be struck down as invalid although the members of the Co-operative Society had never challenged the constitution of the Board of Administrators;

(iv) The Sales/Supervision Committee under whom the auction sale was held should be treated as a defunct body;

- (v) The valuation of the land in the year 2003 which was Rs.12 lacs per acre as per circle rate and Rs.40 lacs market rate should be disbelieved in spite of any evidence to the contrary which in any case has been increased to almost the double by the High Court and has awarded 6 % interest also which clearly takes care of the price factor as the price of the undeveloped land could not have been more than Rs.70 lacs per acre at the relevant time in the year 2003 when the auction sale had been held; A B
- (vi) All activities in regard to the conduct of the auction sale should be treated as bogus and sham although the District Court had vacated the order of injunction restraining the auction sale against which no appeal was filed; C D
- (vii) Only 10 members out of 288 are now aggrieved which renders the co-operative society into a non-existent co-operative society as even the rest 28 members out of 38 who had filed the writ petition in the High Court have withdrawn from the litigation. E

32. From the background, facts and circumstance of the matter, it is further clear that the members of the co-operative society had clearly opted a wrong forum by filing a writ petition in the High Court for if they expected the court to appreciate evidence and record a finding on the aforesaid disputes for setting aside the auction sale, it is obvious that the petitioners should have approached the civil court of competent jurisdiction where it would have had the opportunity to adduce evidence and prove all the allegations of under valuation and the alleged fraud challenging the auction sale. In fact, the writ petition for assailing a factual dispute ought not to have been entertained by the High Court under its writ jurisdiction but in the interest of justice and fairness as also equity and good conscience, the High Court entertained a dispute which purely was of a civil nature since all contentions which have been raised would have F G H

A required appreciation of evidence. Yet the High Court to a great extent has taken care to scrutinize all aspects of the matter in regard to the writ petition filed by the co-operative society members who sought to assail the auction sale clearly alleging disputed questions of fact alleging fraud in conducting auction

B sale as also valuation of the land in question which required adducing of evidence and the same could not have been entertained by the High Court under Articles 226 and 227 of the Constitution except to the extent of considering whether the order passed by the Registrar, Co-operative Societies rejecting

C the challenge of removal of the managing committee was sustainable or not. Yet the High Court has entered into all aspects and has then reached to a conclusion considering entire conspectus of the matter which in our view cannot be held to be arbitrary, illegal or unjust in any manner.

D 33. There is yet another feature of the matter which emerges from the fact that when the removal of Capt. A.K. Mahindra as a Secretary of the society has been set aside, then all activities including passing of the General Body resolution in the meeting that were conducted during his tenure as

E Secretary of the Managing Committee cannot be held to be illegal in any manner. Thus when the General Body resolution was passed during the tenure of a validly elected managing committee under Capt. A.K. Mahindra as the Secretary and the resolution to auction sale the land was passed during his

F secretaryship whereby the value of the land was also assessed and approved by Capt. A.K. Mahindra himself and no allegation was levelled by any member against Capt. A.K. Mahindra as all allegations were confined to Ashok Sharma, then the resolution of the General Body obviously could not have been

G faulted with specially when no appeal against the order of the Civil Court vacating the order of injunction against the auction sale was filed by any member of the society specially the appellants herein. The appellant-society and a handful of members now restricted to 10, have levelled allegations but

H mere allegation cannot be treated as a proof and if the

members were in a position to assail the same which clearly would have required strict proof by way of evidence, they ought to have gone in for a civil suit and the writ jurisdiction was clearly not the appropriate remedy to establish and prove questions of fact. Yet when the single Judge as also the Division Bench have meticulously examined all aspect of the matter discussed hereinbefore and the same does not indicate any perversity in the conclusions drawn, it would be unfair and unjust to interfere with the same by indulging into a roving enquiry merely accepting the contentions of some of the members of the Society which are clearly based on speculation, conjecture and apprehension. The Courts therefore in a circumstance of this nature cannot be expected to decide such an issue on suspicion hunch or even intuition which clearly would be abstract in nature and has no place in the eye of law even before a court of fact and much less before a court under writ jurisdiction.

34. The cumulative effect of the entire analysis based on the facts and circumstance in the light of the reasonings assigned by the Single Bench of the High Court as also the Division Bench, it would not be just and proper to interfere with the judgments and orders passed by the single Judge as also the Division Bench of the High Court holding concurrently that the auction sale which was in pursuance to the resolution passed by the General Body of the Co-operative Society based on the price prevalent on the date of auction sale could be faulted on the ground of allegations leveled on the basis of assumption and speculation of 10 members of the society who had assailed the same by invoking writ jurisdiction.

