

Neutral Citation No. - 2024:AHC:134604-DB

**A.F.R.
RESERVED**

Court No. - 3

Case :- WRIT - C No. - 24279 of 2024

Petitioner :- Committee Of Management Grih Laxmi Sakhari Awas Samiti Ltd And 2 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Lavlesh Kumar Shukla, Sr. Advocate

Counsel for Respondent :- Ayank Mishra, C.S.C., Nipun Singh

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

(Per Hon'ble Jayant Banerji, J.)

1. When the matter was last listed on 6.8.2024, the following order was passed :-

“Heard learned counsel for the petitioners and Sri Ravi Anand Agarwal learned counsel appearing for the respondent No.2 & 3 who has produced another file containing original records.

With the consent of the parties this matter was heard for final disposal.

No counter affidavit has been called because the same does not appear to be required as the original record has already been produced and is available and the dispute is primarily one of jurisdiction of the respondent No.2 to pass the impugned orders.

List on 22.08.2024 for delivery of judgment.

Till that date, further proceedings consequent to the impugned orders, shall remain stayed.

The files containing original records shall be returned back after the delivery of judgment.”

2. This writ petition has been filed seeking the following reliefs:-

“(i) Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned orders dated 30.05.2024 and 04.07.2024 passed by the Additional Housing Commissioner/Additional Registrar, U.P. Avas Evam Vikas Parishad, Lucknow (Annexure Nos.4 and 7 to the writ petition).

(ii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the impugned orders referred to above and stay all further proceedings consequent thereupon during the pendency of the writ petition.

(iii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful functioning of the petitioners as Committee of Management of Grih Laxmi Sahkari Awas Samiti Ltd., District Gautam Buddh Nagar and its office bearers as President and Secretary respectively.

(iv) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(v) Award the cost of the writ petition.”

3. By the impugned order dated 30.5.2024, the respondent no.2, the Additional Registrar of Cooperative Societies, in exercise of power under Section 38(1) of the Uttar Pradesh Cooperative Societies Act, 1965¹, directed the petitioner no.1- Committee of Management of Grih Laxmi Sahkari Awas Samiti Limited, Gautam Budh Nagar to remove the Secretary and Chairman of the Society² within one month from the posts occupied by them under intimation to the office.

By the other impugned order dated 4.7.2024, exercising power under Section 38(2) of the Act, 1965, the respondent no.2 has directed the petitioner no.2-Chairman and the petitioner no.3-

1 Act, 1965

2 Grih Laxmi Sahkari Awas Samiti Limited, Gautam Budh Nagar

Secretary of the Society to appear before him for purpose of affording them opportunity of hearing prior to their removal or removal and disqualification.

4. Briefly stated case of the petitioners is that the Society is registered under the Act, 1965 having its registered by-laws. The election of the Committee of Management of the Society was held in the month of February 2023, in which the petitioner no.2 was elected as Chairman and petitioner no.3 was appointed by the elected Committee of Management as Secretary of the Society under Section 31 of the Act, 1965. The respondent no.4, Smt. Kunta Devi, is stated to be a member of the Society and there is a dispute in respect of the Flat No. H-207 allotted/registered in the name of Smt. Kunta Devi, as a complaint had been received that the said flat was registered in her favour by the former Secretary of the Society, namely Smt. Sushila Saraswat, even without payment being made by Smt. Kunta Devi and without the same being deposited in the account of the Society. It is stated that even after the election in February 2023, the former Secretary, Smt. Sushila Saraswat, has not handed over papers of the Society. It is stated that the daughter of Smt. Sushila Saraswat is married to the son of respondent No.4, Smt. Kunta Devi.

Notice was issued by the petitioners requiring Smt. Kunta Devi to submit necessary evidence to show that actual payment for the flat was made by her and that the same was deposited in the account of the Society. For purpose of getting necessary information regarding deposit, a notice dated 4.5.2024 was also issued by the officiating Secretary to the aforesaid former Secretary, Smt. Sushila Saraswat. Under the circumstances, Smt. Kunta Devi applied to the Registrar, Housing Society for appointment of an Arbitrator under Section 70 of the Act, 1965 and by an order dated

27.5.2024, an Additional Commissioner/Registrar, Cooperative Housing Society was appointed as Arbitrator in that case. It is stated that the petitioners have appeared before the Arbitrator and they have been supplied necessary papers for submitting reply and next date was fixed by the Arbitrator.

5. In the meantime, respondent no.4, Smt. Kunta Devi, made a complaint before the respondent no.2 on which an inquiry was ordered by respondent no.2 and some inquiry report behind the back of the petitioners was submitted. It is stated that acting thereon, the impugned order dated 30.5.2024 was passed by respondent no.2 in arbitrary exercise of powers under Section 38(1) of the Act, 1965, which is without jurisdiction.

Thereafter, in a meeting of the Committee on Management of the Society held on 24.6.2024, it was resolved that given the fact that Smt. Kunta Devi had already approached the Arbitrator and the dispute between Smt. Kunta Devi and the Society is pending before the Arbitrator, the entire action against the elected Chairman and appointed Secretary is wholly unwarranted and the order dated 30.5.2024 is required to be reconsidered. It is stated that the resolution alongwith a covering letter was received in the office of respondent no.2 on 25.6.2024. It is stated that without duly considering the resolution of the Committee on Management and without considering that the dispute between the parties is pending before the Arbitrator, the other impugned order dated 4.7.2024 was passed.

6. The contention of learned counsel for the petitioners is that the proceeding initiated by respondent no. 2 under Section 38(1) of the Act 1965 is wholly without jurisdiction and arbitrary, inasmuch as for want of papers from the previous Secretary of the Committee

of Management, and there being no record of deposits being made by Smt. Kunta Devi in respect of the flat allotted to her and nor there being any evidence with regard to the cost of the flat being deposited in the account of the Society, legitimate notices were issued to Smt. Kunta Devi in respect of which a dispute had been raised by Smt. Kunta Devi which was referred to arbitration under Section 70 of the Act, 1965 and an Arbitrator was appointed and before whom arbitration proceedings are in progress. It is stated that under the circumstances, the proceeding initiated by respondent no. 2 under Section 38(1) of the Act, 1965 on the complaint made by Smt. Kunta Devi in respect of the same dispute that has been referred to arbitration, is without jurisdiction, unwarranted, arbitrary and illegal. It is stated that there is no material before the respondent to resort to the drastic steps under Section 38 of the Act, 1965.

7. In view of the submissions made by the learned counsel for the petitioners, the respondent no.2 was directed to produce the original records pertaining to the case.

8. Learned counsel for the respondent no.2 has strongly urged that there were adequate materials before the respondent no.2 to resort to proceedings under Section 38(1) of the Act, 1965 for proceeding against the petitioner nos. 2 and 3. It is contended that it was not only the respondent no.4, Smt. Kunta Devi, who had complained, but other members of the Society had also leveled serious allegations against the Chairman of the Committee of Management because of which the respondent no.2 was justified in taking the proceedings. Learned counsel has referred to a letter dated 10.5.2024 on the original record allegedly sent by several

members of the Society to the Principal Secretary voicing their complaints. Learned counsel has also placed reliance upon a judgment passed by a coordinate Bench of the Court in the matter of **C/M The Meerut Sahkari Avas Samiti & 2 Ors. vs. State of U.P. & 4 Ors.**³ to contend that the scope of Section 38 of the Act, 1965 has been considered by the Court and that judgment is squarely applicable to the facts of the present case and, therefore, the respondent no.2 was justified in proceeding under Section 38 of the Act, 1965 against the petitioners in the present case.

9. In the original record a complaint letter dated 2.4.2024 of Smt. Kunta Devi is on record, which, however, does not bear her signature. In that letter it is stated that she tried several times to sell her house, but the Secretary is creating hurdles in the way despite knowing that she is an aged lady and she requires to sell the house for money. In that letter, she also submitted her parawise reply to the letter that was stated to be sent by the Secretary of the Society.

10. A letter dated 4.4.2024 was sent by the respondent no.2 to the Cooperative Officer (Housing), Shri Arimardan Singh Gaur, in which it was stated that with reference to the letter of the respondent no.2 dated 20.2.2024 which was issued regarding the letter of 30.1.2024 of Smt. Kunta Devi for reconsideration of the matter of sale of her flat. On that, the Housing Commissioner had directed immediate inquiry and report alongwith a proposal. It was directed that the resolution with regard to the 'No Objection', be given within a period of three days but that resolution was not made available. This letter of 4.4.2024 further mentions that in the meanwhile, Smt. Kunta Devi's letter of 2.4.2024 was received by the office on which the Housing Commissioner had directed "*Pls.*

³ 2024 (1) ADJ 371

get the matter enquired and fix the responsibility and put up A.T.R. on file till 9.4.2024". It was, accordingly, directed that the needful be done within a period of three days and report be submitted before the respondent no.2.

In the complaint dated 5.4.2024 (page 66 of original record), the respondent no.4 reiterated her complaint made on 2.4.2024.

