

(2001) 07 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7934 of 1999

Harvinder Kaur

APPELLANT

Vs

The Joint Secretary, Co-operation
(Appeals), Punjab

RESPONDENT

Date of Decision: July 3, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Co-operative Societies Act, 1961 - Section 26(ID), 27(3), 55, 56, 68

Citation: (2001) 4 RCR(Civil) 658

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: D.V. Sharma, for the Appellant; S.C. Sibal, Addl. AG, S.K. Bhanot, DAG, Ashok Aggarwal M.S. Bedi and Sunil Chadha, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jhanji, J.

In this writ petition, challenge is to order dated 27.4.1999 (Annexure p. 17) passed by Joint Secretary (Co-operation) (Appeals), Punjab Chandigarh) for short the Joint Secretary), exercising the powers of the State Government under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act). Joint Secretary, vide impugned order, not only set aside order dated 20.11.1997 passed by the Joint Registrar, Cooperative Societies, Patiala (for short the Joint Registrar) but also directed that no further proceedings shall be taken in reference filed by petitioner Smt. Harvinder Kaur before the Assistant Registrar, Cooperative Societies, Ludhiana (for short the Assistant Registrar) vis-a-vis plot in question as the same being farce and an abuse of the process of Court as well as law. Joint Secretary further directed that respondent No. 5 K.K. Chadha shall be entitled to get vacant possession of the plot in question as he was entitled to the same as per draw of lots held on 9.5.1993.

2. Adarsh Colony Cooperative House Building Society Limited (for short the Society) came into existence in 1974 and till 1975, it enrolled 511 members. The Society had land in village Sunet and village Thrike. The land belonging to the Society was acquired by Ludhiana Improvement Trust (for short the Improvement Trust). The Society approached the Improvement Trust with a request to exempt its land from acquisition to which the latter at first agreed but later on declined the same. The Society then took the matter to the High Court in two writ petitions. In the said writ petitions, the Improvement Trust was directed by this Court to accommodate the Society by making allotment of land to it. The Improvement Trust agreed to allot 16 acres plotted area in lieu of land situated in village Sunet (now known as Bhai Randhir Singh Nagar, Ludhiana) and land situated in village Thrike (now known as Rajguru Nagar, Ludhiana). Out of the plotted area allotted to the Society, Improvement Trust carved out 281 plots of different sizes for the Society. The Society was to further distribute the plots to its Members but during the time the Improvement Trust allotted plots to the Society, the term of the Executive Committee of the Society had already expired and new Executive Committee had not been elected. Assistant Registrar, Cooperative Societies, in exercise of powers u/s 26(ID) of the Act, vide order dated 22.11.1983 appointed Chaman Lal, Inspector, Cooperative Societies as Administrator of the Society. The appointing of the Administrator was for a period of 3 months or th(sic) such time, election of Executive Committee was held. The Administrator was directed to make arrangements for holding election of the Executive Committee as per Rules. The Administrator did not make any arrangements for holding election and instead enrolled 17 new members on 13.3.1984. Out of 17 new members, two namely, Ram Lal and Jaswant Singh were enrolled by way of transfer of shares i.e. shares of Jagdish Chand Rai (Membership No. 630) were transferred in the name of Ram Lal Galhotra to whom new membership No. 739 was allotted. Likewise, shares of Daljit Kaur (Membership No. 209) were transferred in the name of her husband Jaswant Singh and membership No. 734 was allotted to him. On 18.5.1984, the Administrator allotted 281 plots to the members of the Society and amongst 281 members 17 newly enrolled members were also allotted plots. Some of the members out of original 511 members including respondent No. 5, namely, K.K. Chadha made representation to the Deputy Registrar, Cooperative Societies, Ludhiana (for short the Deputy Registrar), against aforesaid allotments made by the Administrator. The Deputy Registrar, vide order dated 17.7.1984 cancelled all the allotments made by the Administrator. He found that the Administrator had not adopted any criterion for allotment and the allotment was not made in presence of the members and was also not done by draw of lots. Deputy Registrar further held that the Administrator had not obtained the approval of the Registrar for allotment of plots and allotment was made by enrolling new members whereas the old members who were members of the Society at the time of acquisition of land, had not been allotted the plots. Since election of the Managing Committee had been fixed for 8.8.1985, the Deputy Registrar directed the Administrator not to make any allotment till then. The Managing Committee which