35. At this juncture, it would be appropriate to observe that in judging the functioning of a co-operative society or any other statutory body where the democratic process of election is adopted in pursuance to the Rule and a collective decision is taken by majority of the members of the entire body expressed in terms of a resolution passed by the General Body, then the

A plea that the same should be ignored and bye-passed even if the same has been challenged by a handful of members on speculative allegation and assumption contrary to the reasons recorded in the Minutes Books on the plea of mala fide, without any evidence, would be illegal and arbitrary to accept being contrary to the rule unless the alleged malicious action is writ large on the alleged decision and is challenged by majority of the members. If a decision is taken by majority of the members of a Co-operative Society or any other body under a statute in terms of the Rule, it cannot be over-ruled by minority on the ground of mala fide or fraud unless it has passed through a strict proof of evidence. It is a well known dictum that mala fide is always easy to allege but difficult to prove as the same cannot be held as proved relying on assumption, speculation and suspicion.

36. In the instant matter existing 10 members of the society have practically reduced the Co-operative Society to a defunct society as all members except 10 out of 278 have finally withdrawn. Hence, the auction sale at their instance, although the said auction sale had taken place in view of the majority support of the General Body resolution which was conducted under the supervision of the Board of Administrators appointed by the Registrar, Co-operative Society and the Sales Committee is difficult to scrap it as illegal in spite of the overwhelming material relied upon by the High Court which has upheld the auction sale. Thus in a matter where the decision has been taken collectively by the General Body reflected in the form of a resolution passed by the General Body, it would be unjust and inappropriate to nurture a lurking doubt and keep suspecting the decision by entertaining the version of a handful who might be disgruntled or might be genuine but would be difficult to be gauged by any court so as to over-rule the General Body resolution and accept the view of the minority based on no evidence except assumption and speculation. If the instant matter is viewed meticulously, it is clearly obvious that the appellants have expected the court of writ jurisdiction

to enter into the correctness and validity of the auction sale essentially by expecting the Court to draw inference without evidence that the auction sale was not bona fide as it did not fetch the desired value of the land contrary to the materials available on record. Plethora of circumstances have been related to establish the same which clearly are in the realm of conjecture and speculation, yet the Single Judge and the Division Bench have both scrutinized and considered the same and have recorded a finding against the appellants which cannot be held to suffering from perversity being contrary to the existing materials before the Court which have been relied upon. Thus, the validity and correctness of the General Body resolution in view of which the land was put to auction sale cannot be allowed to be assailed specially when the price/alleged under valuation of the land in the auction sale no longer survives as the High Court has allowed the value of the land to be increased by increasing it from Rs. 40 lakhs to Rs.70 lakhs per acre which has been ordered to be paid along with 6 % interest. The appellants have not furnished any material as noted by the High Court that the cost of the land in the year of the date of auction which is 2003 was more than Rs.70 lakhs per acre so as to offer a cause to interfere even if it were to be interfered in the interest of equity, justice and fair play specially when the circle rate of the land in the year 2003 when the auction was held was Rs.12 lacs per acre only.

37. Hence, the endeavour of the appellants that the auction sale should be set aside and the land be revived to the society cannot be entertained in absence of proof of mala fide contrary to the existing materials on record on the basis of speculation, assumption and inference urged by the appellants.

38. Assuming for a while although not conceding that the land were to be reverted to the co-operative society for any reason whatsoever at this stage after 11 years of the sale during which the appellant Society has practically ceased to exist where all members except ten out of 288 are left, it is

- A obvious that the land cannot be reverted to the original members who have taken their refund. In that event, the appellant –society through a handful of members numbering ten is bound to indulge in trading of the land by inducting new members quoting new rates at their instance clearly sacrificing
- B the very spirit of a co-operative society as the land cannot be marketed even by the defunct Co-operative Society at the old rate which land had been purchased out of the contribution made by the erstwhile 288 members out of which only 10 are now left into the fray who had never even objected to the
- C General Body Resolution approving sale of the land nor challenged the auction sale in the year 2003 when the auction was held.

39. We, thus find no illegality or infirmity in the impugned judgments and orders passed by the single Bench as also the
- D Division Bench concurrently refusing to set aside the auction sale held 11 years ago in the year 2003 at the instance of a Co-operative Society which has practically been rendered defunct and thus ceased to exist apart from the other weighty reasons discussed hereinbefore. Consequently, both the
- E appeals are dismissed but in the circumstance without any order as to costs.

Devika Gujral

Appeals dismissed.