11. It is pertinent to mention here that on record at page no.21 is a letter dated 5.4.2024 sent by Shri Arimardan Singh Gaur, Cooperative Officer (Housing) to the Secretary of the petitioner-Society referring to the letter dated 4.4.2024 of the respondent no.2 regarding submission of the inquiry report. It is stated therein that there was a report required by the Housing Commissioner himself by 9.4.2024. It is stated in that letter that relatives of Smt. Kunta Devi are constantly complaining to the higher authorities as the matter was not being disposed of within a time frame and since Smt. Kunta Devi had become too old, the matter has become extremely sensitive. It was, therefore, stated that the letter be taken to be a notice and if immediate steps are not taken as per rules, then it should be assumed that the Secretary is deliberately delaying the issue and, accordingly, steps would be taken under the Act, 1965.

12. On page 23 of the original records is a letter dated 7.4.2024 of the Cooperative Officer (Housing) addressed to the respondent no.2 with reference to letter no.61/Sah./dated 4.4.2024. He referred to his letter dated 5.4.2024 issued to the Secretary of the Society whereby a report was sought. It was stated that even earlier, the Secretary and the Chairman of the Society were informed

telephonically for speedy disposal of the matter but on every occasion the Secretary of the Society narrated some legal impediment, and that only after verification steps can be taken and, therefore, had refused to issue a 'No Objection Certificate'; whereas by the letter dated 5.4.2024, the respondent no.2 had asked for it being made available forthwith. It was stated that he has been informed by a letter of the Chairman of the Society that the Secretary of the Society has gone abroad and only after his return in the following month, decision could be taken after due consideration.

It was further stated in the letter of 7.4.2024 that the Secretary of the Society by his letter dated 6.4.2024 has informed that Smt. Kunta Devi's flat was allotted previously for more than 10 years to the former Chairman of the Society, Shri R.C. Sharma, and in support of that, copies of two maintenance receipts had been submitted by him, but no other good evidence had been presented by him; further, photocopies of various letters exchanged with Smt. Kunta Devi had also been submitted; that no final conclusion is possible to be reached on the basis of those letters; in view of the talks with Chairman of the Society, it appeared that certain documents of Smt. Kunta Devi were not available on the record because of which repeatedly the Management of the Society was writing letters to Smt. Kunta Devi; that in the matter, given the advanced age of Smt. Kunta Devi, the Management of the Society ought to have acted sympathetically and acted with more alacrity for disposal of the matter; therefore, it appeared that the Management of the Society was not working with adequate urgency because of which the matter was pending for several months; the officer has directed the Management of the Society to dispose of the matter in a time bound manner and the Chairman of the Society

has assured that he will make all efforts in that regard. However, in this letter of 7.4.2024, in the last paragraph, the officer wrote that in the aforesaid inquiry, the management of the Society was not giving adequate cooperation because of which the role of the management was suspicious. Therefore, recommendation was made for undertaking detailed inspection of the records of the Society under the provisions of Section 66 of the Act, 1965 so that the role of the management of the Society could be inquired into.

13. By a letter dated 19.4.2024 (page 121 of the original record), the petitioners wrote to the Cooperative Officer (Housing), who was conducting the inquiry, making detailed submissions with regard to the various irregularities existing in the Society which reflected wrong doings by the previous Committees of Management. This letter was in furtherance of a previous letter dated 8.4.2024 sent by the Society to the officer of the respondent no.2 in response to a letter dated 5.4.2024. It was stated that a letter was sent to Smt. Kunta Devi asking from her certain information within a period of three days but even till 18.4.2024, the response was awaited. The letter recorded the following :-

- (i) A list of 7 flats was submitted in which 5 flats were stated to be benami properties and all 7 of which were allotted to persons who were related to each other, whose bank accounts are more than 100 kms. away from their residence at Aligarh, Hathras and Mathura, in the Nainital Bank at Sector -18, Noida. It was stated that one Radha Raman is also the brother of one of the allottees, Smt. Sushila Saraswat, and her bank account is also in that bank branch even though she is a resident of Morena in Madhya Pradesh. Several points

with regard to the discordance in the membership of the persons mentioned in the list were noted. It was then stated that it is common knowledge that in Cooperative Housing Society, individuals flats are being allotted to several persons and the existing Management of the Society wants to avoid any stigma in this regard, but the Inquiry Officer and the higher authorities want to maintain the influence of Smt. Sushila Saraswat (the former Secretary of the Society) during the term of present Management. It was alleged, *inter alia*, that for handing over complete charge, repeated letters and personal requests of the petitioners were being ignored and opportunity was being granted to the former Secretary for manipulating the records. A direct allegation made was that at the instance of the authorities, Smt. Sushila Saraswat is selling off her benami flats in which the authorities are appearing as accomplice. It was stated that despite an unsigned complaint made by Smt. Kunta Devi, the Housing Commissioner himself took cognizance of the same and not only did he direct time bound action but has also directed to fix responsibility for not issuing a 'No Objection Certificate'. It was stated that it is not known that what the Additional Commissioner/Additional Registrar had done to ensure handing over charge from the former Secretary.

- (ii) It was stated that from several sources, proof was found that the rent of the benami flats was being made directly in the Axis Bank Account No.918010038855435 of Smt. Sushila Saraswat. The

details of the same were enclosed with the letter. No one had seen any of the allottees other than Smt. Sushila Saraswat and her daughter Ritu. During verification, the signature of each of them was made by another person, which was different from the signature made in the presence of the members of the Management. It was stated that in view of the unnecessary inference of the Additional Registrar, NOCs regarding transfer of six of the aforesaid flats had been given, in which till that point of time no dispute had surfaced. It was stated that the flat in question would also have been sold but for the reason that despite assurance, the tenant residing therein was not vacating the flat and the reasons for the same were inquired from which inquiry it emerged that there are some wrong doings regarding the ownership of that flat and, therefore, the tenant is not following the directions. The receipts of dues with regard to electricity and maintenance charges (of the flat) were not made available by Smt. Kunta Devi. As such, her ownership of the flat in question is suspicious and, therefore, giving of an NOC for the transfer of that flat would not be possible. It was stated that a conspiracy was reflected in the matter in view of the wrong doings of the former Secretary Smt. Sushila Saraswat, the details of which were mentioned in that letter.

14. The Cooperative Officer (Housing) submitted an inquiry report dated 20.4.2024, which appears on page 123 of the original record, in which it was alleged that there was non-cooperation by

the Committee of Management of the Society which was giving inappropriate response. It was also stated in that report that the relatives of Smt. Kunta Devi are constantly demanding that the Inquiry Officer should get a 'No objection Certificate' (from the Society) immediately, whereas the entire proceeding with regard to the membership has to be done at the level of the Committee of Management of the Society. At the level of the Inquiry Officer, no action could be taken till a proper resolution is not passed by the Committee of Management of the Society. It was stated in that report by the Inquiry Officer that both the parties were inappropriately pressurising him because of which his position has become very paradoxical. It was stated that for a proper inquiry, a committee be constituted. He recommended an inspection under Section 66 of the Act, 1965 so that the records of the Society could be inspected and the role of the Committee of Management could be properly investigated.

15. In another complaint letter dated 29.4.2024, which is on page 128 of the original record, Smt. Kunta Devi, the respondent no.4, apart from reiterating her previous complaint, also sought to give evidence in support of her claim and alleged that the Society is going to usurp her flat. In this letter, it was urged that steps be taken against the Committee of Management of the Society under Section 70 of the Act, 1965.

16. With reference to the inquiry report dated 20.4.2024, the respondent no.2 issued two letters dated 30.4.2024. One letter bears letter No.408/sah./30.4.2024 (on page 124 of the original record). In this letter, in exercise of powers under Section 66, Shri Anand Kumar Mishra, Assistant Housing Commissioner/Assistant Registrar and Shri Arimardan Singh Gaur, Cooperative Officer

were nominated and directed to **undertake a detailed inspection and submit an inspection report within 15 days.**

There is also a letter dated 30.4.2024 bearing No.404/sah./30.4.2024 (appearing on page 126 of the original record) written by the respondent no.2 and addressed to Shri Anand Kumar Mishra, Assistant Housing Commissioner/Assistant Registrar and Shri Arimardan Singh Gaur, Cooperative Officer (Housing) directing them **to submit an inquiry report within seven days.** This letter refers to a complaint letter dated 2.4.2024 received from Smt. Kunta Devi against the petitioner-Society on which an order dated 4.4.2024 was passed directing the Cooperative Officer (Housing) aforesaid, to submit an inquiry report and that he, in turn, submitted an inquiry report dated 21.4.2024 (*sic*).