was to be elected, was directed to adopt some criterion for allotment of plots and while framing the criterion, interest of members who were members at the time of acquisition of land be kept in view and approval be obtained from the General Body of the Society. Ram Lal Galhotra and some other newly enrolled members by the Administrator, look the, matter in appeal before the Joint Registrar, who vide order dated 2.1.1985 set aside the order of the Deputy Registrar. Against the order of the Joint Registrar, 4 revision petitions were filed before the Commissioner (Appeals), Jalandar Division, Jalandhar (for short the Commissioner). In the revision petitions, it was pointed out that the Administrator had no authority to allot the plots. Finding merit in this contention, the Commissioner accepted the revision petitions vide order dated 9.6.1988 and orders dated 2.1.1985 passed by the Joint Registrar were set aside and orders dated 17.7.1984 passed by the Deputy Registrar were restored. With the decision of the Commissioner, enrolment of Ram Lal at Serial No. 739 and allotment of Plot No. 69-A measuring 489 Sq. Yds. situated in Bhai Randhir Singh Nagar by the Administrator Shri C.L. Azad and also the allotments made by C.L. Azad to other members, came to be cancelled. It deserves to be mentioned at this stage that during the period the revision petitions were pending before the Commissioner, Ram Lal transferred his membership in favour of Smt. Harvinder Kaur (petitioner herein) and this transfer was allowed by S.S. Mann, who had then been appointed as Administrator of the Society in place of C.L. Azad and was allotted membership No. 757. The transfer of membership by Ram Lal in favour of petitioner was kept concealed and not brought to the notice of the Commissioner. Petitioner Harvinder Kaur too did not make an application for being substituted in place of Ram Lal.

3. The Managing Committee which had since been elected, in its meeting dated 5.3.1993 laid down certain criterion for allotment of plots in pursuance of orders dated 17.7.1984 of the Deputy Registrar. It decided that allotment of plots be made to all eligible members through draw of lots in Bhai Randhir Singh Nagar and Rajguru Nagar. It also decided that the members who were earlier allotted plots, whose allotments were cancelled vide order dated 17.7.1984 passed by the Deputy Registrar and as affirmed by the Commissioner vide order dated 9.6.1988 and had made construction and got sale deeds registered though all were illegal, an option be given to them to pay compensation @ Rs. 100/- per Sq. Yd. upto 300 Sq.Yds. plot and @ Rs. 300/- per Sq. Yd. for plots above 300 Sq. yds. Such persons were to intimate the Society within 15 days from the date of meeting of the General Body which was to be held on 4.4.1993 along with payment of compensation. The Managing Committee accordingly convened meeting of the General Body on 4.4.1993 for putting the criterion laid down by it in its meeting held on 5.3.1993 for allotment of plots before the general Body for approval. In its meeting held on 4.4.1993, the General Body approved the criterion laid down by the Managing Committee for allotment of plots. It also decided that such persons who were earlier allotted plots and had raised constructions, got sale deeds registered though