The respondent no.2 further wrote in that letter of 30.4.2024 that on the same subject, another complaint dated 5.4.2024 was received by the office and, therefore, seeing the seriousness of the matter, the photocopies of the aforesaid complaint letters were being enclosed with direction that **the facts reflected in the complaint be examined from the records of the Society and an inquiry report be submitted within seven days.**

17. Another letter is in the original record at page 129 bearing No. 477/Sah./ dated 1.5.2024 issued by respondent no.2 addressed to the aforesaid two members of the Inquiry Committee alongwith the aforesaid letter dated 29.4.2024 (page 124 of original record) moved by Smt. Kunta Devi. It was directed that the matter be inquired **and an inquiry report be submitted within 7 days.**

18. A letter dated 3.5.2024 (page 132 of the original record) was

sent by the petitioners to the respondent No. 2 which appears to have been received by him on 8.5.2024. It was stated in this letter that the flat in dispute belonged to the former Chairman of the Society till the year 2017, whose membership number is 22, but instead of transfer being made by him, a registered deed was executed in favour of Smt. Kunta Devi by the Society in September 2017. It was stated that Smt. Kunta Devi became a member of the Society in July 2012, but she has been making payments of the flat since the year 2005. It was further stated that in her undated application for membership of the Society, her annual income was reflected as NIL. It was stated that the allotment and possession letters are both without any dates. It was stated that despite bringing it to the notice of the Housing Commissioner as well as to the respondent No. 2, the charge of the records of the Society was not given to the existing Committee of Management. Therefore, the Society is not able to verify any statement. It was stated that if any payment had been made by way of any cheque or draft or online, the same could have been verified from the bank account statement of Smt. Kunta Devi. However, whether the sale consideration of the flat has been deposited in the bank account of the Society is suspect. It was, therefore, urged that pursuant to the letter of the Respondent No. 2 bearing no. 477/sah./dated 1.5.2024, the proceedings be expedited, or in view of the request made by Smt. Kunta Devi in her letter dated 29.4.2024, an Arbitrator be appointed under Section 70 of the Act, 1965.

On page 133 of the original record is another letter of the same date, i.e., 3.5.2024 written by the petitioners to the Respondent No. 2 with reference to his aforesaid letter no.477/sah./dated 1.5.2024. It was stated that pursuant to the previous letter dated 30.4.2024, Shri Anand Kumar Mishra had asked separate

reports from the Society and from Smt. Kunta Devi on five points. On the next day, the respondent No. 2 constituted a two-member Inquiry Committee to conduct an inquiry in respect of the complaint letter, whereas Smt. Kunta Devi had requested for action under Section 70 of the Act. It was requested that the request made by Smt. Kunta Devi should not be ignored and orders be passed for which the Committee of Management has no objection. It was stated that in the proceedings under Section 70, the examination of the five points asked by the Assistant Registrar as well as the decision shall be forthcoming.

19. On page 143 of the original record is a letter dated 4.5.2024 sent by the petitioners to Smt. Sushila Saraswat (the former Secretary of the Society) with copies endorsed (i) to the respondent no.2, (ii) to Shri Arimardan Singh Gaur, and, (iii) to Smt. Kunta Devi, in which it was stated that the receipts of payments with regard to the disputed flat as verified by her were received by the Cooperative Officers (Housing) in which she had written that the amount has been received by the Society, even though no such endorsement was necessary; that the receipts were issued by her under her signature; but **since all the payments had been made in cash, therefore, proof of her having deposited the cash in the relevant bank account of the Society is required;** that since the charge of crucial records had not been given, therefore, **there is no verification of the amount of Rs.26,62,110/- having been actually deposited in the bank account;** that since the matter related to the term of of Smt. Sushila Saraswat, therefore, it was required to be certified by her so that an NOC can be expeditiously issued to Smt. Kunta Devi. She was, therefore, asked to verify the deposits by giving a certificate, the format of which was enclosed with that letter.

However, soon thereafter by a letter dated 10.5.2024 (page 145 of the original record), a complaint purportedly signed by 12 other flat owners was sent to the Principal Secretary in the office of the Commissioner and Registrar Cooperatives, leveling serious allegations against the petitioners. A copy of this letter was received in the office of the respondent No. 2 on 17.5.2024.

By the letter bearing letter No. 766/Sah./ dated 17.5.2024 (page No. 146 of the original record), the respondent No. 2 referred to the inspection directed to be made under Section 66 and asked the two-member Inquiry Committee to include the facts mentioned in the complaint letter dated 10.5.2024 in their inspection under Section 66 and to submit their inspection report in the office as early as possible.

20. On page 214 of the original record is a letter dated 15.5.2024 of the petitioners received by the respondent No.2 on 24.5.2024, reiterating their previous stand. However, thereafter by means of a letter dated **29.5.2024** (page 218 of the original record) the aforesaid two-member Inquiry Committee comprising Shri Arimardan Singh Gaur and Shri Anand Kumar Mishra, **submitted an Inquiry Report** that is stated to be in response to the letter no.404/sah./dated 30.4.2024 and letter No.477/sah./dated 1.5.2024. Since this inquiry report is a relevant document for consideration of this case, it is quoted hereinbelow in its entirety :-

"पत्र सं०- 155/सह०/2024-25 गाजियाबाद/
2024
सेवा में,

दिनांक- 29-05-

अपर आवास आयुक्त/ अपर निबन्धक,
उ०प्र० आवास एवं विकास परिषद्,
लखनऊ

महोदय,

कृपया अपने कार्यालय पत्रांक-404/सह०/ दिनांक-30.04.2024 एवं पत्रांक-477/सह०/ दिनांक-01.05.2024 का संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से गृहलक्ष्मी सहकारी आवास समिति लि०, ग्रेटर नोएडा, गौतमबुद्धनगर की सदस्या

श्रीमती कुन्ता देवी के द्वारा की गयी शिकायत के सम्बन्ध में अधोहस्ताक्षरीद्वय को जांच अधिकारी नियुक्त करते हुए सात दिवस के अन्दर जांच आख्या उपलब्ध कराने विषयक निर्देश दिये गये हैं। उल्लेखनीय है कि प्रश्नगत प्रकरण में श्रीमती कुन्ता देवी के द्वारा गृहलक्ष्मी सहकारी आवास समिति लि०. गौतमबुद्धनगर के सचिव एवं अध्यक्ष के द्वारा उनके फ्लैट को हड़पने का प्रयास करने एवं अनापत्ति प्रमाणपत्र निर्गत न करने विषयक शिकायत की गयी है।

उपरोक्तानुक्रम में अवगत कराना है कि शिकायतकर्ता श्रीमती कुन्ता देवी के द्वारा अपने शिकायती पत्र के साथ संलग्न अभिलेखों के माध्यम से अवगत कराया गया है कि वे प्रश्नगत समिति के फ्लैट संख्या-एच-207 की रजिस्ट्रीशुदा मालकिन हैं और तत्कालीन सचिव के स्तर से उन्हें यथापेक्षित शेयर सर्टिफिकेट, आवंटन पत्र एवं कब्जा पत्र आदि सम्यक रूप से तत्समय ही निर्गत किये गये थे और वर्तमान में भी शिकायतकर्ता श्रीमती कुन्ता देवी उक्त फ्लैट की कब्जेदार हैं। अग्रेतर अवगत कराना है कि शिकायतकर्ता द्वारा विभिन्न स्तरों पर की गयी शिकायतों के माध्यम से अवगत कराया गया है कि गृहलक्ष्मी सहकारी आवास समिति लि०, गौतमबुद्धनगर के पदाधिकारीगण द्वारा जानबूझकर उनके फ्लैट को हड़पने की नीयत से उन्हें परेशान किया जा रहा है और उन्हें प्रश्नगत फ्लैट को विक्रय करने की अनुमति प्रदान नहीं की जा रही है। अग्रेतर शिकायतकर्ता द्वारा अपने शिकायती पत्रों में यह उल्लेख किया गया है कि समिति प्रबन्धन द्वारा हर बार उनके फ्लैट ट्रांसफर के सम्बन्ध में बदल-बदल कर तर्क दिये जाते हैं कभी शिकायतकर्ता के हस्ताक्षर मेल न खाने, कभी शिकायतकर्ता की सदस्यता संख्या किसी और के नाम होने, कभी शिकायतकर्ता का फ्लैट संख्या-एच-207 किसी और के नाम होने, कभी बिजली का बिल और मेट्रीनेन्स की रसीद किसी और के नाम होने कभी धनराशि जमा नहीं होने, कभी समिति में जमा की गयी धनराशि समिति के बैंक खाते में जमा नहीं होने आदि की बातें कहकर फ्लैट विक्रय की अनुमति प्रदान नहीं की जा रही है। शिकायतकर्ता द्वारा अपने प्रार्थनापत्रों में यह भी उल्लेख किया गया है कि उनकी उम्र लगभग 85 वर्ष है और समिति प्रबन्धन द्वारा इन तकनीकी बिन्दुओं में उलझा कर उन्हें मानसिक रूप से प्रताड़ित किया जा रहा है।

उक्त के सम्बन्ध में जांचोपरान्त अवगत कराना है कि श्रीमती कुन्ता देवी को आवंटित फ्लैट संख्या-एच-207 को समिति की ओर से समिति के प्रतिनिधि श्री सुनील कुमार पुत्र श्री रमेश सिंह के द्वारा दिनांक-25.09.2017 को शिकायतकर्ता के पक्ष में रजिस्टर्ड डीड निष्पादित की गयी थी। जांच दौरान यह प्रकाश में आया कि समिति प्रबन्धन द्वारा काफी अरसे से भिन्न-भिन्न कारणों से उनके फ्लैट के अन्तरण विषयक अनुरोध पर आपत्ति लगाकर फ्लैट अन्तरण की अनुमति प्रदान नहीं की जा रही है। उक्त के सम्बन्ध में जांच दौरान समिति स्तर से अवगत कराया गया कि श्रीमती कुन्ता देवी के फ्लैट आवंटन में कतिपय विसंगतियां हैं यथा श्रीमती कुन्ता देवी को आवंटित मेम्बरशिप नम्बर किसी और को भी आवंटित रही है। इसी प्रकार श्रीमती कुन्ता देवी द्वारा अपने फ्लैट के एवज में किये गये भुगतान की जो रसीदें बतौर साक्ष्य प्रस्तुत की गयी हैं, उन रसीदों से संगत धनराशि के समिति के खाते में जमा होने के प्रमाण उपलब्ध नहीं हैं। उल्लेखनीय है कि श्रीमती कुन्ता देवी द्वारा प्रस्तुत भुगतान के सम्बन्ध में रसीदों/साक्ष्यों का विवरण निम्नवत् है-

S.r. No.	Book /Receipt	Mode	Date	Rupees	Progressive
1.	3/448	Cash	01-09-2005	0,19,110	0,19,110
2.	6/754	Cash	31-05-2005	2,00,000	2,19,110
3.	6/772	Cash	07-08-2005	1,82,000	3,01,110
4.	4/518	Cash	29-06-2006	2,80,000	5,81,110
5.	5/639	Cash	23-03-2007	2,00,000	7,81,110
6.	5/669	Cash	23-03-2007	0,40,000	8,21,110

7.	6/715	Cash	27-10-2007	0,20,000	8,41,110
8.	5/699	Cash	27-11-2007	0,10,000	8,51,110
9.	6/701	Cash	05-12-2007	0,80,000	9,31,110
10.	6/722	Cash	29-01-2008	2,00,000	11,31,110
11.	6/727	Cash	12-02-2008	0,30,000	11,61,110
12.	6/743	Cash	12-05-2008	1,99,000	13,60,110
13.	6/772	Cash	07-08-2008	102,000	14,62,110
14.	6/779	Cash	28-08-2008	0,80,000	15,42,110
15.	7/801	Cash	10-12-2008	2,00,000	17,42,110
16.	7/811	Cash	07-01-2009	0,70,000	18,12,110
17.	7/882	Cash	07-02-2009	0,50,000	18,62,110
18.	7/862	Cash	25-03-2009	1,00,000	19,62,110
19.	1789	Cash	07-12-2013	1,00,000	20,62,110
20.	1886	Cash	03-03-2014	1,00,000	21,62,110
21.	1894	Cash	24-03-2014	1,00,000	22,62,110
22.	2102	Cash	03-03-2015	2,00,000	24,62,110
23.	2110	Cash	12-03-2015	2,00,000	26,62,110

शिकायकर्ता श्रीमती कुन्ता देवी द्वारा प्रस्तुत की गयी रसीदों के सम्बन्ध में समिति स्तर से आपत्ति किये जाने पर समिति की तत्कालीन सचिव श्रीमती सुशीला सारस्वत के द्वारा उक्त रसीदों में यह अभियुक्त अंकित की गयी कि प्रशगत धनराशि समिति को प्राप्त हुई है। उक्त तथ्य से यह स्पष्ट है कि श्रीमती कुन्ता देवी द्वारा उक्त फ्लैट के लिये सम्यक भुगतान किया गया। यदि तत्कालीन सचिव के द्वारा उक्त फ्लैट के लिये सम्यक भुगतान किया गया। यदि तत्कालीन सचिव के द्वारा उक्त फ्लैट के एवज में प्राप्त की गयी धनराशि का दुर्विनियोग किया गया है तो उसके लिए सम्बन्धित सचिव एवं तत्कालीन प्रबन्ध कमेटी उत्तरदायी है। शिकायतकर्ता श्रीमती कुन्ता देवी के द्वारा अपने पत्रों में बार-बार यह उल्लेख किया गया है कि उनके द्वारा समिति में विधिवत् धनराशि जमा कर उक्त फ्लैट प्राप्त किया गया है और यदि तत्कालीन सचिव अथवा प्रबन्ध कमेटी के द्वारा उक्त फ्लैट के आवंटन में कोई अनियमितता की गयी है अथवा संगत अभिलेखों में कोई विसंगति है तो उसके लिए तत्कालीन प्रबन्धन और समिति सचिव उत्तरदायी हैं। वर्तमान प्रबन्ध कमेटी को उनके विरुद्ध यथोचित कानूनी कार्यवाही करनी चाहिये किन्तु वर्तमान प्रबन्ध कमेटी अनुचित रूप से उनके फ्लैट हस्तांतरण में बाधा उत्पन्न कर रही है।

उक्त के विश्लेषण से यह तथ्य प्रकाश में आया है कि समिति के पूर्व पदाधिकारियों द्वारा समिति अभिलेखों का सम्यक रख-रखाव नहीं किया गया है और न ही वर्तमान प्रबन्ध कमेटी को समिति अभिलेखों का चार्ज ही हस्तांतरित किया गया है। जिस कारण से वर्तमान सचिव/प्रबन्ध कमेटी के द्वारा प्रशगत फ्लैट के अन्तरण में बार-बार पृच्छा की जा रही है। वर्तमान कमेटी को उक्त तथ्यों का संज्ञान रखते हुए उनके प्रार्थना पत्र पर विचार किया जाना चाहिये था किन्तु समिति सचिव एवं समिति अध्यक्ष के द्वारा असंगत प्रसंगों का उल्लेख करके श्रीमती कुन्ता देवी को अनापत्ति प्रमाण पत्र निर्गत नहीं किये जाने को सही साबित करने का प्रयास किया जा रहा है जो आपत्तिजनक है। समिति प्रबन्धन द्वारा समिति के अत्यंत वृद्ध सदस्य को नाहक परेशान किया जाना मानवीय गरिमा के भी प्रतिकूल है। यदि समिति के पूर्व पदाधिकारियों के द्वारा उक्त फ्लैट के आवंटन आदि में कोई अनियमितता की गयी है अथवा समिति को कोई क्षति पहुँचायी गयी है तो वर्तमान प्रबन्ध कमेटी से यह अपेक्षित था कि वह सम्बन्धित के विरुद्ध यथोचित विधिक कार्यवाही अमल में लाते हुये न्यायोचित कार्यवाही की जाती, किन्तु पूर्व प्रबन्ध कमेटी के किसी कृत्य के लिए किसी

सदस्य को प्रताणित किया जाना उचित प्रतीत नहीं होता है। यदि वर्तमान प्रबन्ध कमेटी को शिकायतकर्ता श्रीमती कुन्ता देवी के प्रत्यावेदन से किंचित असहमति थी तो प्रश्नगत प्रकरण के सम्बन्ध में उ०प्र० सहकारी समिति अधिनियम-1965 की धारा-70 के अन्तर्गत मध्यस्थवाद योजित कर प्रकरण को निस्तारित किया जा सकता था, किन्तु समिति प्रबन्धन द्वारा वृद्ध सदस्या को अनापत्ति प्रमाण पत्र निर्गत किये जाने के विषय पर उत्पीड़न किया गया है।

उक्त के अतिरिक्त समिति के कतिपय अन्य सदस्यों के द्वारा वर्तमान प्रबन्ध कमेटी के विरुद्ध गम्भीर शिकायतें की गयी हैं, जिसमें मुख्य रूप से नियम विरुद्ध ढंग से ए०ओ०ए० का संचालन किया जाना, समिति के कूड़ेदान को समिति के बेसमेन्ट में रखकर समिति सदस्यों को परेशान करने एवं उनके स्वास्थ्य को क्षति पहुंचाने, रेन वाटर हार्वेस्टिंग के स्थल पर मदर डेयरी की दुकान का निर्माण कराकर उसे अत्यल्प किराए पर देकर समिति को क्षति पहुंचाने एवं रेनवाटर हार्वेस्टिंग को बाधित करने, समिति के कुछ बकाएदारों को बगैर बकाया धनराशि का भुगतान प्राप्त किये अनापत्ति पत्र निर्गत करते हुए समिति को आर्थिक क्षति पहुंचाने, मनमाने ढंग से समिति के मेन्टीनेन्स चार्ज में 50 प्रतिशत की वृद्धि कर देने, समिति सदस्यों से प्रति फ्लैट 50000 रु० की अतिरिक्त धनराशि वसूल करने, समिति की पार्किंग को अनुचित रूप से विक्रय करने तथा ग्रेटर नोएडा अथॉरिटी से स्वीकृत पार्किंग के नक्शे को मनमाने ढंग से तब्दील करने एवं समिति की जनरल बॉडी की मीटिंग नहीं आहूत करने विषयक तमाम शिकायतें की गयी हैं, जो अत्यंत गम्भीर हैं।

उक्त तथ्यों के आलोक में यह स्पष्ट परिलक्षित हो रहा है कि समिति के सचिव एवं समिति अध्यक्ष के द्वारा स्वेच्छाचारी ढंग से कार्य करते हुए समिति एवं समिति सदस्यों के हितों को गम्भीर क्षति पहुंचायी जा रही है। अतः उक्त दोनों व्यक्तियों के विरुद्ध उ०प्र० सहकारी समिति अधिनियम -1965 की धारा-38 के अन्तर्गत कार्यवाही किये जाने की संस्तुति की जाती है।

संलग्नक- यथोक्त।

ह० अप०

(अरिमर्दन सिंह गौर)

सहकारी अधिकारी (आवास)
गाजियाबाद।

ह० अप०

(आनन्द कुमार मिश्रा)

सहायक आयुक्त / सहायक निबन्धक
मुख्यालय, लखनऊ।"

21. As is evident from the aforesaid inquiry report that barring the short narrative of allegations in the penultimate paragraph, the entire discussion is with regard to the dispute between Smt. Kunta Devi and the petitioner Society. It has been stated therein that if there was any irregularity with regard to the allotment of the flat by the former office bearers or if any loss has been caused to the Society, then it was required for the present Committee of Management to initiate appropriate legal proceedings separately but for the actions of the former Committee of Management, a member of the Society ought not to be harassed. It was then mentioned that if the present Committee of Management had any dispute with the

representation of Smt. Kunta Devi then proceedings under sections 70 of the Act 1965 ought to have been filed which should have resolved the matter, but the management of the Society is harassing an aged member on the subject of issuance of 'No Objection Certificate'.

Only in the penultimate paragraph, there is an encapsulation of the allegations made in the aforesaid letter dated 10.5.2024 allegedly sent by certain members of the Society to the Principal Secretary/Housing Commissioner. Thereafter, abruptly it is noted that in light of the aforesaid facts it is clearly evident that Secretary and Chairman of the Society have seriously damaged the interest of the Society and its members. Therefore, against both the aforesaid officers of the Society, proceeding under Section 38 of the Act, 1965 was recommended to be taken.

22. It is pertinent to mention here that in the inquiry report dated 29.5.2024, there is no mention whatsoever of the letter no.408/Sah./dated 30.4.2024 issued by the respondent no.2 asking the two member Inquiry Committee to conduct an inspection under Section 66 of the Act, 1965 nor is there any reference to the letter no.766/Sah./dated 17.5.2024 asking the two member Inquiry Committee to undertake an inspection under section 66 of the Act, 1965 with regard to the matters including the complaint letter dated 10.5.2024. A perusal of the Inquiry Report dated 29.05.2024 reflects that it is one-sided and without taking into account the serious objections and observations made by the petitioners for not granting the NOC in favour of Smt. Kunta Devi for transfer of the disputed flat.

23. Thereafter, on the very next day, by means of a letter no.913/

Sah./dated 30.5.2024, the impugned order was passed directing the Committee of Management under the provisions of sub-section (1) of Section 38 of the Act, 1965 to remove the Secretary and the Chairman from their posts within one month under information to the office of the respondent no.2. It is pertinent to mention here that even in this order, there is no reference to the office letter no.408/Sah./dated 30.4.2024 directing the two member Inquiry Committee to conduct an inspection under Section 66 of the Act, 1965 nor is there any reference to the letter no.766/Sah./dated 17.5.2024 issued by the respondent no. 2 to the two member Inquiry Committee regarding the inspection under Section 66 bringing to their notice the complaint letter dated 10.5.2024. A perusal of the impugned order of 30.5.2024 reflects that it is based on surmises and conjectures. However, the same shall be elaborated later.

24. By a letter dated 7.6.2024 that appears on page 290 of the original record, the petitioners acknowledged receipts of the impugned order dated 30.5 2024 but demanded copy of the inquiry report dated 29.5.2024.

25. On page no.293 of the original record is summon/notice dated 4.5.2024 (*sic*) pertaining to Case No.3/2024-2025 issued vide letter no. 91/P.A./A.Ni (vikas), Lucknow dated May 4, 2024 (*sic*) with copies address to the petitioners as well as Smt. Kunta Devi which is in respect of arbitration proceedings initiated by Smt. Kunta Devi against the petitioner Society. In the summon/notice, it is written that the Commissioner and Registrar (Cooperative) has appointed its signatory, Manoj Kumar, as Arbitrator by his letter dated 27.5.2024. In this notice, the date fixed was 25.6.2024.

Evidently, the date of issuance of the aforesaid summon/

notice is discordant with the date of appointment of Arbitrator.

26. On page 295 (as well as page 302) of the original record is letter dated 24.6.2024 of the petitioners to the Housing Commissioner/Registrar complaining that the order dated 30.5.2024 was passed by the respondent no.2 but till date, neither the inquiry report nor any evidence has been made available to them. Details of the work done by the Society were reflected in the letter. It was also mentioned in that letter that the complainant had initiated arbitration proceedings in which an Arbitrator was appointed on 27.5.2024 and, therefore, the inquiry report being filed on 29.5.2024 and on the very next date, i.e., 30.5.2024, the order being passed directing the Society to remove the Chairman and the Secretary, and service of that order on the very next day, i.e., 31.5.2024 through WhatsApp, was not called for. It was stated that on one disputed issue, proceedings in two forums cannot be taken. It was, therefore, requested that the order dated 30.5.2024 be reconsidered and the matter be kept in abeyance till the decision of the Arbitrator. It was stated that in the arbitration proceedings whatever be the decision of the Arbitrator, the Committee of Management would proceed according to that.

In the copy of the aforesaid letter dated 24.06.2024 appearing on page 302, the Housing Commissioner on 28.06.2024 ordered the respondent no.2 to take necessary action after conducting an inquiry and submit the same with the record within ten days.

27. By a letter no.1298/Sah./dated 2.7.2024 (page 303 of the original record), the respondent no.2 wrote a letter to Shri Arimardan Singh Gaur, the Cooperative Officer (Housing) with reference to the letter of the petitioners dated 24.6.2024 directing to inquire into the facts and to submit a report along with the relevant

proof/documents within 7 days.

28. However, by the impugned order issued vide letter no.1333/Sah./dated 4.7.2024 (page 305 of the original record), the respondent no.2 exercising powers under of Section 38 of the Act, 1965 directed the Secretary and the Chairman of the Society to appear on 19.7.2024 before him along with evidence. It is pertinent to mention here that even in this order, there is no reference to the proceedings ordered under Section 66 of the Act, 1965 by means of the letter no.408/Sah./dated 30.4.2024.

29. On page 310 of the original record is the letter dated 4.7.2024 sent by the petitioner no.2 to the respondent no.2 with reference to the order no.1333/Sah./dated 4.7.2024 under section 38(2) of the Act, 1965. It is stated in this letter that the inquiry report dated 29.5.2024 has not been provided on the basis of which the petitioners were charged. It was stated that during the inquiry proceedings, one of the inquiry committee member, Shri Anand Kumar Mishra, vide letter no.416 dated 30.4.2024 had asked information from the complaint Smt. Kunta Devi on 5 points which was imperative for verifying her ownership over Flat No. H-207. Accordingly, the information submitted by Smt. Kunta Devi alongwith a certified copy of the inquiry dated 29.5.2024 and other evidence, if any, on the basis of which the petitioners have been charged, be furnished at the earliest so that a response could be submitted. It was further stated in this letter of the petitioner dated 4.7.2024 that with regard to the order dated 30.5.2024 under Section 38(1), documents have been asked for under the provisions of the Right to Information Act but till now no information/document has been provided. It was alleged that the principles of natural justice were being violated and matters were

being deliberately concealed.

30. However, on page 311 of the original record is an order issued by the respondent no. 2 bearing letter no.1513/Sah./Ghaziabad dated 16.7.2024 with reference to the office order no.408/Sah./dated 30.4.2024 with regard to the inspection being conducted under the provisions of Section 66 of the Act, 1965 stating that Shri Anand Kumar Mishra, Assistant Housing Commissioner has been reverted to his original department and, under the circumstances, the order no.408/Sah./dated 30.4.2024 is required to be amended. It is further mentioned that in the meanwhile, a complaint of Shri Sharad Chandra Agarwal and others has been received by a letter dated 10.5.2024 reflecting the irregularities by the management of the concerned Society; that therefore, the office order no.408/sah./dated 30.4.2024 was being partly amended and in place of Shri Anand Kumar Mishra, Shri Raj Kumar, Assistant Housing Commissioner/Assistant Registrar was nominated as Inquiry Officer, who was directed to include the complaint letter in the inspection under Section 66 and, after undertaking a detailed inspection, to submit an inspection report along with proof.

31. It is evident from the record that earlier, the single member Inquiry Committee had submitted a report vide letter no.29/Sah./Ghaziabad dated 20.4.2024 in which he had stated that he was being inappropriately pressurized by both the sides and he had recommended an inspection under Section 66 of the Act, 1965 so that the records of the Society could be inspected and the role of the Committee of Management could be properly investigated. However, as noted above, the two orders, both dated 30.4.2024, were issued vide letter nos.404/sah. and 408/sah. directing the two

member Inquiry Committee to conduct an inquiry within 7 days, as well as directing the same two member Inquiry Committee to conduct an inspection under Section 66 of the Act, 1965, respectively. There is also a letter bearing no.766/sah./dated 17.5.2024 issued by the respondent no. 2 to the two member Inquiry Committee enclosing the complaint letter dated 10.5.2024 directing that the same be included in the inspection under Section 66, and to submit a report expeditiously.

However, as noted above, neither in the inquiry report dated 29.5.2024 submitted by the two member Inquiry Committee nor in the impugned orders dated 30.5.2024 and 4.7.2024 passed by the respondent no. 2, is there any reference of the office letter no.408/Sah./dated 30.4.2024. The contents of the complaint letter dated 10.5.2024 find encapsulated in the inquiry report dated 29.5.2024 without it being stated whether any inspection of the records of the Society was conducted by the two member Inquiry Committee. It is pertinent to mention here that the report dated 20.4.2024 sent by Shri Arimardan Singh Gaur, Cooperative Officer (Housing) to the respondent no.2 bears letter no.29/sah./Ghaziabad dated 20.4.2024. However, in the letter/order issued by respondent no.2 being letter no. 404/sah./dated 30.4.2024, the date of the inquiry report is stated to be 21.4.2024, while in the office order issued by the respondent no.2 vide letter no.408/sah./dated 30.4.2024, the inquiry report of Shri Arimardan Singh Gaur is stated to bear letter no.20/sah./Ghaziabad dated 20.4.2024. Therefore, references to the same letter/inquiry report of Shri Arimardan Singh Gaur dated 20.4.2024 appearing differently in the two letters/orders issued by the respondent no.2 on the same day, i.e., 30.4.2024, may require explanation from the respondent no.2. The matter is confounded by the fact that the page numbering on

the file in which the aforesaid letter/inquiry report dated 20.4.2024 appears, page no.119 has been struck off and instead page no. 123 has been mentioned. As a matter of fact, the page numbering in the original record is altered by correction on several pages.

32. Be that as it may, in the writ petition, which was submitted for reporting before the Stamp Reporter on 19.7.2024 and presented on 24.7.2024 after removal of defects raised by the Stamp Reporter, in paragraph 20, it has been stated that the alleged (inquiry) report dated 29.5.2024 has not been supplied to the petitioners.

33. The order impugned dated 30.5.2024 is vague and only reference has been made to the inquiry report dated 29.5.2024 without any discussion by the respondent no.2 that could reflect due application of mind to form an 'opinion' that the Secretary and the Chairman of the Society were acting fraudulently and causing serious damage to the interest of the Society and its members. Further, there appear to be no materials other than the report of the Inquiry Committee dated 29.05.2024 which Inquiry report reflects merely a dispute between the petitioners and Smt. Kunta Devi. Certain allegations made in a letter dated 10.05.2024 are merely narrated in the Inquiry report without any examination, inquiry or inspection thereon. The inspection under Section 66 of the Act, 1965 that was allegedly ordered by the respondent no.2 was never undertaken by the Inquiry Committee prior to submitting its report dated 29.05.2024. Moreover, in the original record there is evidence of arbitration proceedings initiated by Smt. Kunta Devi against the petitioners under Section 70/71 of the Act, 1965 in respect of the same dispute which was raised by Smt. Kunta Devi and in which an arbitrator was appointed by the Commissioner and Registrar, Cooperatives by his order dated 27.05.2024, which was

in the knowledge of the respondent no.2.

34. The authority of a Registrar under the provisions of the Act, 1965 are wide ranging but given the extent of autonomy conceived by the Act, 1965 to a Cooperative Society and its management, the regulation and intervention of the State are circumscribed by various provisions in the Act, 1965.

35. A Full Bench of this Court in the case of **Smt. Vandana Varma & Ors. vs. State of U.P. & Ors.**⁴ stressed upon the fact that provisions of U.P. Act, 1965 are to be read in a manner so as to give more autonomy and independence to a Co-operative Society and its management, instead of intruding administrative control of administrative officer i.e. Registrar, even if not specifically provided, as it will impinge upon the concept of independent democratic autonomy of Co-operative Society. Only to the extent law specifically provides, attempt while making interpretation, should be towards autonomy and independence of Society and its management, than, bringing in, the element of control by Executive/Administrative Officers.

36. At this stage, it is pertinent to refer to certain provisions of the Act, 1965. Section 38 comes under Chapter IV which chapter deals with 'Management of Societies'. Under this chapter fall sections 28 to 38. Section 28 provides that the final authority of a Co-operative Society shall vest in the general body of its members in general meeting, subject to the provisions of the Act and the Rules. Section 29 provides the vesting of the management of every Cooperative Society in a duly constituted Committee of Management, the term of the Committee of Management, its election, appointment of interim Management Committee, ceasing

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of the existence of the Management Committee after expiry of its term, filling up casual vacancies etc.. Section 29-A enumerates special provisions for Primary Agricultural Co-operative Credit Societies, Central Co-operative Banks and Apex Bank. Section 30 provides for election, nomination or appointment of a Chairman and Vice-Chairman of every Cooperative Society and their responsibilities. Section 30-A deals with motion of no confidence against the Chairman or Vice-Chairman. Section 31 details the appointment and removal of a Secretary of every Cooperative Society, his emoluments and functions. Section 31-A is in relation to Apex Society and provides for appointment of Managing Director instead of Secretary and the duties and responsibilities of the Managing Director. Section 32 deals with holding of an Annual General Meeting, while Section 33 provides for holding of other General Meeting. Section 34 provide for nominees of the State Government on the Committee of Management of certain Cooperative Societies. Section 35 deals with supersession or suspension of Committee of Management. Section 35-A provides for circumstances under which the Chairman and members of the Committee of Management are mandated to vacate their respective offices. Section 36 contains provisions for securing possession of record etc. where the outgoing member of the Committee of Management which is suspended or superseded under Section 35 or where the Society is ordered to be wound up under Section 72 and the outgoing members of the Committee of management fail to hand over charge of the records and properties of the Society. Section 37 empowers the Registrar to issue an order directing seizure and taking possession of books, records, funds and property of the Society on his satisfaction that they are likely to be tampered with or misappropriated or misapplied.

37. Section 38, in purported exercise of which the impugned orders have been passed by the respondent no.2, reads as follows:-

“38. Removal of an officer of a co-operative society- (1)

If in the opinion of the Registrar, any officer of a co-operative society has contravened or omitted to comply with, any provisions of this Act, the rules or the bye-laws of the society, or has forfeited his right to hold office, the Registrar may, without prejudice to any other action that may or can be taken against him, call upon the society to remove, within a specified period, such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity of being heard to the officer concerned, pass such orders as it may deem fit.

Provided that on the request of the Reserve Bank of India, the competent authority shall remove a Director or the Secretary/Chief Executive Officer of a Central Co-operative Bank or the Uttar Pradesh Co-operative Bank, who do not fulfill the criteria stipulated by the Reserve Bank of India after giving him an opportunity of being heard.

(2) On the failure of the society to take action under sub-section (1), the Registrar may, after according opportunity of being heard to the officer and for reasons to be recorded and communicated to the person and the society concerned, remove, or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society.

(3) An officer removed under sub-section (1) or sub-section (2) shall, with effect from the date of communication of the order, cease to hold that office and, if disqualified, shall not be eligible to hold any office under that society for the period specified in the order.”

38. Sub-section (1) of Section 38 of the Act, 1965 gives wide ranging power to the Registrar to direct the Society to remove such officer from the office held by him and, where necessary, also to disqualify him from holding any office under that Society for a period not exceeding three years, in case the Registrar is of the opinion that any officer of a Co-operative Society has contravened

or omitted to comply with any provisions of the Act, 1965, the rules or the bye-laws of the Society, or has forfeited his right to hold office. Therefore, the discretion has to be exercised by the Registrar which is reflected in the word “may”, calling upon to Society to remove an officer from the office held by him where the Registrar is of such “opinion”. Thereupon, **the Society is mandated to pass such orders, as it may deem fit, after affording opportunity of being heard to the officer concerned.**

39. It is noted that under Section 38(1), the Society is not mandated to comply with the “call upon” of the Registrar for removal of the officer, but it may pass such orders, as it may deem fit, after affording opportunity of being heard to the officer concerned. This aspect of this provision preserves the discretion and democratic functioning and autonomy of the Society.

40. Under sub-section (1) of Section 38, the opinion of the Registrar is subjective. At this stage, he is not exercising a judicial function, but, at the same time he is directing an electorate to take a specific action against two officers of the Society one of which is the Chairman of the Committee of Management. The Chairman is duly elected. Any such direction of the Registrar has to be given its full play if such direction is within the scope of his powers and, in case there are relevant materials before him. However, if such discretion is exercised by the Registrar in an unreasonable or perverse fashion, without taking into consideration admitted facts, so as to leave no doubt in the mind of a court that discretion has been exercised arbitrarily without consideration of the materials before him and / or by relying on materials that reflect only bare allegations, then after considering other attendant facts, the court may interfere in the matter. Moreover, the court would not hesitate

to interfere where the mind of the Registrar has not been applied at all to what was necessary for him to consider.

41. In Narayan Govind Gavate v. State of Maharashtra, (1977) 1 SCC 133, the Supreme Court observed :-

“10. It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which courts do impose. That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider.”

42. In Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664, the observations of the Supreme Court are :-

“59. We find merit in this contention. It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, but, as was pointed out

by this Court in Barium Chemicals [Barium Chemicals v. Company Law Board, AIR 1967 SC 295 : 1966 Supp SCR 311 : 1966 Com Cas 639] , the existence of the circumstances from which the inferences constituting the opinion, as the sine qua non for action, are to be drawn, must be demonstrable, and the existence of such “circumstances”, if questioned, must be proved at least prima facie.

60. Section 18-AA(1)(a), in terms, requires that the satisfaction of the Government in regard to the existence of the circumstances or conditions precedent set out above, including the necessity of taking immediate action, must be based on evidence in the possession of the Government. If the satisfaction of the Government in regard to the existence of any of the conditions, (i) and (ii), is based on no evidence, or on irrelevant evidence or on an extraneous consideration, it will vitiate the order of “take-over”, and the court will be justified in quashing such an illegal order on judicial review in appropriate proceedings. Even where the statute conferring the discretionary power does not, in terms, regulate or hedge around the formation of the opinion by the statutory authority in regard to the existence of preliminary jurisdictional facts with express checks, the authority has to form that opinion reasonably like a reasonable person.

61. While spelling out by a construction of Section 18-AA(1)(a) the proposition that the opinion or satisfaction of the Government in regard to the necessity of taking immediate action could not be the subject of judicial review, the High Court (majority) relied on the analogy of Section 17 of the Land Acquisition Act, under which, according to them, the Government's opinion in regard to the existence of the urgency is not justiciable. This analogy holds good only up to a point. Just as under Section 18-AA of the IDR Act, in case of a genuine “immediacy” or imperative necessity of taking immediate action to prevent fall in production and consequent risk of imminent injury to paramount public interest, an order of “take-over” can be passed without prior, time-consuming investigation under Section 15 of the Act, under Section 17(1) and (4) of the Land Acquisition Act, also, the preliminary inquiry under Section 5-A can be dispensed with in case of an urgency. It is true that the grounds on which the Government's opinion as to the existence of the urgency can be challenged are not

unlimited, and the power conferred on the Government under Section 17(4) of that Act has been formulated in subjective terms; nevertheless, in cases, where an issue is raised, that the Government's opinion as to urgency has been formed in a manifestly arbitrary or perverse fashion without regard to patent, actual and undeniable facts, or that such opinion has been arrived at on the basis of irrelevant considerations or no material at all, or on materials so tenuous, flimsy, slender or dubious that no reasonable man could reasonably reach that conclusion, the court is entitled to examine the validity of the formation of that opinion by the Government in the context and to the extent of that issue.”

43. Formation of the opinion by the Registrar for exercising his discretion has to be done only along well recognized and sound juristic principles with a view to promoting fairness, induce transparency and aiding equity. [*Ref: Maya Devi vs. Raj Kumari Batra*⁵]

44. In the case of **Union of India vs. Raj Grow Impex LLP**⁶, the Supreme Court, after considering several of its decisions, observed as follows:-

“126. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

5 (2010) 9 SCC 486

6 (2021) 18 SCC 601

127. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.”

45. Therefore, the constitutional principles of non-arbitrariness, transparency and fairness, require that such solemn discretion is exercised by an administrative/statutory authority rationally and cautiously and is guided by law; it has to be according to the rules of reasons and justice; and has to be based on relevant considerations. The direction so made by such authority has to reflect due application of mind, having due regard to the fact that the Registrar seeks to call upon an electorate comprising of members of the Society to remove, and where necessary, disqualify the Chairman, who is an officer duly elected.

46. Section 66 of the Act, 1965 comes under Chapter VIII that deals with 'Audit, Inquiry, Inspection and Surcharge'. Under Chapter VIII, fall Sections 64 to 69. Section 65, 66, 68, and 69 which read as under:-

“65. Inquiry by Registrar.- (1) The Registrar may, of his own accord, himself, or by a person authorised by him by order in writing, hold an inquiry into the constitution, working and financial condition of a co-operative society.

(2) An inquiry of the nature referred to in sub-section (1) shall be held by the Registrar or by a person authorised by him in writing in this behalf on the application of-

(a) a co-operative society to which the society concerned is affiliated ;

(b) not less than one-third of the total members of the society ;

(c) a majority of the members of the Committee of Management of the society.

(3) The Registrar, or the person authorised by him under sub-section (1) shall, for the purposes of any inquiry under

this section, have the following powers, namely-

(a) he shall, at all times, have access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession of, or responsible for the custody of any such books, accounts, documents, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof ;

(b) he may summon any person who, he has reason to believe, has knowledge of any affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath ;

(c) he may, notwithstanding any rule or bye-law specifying the period of notice for a general meeting of the society require the officers of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him, and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself ; and

(d) he may in the manner and for the purpose mentioned in clause (c) require to be called or himself call, a meeting of the Committee of Management.

(4) Any meeting called under clause (c) or clause (d) of sub-section (3) shall have the powers of the general meeting or meeting of the Committee of Management, as the case may be, under the bye-laws of the society and its proceedings shall be regulated by such bye-laws.

(5) When an inquiry is made under this section, the Registrar shall communicate the result of the inquiry to the society and, in the case of inquiry on an application under clause (a) of sub-section (2), also to the applicant co-operative society.

66. Inspection books and property of a co-operative society.- (1) The Registrar may of his own motion, or on the application of a creditor of a co-operative society, inspect or direct any person authorised by him by order in writing in this behalf, to inspect books, cash and other property of the society :

Provided that no such inspection shall be made on

the application of a creditor unless the applicant satisfies the Registrar that a debt is still due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time.

(2) The Registrar shall communicate the results of any such inspection -

(a) where the inspection is made of his own motion, to the society; and

(b) where the inspection is made on the application of a creditor; to the creditor and the society.

.....

68. Surcharge.- (1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society it is found that any person, who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made or caused to be made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him by an order in writing in this behalf to inquire into the conduct of such person :

Provided that no such inquiry shall be commenced after the expiry of twelve years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after affording the person concerned a reasonable opportunity of being heard, make an order of surcharge requiring him to restore the property or repay the money or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such an extent as the Registrar may consider just and equitable.

(3) Where an order of surcharge has been passed against a person under sub-section (2) for having caused any deficiency in the assets of the society by breach of trust or wilful negligence, or for having misappropriated or fraudulently retained any money or other property belonging to such society, such person shall, subject to the result of appeal, if any, filed against such order, be disqualified from continuing in or being elected or

appointed to an office in any co-operative society for a period of five years from the date of the order of surcharge.

69. Registrar's power to order remedying of defects.- If as a result of audit held under section 64 or an inquiry under section 65, or an inspection under section 66, the Registrar is of opinion that the society is not working on sound lines, or its management is defective he may, without prejudice to any other action under this Act, make an order directing the society or its officers to take such action not inconsistent with this Act, the rules and the bye-laws as may be specified in the order to remedy the defects within the time specified therein."

47. Sections 70 and 71 fall under Chapter IX that deals with 'Settlement of Disputes', which read as follows:-

“70. Disputes which may be referred to arbitration.-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its Committee of Management or any officer, agent or employee of the society, including any past officer, agent or employee; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) between a co-operative society and any other co-operative society or societies,

such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute :

Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.

(2) For the purpose of sub-section (1), the following shall be deemed to be included in disputes relating to the constitution, management or the business of a co-operative society, namely-

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party ;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not;

(c) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent or employee, whether individually or collectively and whether such loss be admitted or not ; and

(d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

71. Reference of dispute to arbitration.- (1) On receipt of a reference under sub-section (1) of section 70, the Registrar may, subject to the provisions of the rules, if any-

(a) decide the dispute himself ; or

(b) refer it, for decision to an arbitrator appointed by him; or

(c) refer it, if the parties so request in writing, for decision to a board of arbitrators consisting of the three persons to be appointed in the prescribed

manner.

(2) The Registrar may, for reasons to be recorded withdraw any reference made under clause (b) or (c) of sub-section (1) and refer it to another arbitrator or board of arbitrators or decide it himself.

(3) The Registrar, the arbitrator or the board of arbitrators, to whom a dispute is referred for decision under this section may, pending the decision of the dispute make such interlocutory orders including attachment of property as he or they may deem necessary in the interest of justice.

(4) The decision given by the Registrar, the arbitrator or the Board of Arbitrators under this section shall hereinafter be termed as award.

(5) The procedure to be followed by the Registrar, the Arbitrator or the Board of Arbitrators in deciding a dispute and making an award under this section shall be as may be prescribed.”

48. Under the provisions of the Sections 65 and 66 of the Act, 1965, the Registrar has powers to hold an inquiry and inspection either himself or through any person authorised by him order in writing. However, the inquiry contemplated under Section 65 is required to be held only on the application of :-

- (a) a co-operative society to which the society concerned is affiliated;
- (b) not less than one-third of the total members of the society; and
- (c) a majority of the members of the Committee of Management of the society.

49. Section 66 of the Act, 1965 authorizes the Registrar, of his own motion or on the application of a creditor of the Cooperative Society, to inspect or direct any person authorized by him in writing in this behalf, to inspect books, cash and other properties of a Society. The Registrar is enjoined to communicate the results of any

such inspection to the Society where the inspection is made of his own motion.

50. Under Section 69 of the Act, 1965, if as a result of any audit held under Section 64 or an inquiry under section 65, or an inspection under section 66, the Registrar is of opinion that the Society is not working on sound lines, or its management is defective, he may, without prejudice to any other action under this Act, make an order directing the Society or its officers to take such action not inconsistent with this Act, the rules and the bye-laws as may be specified in the order to remedy the defects within the time specified therein.

51. On a conspectus of the original record, and consideration of the inquiry report dated 29.05.2024 and the order dated 30.05.2024 as well as other materials on record of the writ petition, we find that the respondent no.2, who was required to exercise his discretional jurisdiction under Section 38 (1) of the Act, 1965 after due and independent application of mind and after considering relevant materials, has exercised the same with material irregularity and in excess of jurisdiction, arbitrarily, unreasonably, and unfairly. Moreover, not furnishing to the Society copies of the Inquiry Report and other documents examined by the Inquiry Committee, would render the mandatory hearing (as a consequence to any opportunity afforded to the officers) and deliberations of the Society directionless, precluding the Society from complying with the principles of natural justice at the time of affording opportunity of hearing to the officers. The aforesaid conclusions are due to the reasons stated above and collated below :-

a) In the order dated 30.05.2024 there appear no materials other

than the report of the Inquiry Committee dated 29.05.2024 which Inquiry report reflects examination of an individual dispute between the petitioners and Smt. Kunta Devi.

- b) The other allegations that are merely narrated in the Inquiry Report of 29.05.2024 pertain to a complaint dated 10.05.2024 allegedly made by some Society members, which have evidently not been examined by the Inquiry Committee under Section 66 of the Act, 1965 despite directions of the respondent no.2.
- c) The dispute between the petitioners and Smt. Kunta Devi is subject matter of an arbitration proceeding being case no.03/2024-25 under Section 70 / 71 of the Act, 1965 in which an arbitrator has been appointed by an order dated 27.05.2024 of the Commissioner / Registrar, Cooperative, which is pending.
- d) Despite the respondent no.2 directing inspection under Section 66 of the Act, 1965 evidently no such inspection was conducted by the Inquiry Committee prior to submission of its report dated 29.05.2024 nor is any reference made in that report to the letter of the respondent no.2 to the Inquiry Committee directing the inspection. Therefore, mere existence of an individual dispute between the petitioners and Smt. Kunta Devi, which anyway is subject matter of a pending arbitration case, would not be construed as relevant material before the respondent no. 2 to reach its conclusion warranting action under Section 38(1).
- e) Even though the inspection and inquiry were simultaneously directed to be conducted by means of two of his letters both

dated 30.04.2024, the respondent no.2, without considering that the Inquiry Committee did not conduct inspection under Section 66 prior to submitting its report dated 29.05.2024, on the very next day passed the impugned order dated 30.05.2024 under Section 38 (1).

- f) Given the fact that under Section 38 (1) of the Act, 1965 the electorate of the petitioner-Society has been called upon by the respondent no.2 to remove two officers, one of whom is duly elected (in the present case, the Chairman), the discretion of the Registrar is necessary to be exercised after due and independent consideration of the materials on record, due application of mind, without taking into account unexamined allegations, which has not been done in the present case.
- g) The Inquiry Report dated 29.05.2024 alleges that the Chairman and Secretary of the Society are working arbitrarily and are seriously damaging the interests of the Society and its members. However, this inquiry report only reflects an individual dispute between the petitioners and one member of the Society, Smt. Kunta Devi. The allegations made in the complaint dated 10.05.2024 allegedly submitted by other Society members is merely narrated in this inquiry report without their examination or without any inspection conducted by the Inquiry Committee. Relying on such an inquiry report the respondent no.2 has concluded in his order of 30.05.2024 that the conduct of the Chairman and Secretary of the Society is fraudulent, biased and is altogether contrary to their responsibilities. In the same vein the respondent no.2 observes that '*prima facie*' he is satisfied that the Chairman

and Secretary are not fully discharging the duties of their office, are working against the provisions of the Act and Rules, and in such circumstances they have forfeited their right to hold their offices, and therefore, in the interest of the Society and its members it is necessary to remove them from the posts held by them. Evidently, there were no materials before the respondent no.2 to initiate action under Section 38(1), rather he has based his discretion on irrelevant considerations which no reasonable man could reasonably arrive at given the facts and circumstances of the present case. As a matter of fact in the letters of the petitioners, as noted above, inter alia, serious allegations have been made with regard to non-deposit in the Society's bank account of the amounts received in cash towards the sale consideration of the disputed flat by the former Secretary, which under the facts and circumstances, where no inspection under Section 66 of the Act, 1965 has been conducted, or where the inquiry has not returned a categorical finding based on lawful considerations, could be a valid ground to deny NOC.

- h) Neither the Inquiry Report dated 29.05.2024 nor other documents which were relied upon by the Inquiry Committee were supplied to the Society alongwith the impugned order / direction dated 30.05.2024 or even thereafter. These documents were necessary to be supplied because under Section 38(1) the society is mandated to pass such orders as it may deem fit after affording an opportunity of being heard to the officers. In the interest of the autonomy of a democratic Society, its members are required to be informed and supplied the materials relied upon by the Registrar to

pass such an order of removal of officers and where necessary to disqualify them, so that the society can take an informed decision after considering the objections of such officers before passing such orders as the Society may deem fit. The Inquiry Report and other documents are materials that the Society would require to confront the officers while affording them opportunity of being heard.

52. The judgment of this court in the matter of **Meerut Sahkari Avas Samiti** relied upon by the learned counsel for the respondent no.2 observes that powers of the Society that is exercisable under Section 38(1) is with the general body of the Society and not the Committee of Management. Where a direction is given by the Registrar under Section 38(1), the Committee of Management is under obligation to call meeting of the general body of the Society for considering the directive of the Registrar. It was observed as follows:-

“23. Section 38, when we read it in its entirety we find that when action is initiated under sub-clause (1) of Section 38 by the Registrar by giving direction to the Society, it is the Society which has to take action after affording opportunity of being heard to the officer concerned. At this stage, the Registrar has nothing to do except for calling upon the Society to consider the action proposed and therefore, there is no requirement of giving notice or providing for observance of principle of natural justice. It is only the Society which is required to give opportunity of hearing to the officer concerned as the decision, if any, is to be taken by the Society itself and not by the Registrar.

24. Sub-section (2) of Section 38 talks of the situation where despite direction given by Registrar, Society failed to comply with such direction and did not take any action against the "Officer" concerned, who is rendered disqualified to hold the office. In such eventuality, when Society has failed, sub-section

(2) of Section 38 confers power upon Registrar to take action himself and to disqualify, remove or both, such "Officer" from the office. Under sub-section (2) of Section 38, when Registrar takes action on its own, he has to observe the principles of natural justice i.e. afford opportunity of hearing to "Officer" concerned and thereafter pass order which must be a reasoned one.

25. It is only in the second case, as contemplated in sub clause (2) of Section 38 where the Society fails to take any action, and the Registrar himself exercises the power of removal of the erring officer of the cooperative Society, sub clause (2) of Section 38 of the Act of 1965, stipulates that opportunity is to be given to the officer concerned.

26. In view of the discussion made above, we are of the considered opinion that the Registrar was not required to afford hearing to the officers at the stage of issuing direction to the Committee of Management to convene the meeting of general body to consider the removal of Chairman and the Secretary in accordance with provisions of Section 38 of the Act of 1965.”

53. While we are in respectful agreement with the observations of the Bench in **Meerut Sahkari Avas Samiti**, however, they do not inure to the benefit of the respondent no.2 in the facts and circumstances of the present case. Though there is indeed no material on record to show that any meeting of the general body of the Society was called by the Committee of Management pursuant to the direction of the respondent no.2 under section 38(1), what we have examined and found in the present case is that while issuing the directions under Section 38(1) the respondent no.2 had not exercised his discretion judiciously. The discretion was exercised without due and independent application of mind, on the basis of irrelevant materials, unfairly, unreasonably and inequitably. Further, by the impugned order dated 30.05.2024, though the respondent no.2 directed the Committee of Management of the Society to take

action under Section 38(1), however, the same is impermissible and such direction can only be construed to mean that the Committee of Management shall call a meeting of the General Body of the Society to consider the matter in the light of the mandate of Section 38(1).

Moreover, the learned Judges of the Bench in **Meerut Sahkari Avas Samiti** have observed that under the provision of Section 38(1), Registrar was not required to afford hearing to the officers at the stage of issuing direction to the Committee of Management to convene the meeting of general body to consider the removal, but only at the stage of proceedings under Section 38(2), to which we respectfully agree.

54. In view of the aforesaid, the impugned orders dated 30.05.2024 and 04.07.2024 passed by the respondent no.2 are quashed. The writ petition is, accordingly, **allowed**. This order is without prejudice to the powers and authority of the respondent no.2 to proceed against the petitioners in accordance with law and keeping in view the observations made above. It is made clear that any observations made herein are for purpose of adjudication of the case at hand and shall not be taken as an opinion of the court on merits of the case of either of the parties.

Order Date :-22.8.2024

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