illegally, shall not be sent any demand letters and no relaxation will be given thereafter except in a case where the Managing Committee feels that the same is required to be given in the facts and circumstances of the case. The General Body also decided that the matter for allotment of plots both in Bhai Randhir Singh Nagar and Rajguru Nagar by draw of lots will be taken up in its meeting to be held on 9.5.1993 at Lions Bhavan, Ludhiana at 9.00 A.M. In pursuance of the decision taken on 4.4.1993 by the General Body meeting of its members was held on 9.5.1993 and draw of lots was taken out for allotment of plots to them. In the said draw, Plot No 69-A measuring 489 Sq.Yds. in Bhai Randhir Singh Nagar was allotted to respondent No. 5 K.K. Chadha. This plot had earlier been allotted to Ram Lal by the Administrator whose allotment stood cancelled by an order of the Deputy Registrar as affirmed in appeal by the Commissioner. Petitioner to whom Ram Lal had transferred his membership during the pendency of revision petition before the Commissioner, raised a dispute under Sections 55/56 of the Act before the Assistant-Registrar regarding transfer of Plot No. 69-A in favour of respondent No. 5. She alleged that the plot should have been allotted to her as membership of Ram Lal stood transferred in her name. She alleged that she had not received any notice of the General Body meeting held on 4.4.1993 and, therefore, could not send draft on account of compensation amount as per decision of the General Body meeting but on coming to know of the decision, she had sent draft for a sum of Rs. 86,700/- on 28.5.1983 to the Society but the said draft was returned to her by the Society stating that Plot No. 69-A cannot be allotted to her as the same had been allotted to respondent No. 5 K.K. Chadha. She further alleged that instead of Plot No. 69-A, she has been allotted Plot No. 203-A in Rajguru Nagar. The allotment in favour of respondent No. 5 was termed to be illegal and not binding upon her. Respondent No. 5 to whom the plot had been allotted but possession was not delivered, filed a petition before the Joint Registrar for a suitable direction to the Society to deliver possession of Plot No. 69- A. The Society also filed petition before the Joint Registrar restraining the Assistant Registrar from proceeding with reference under Sections 55/56 preferred by the petitioner. It was submitted by the Society that second reference is not maintainable as according to it, the predecessor in interest of the petitioner Ram Lal had lost in the earlier reference and allotment of Plot No. 69-A made in his favour was cancelled. Joint Registrar issued notices to the petitioner. On receipt of notices, petitioner filed revision petition u/s 69 of the Act before the Joint Secretary against the entertainment of petition by the Joint Registrar filed by respondent No. 5 and the Society. In his revision petition, he sought restraint order against the Joint Registrar from proceeding with the petitioners filed by the petitioner and the Society. Petitioner contended before the Joint Secretary that the Joint Registrar is not vested with any power to entertain any petition against reference of dispute pending before the Assistant Registrar. Joint Secretary vide order dated 6.9.1996 disposed of the revision petitions filed by respondent No. 5 herein and also by the Society, without expressing any view on merits and directed the Joint Registrar to decide the matter pending before him expeditiously. Pursuant

to the directions of Joint Secretary, Joint Registrar vide his order dated 20.11.1997 while dismissing application of respondent No. 5 for warrants of possession, directed the Assistant Registrar to decide the matter within 3 months. He further directed the Assistant Registrar to decide the question of admissibility of photostat copies tendered by parties after giving them opportunity to plead and rebut the authenticity and admissibility thereof.

4. Respondent No. 5 feeling aggrieved against order dated 20.11.1997 passed by The Joint Registrar directing Assistant Registrar to proceed with the reference filed by the petitioner, preferred revision petition u/s 69 of the Act before the Joint Secretary. Joint Secretary accepted the revision petition. Vide detailed order dated 27.4.1999, Joint Secretary came to the following conclusions. :-

"(i) Hon"ble Supreme Court in its judgment dated 9.5.1997 delivered in the case of [K. Shantharaj and another Vs. M.L. Nagaraja and others](#), while interpreting provision of Section 30 and 30A of the Karnataka Cooperative Societies Act which are analogous to the provisions of Sections 26(ID) and 27 of the Punjab Cooperative Societies Act, 1961, held that enrolment of new member by an Administrator is beyond his power and he can organize election process in accordance with provisions of Act, Rules and Bye- Laws of the society. In the present case Sh. C.L. Azad was appointed as Administrator of the society by the ARCS, Ludhiana vide its order dt. 21.11.1983 only for the purpose of holding elections of the Managing Committee of the society. In this view of the legal as well as factual position, Sh. C.L. Azad, the then Administrator of the society had no power to enroll or substitute new members of the society much less to allot plots to them. Therefore, the contention put forward on behalf of respondent No. 4 is liable to be rejected being highly untenable to the extent that Sh. Ram Lal from whom respondent No. 4 got transferred membership of the society in her name was a validly enrolled/substituted member of the society. Therefore, since Ram Lal himself was not a valid and legal member of the society having been enrolled/substituted by the then Administrator of the society having no power to do so, how could he pass a better title in favour of respondent No. 4. Therefore, I feel no hesitation to conclude that respondent No. 4 is not a valid, legal and bona fide member of the society.

(ii) The enrollment of 17 new members of the society on 13.3.84 including aforesaid Ram Lal by the then Administrator of the society either by making new enrollments or by substitution and thereafter making allotments of 281 plots on 18.5.1984 to the members enrolled by him on 13.3.1984 has already been struck down up to the court of Commissioner (Appeals). In this view of the matter, since the very membership of Ram Lal as well as allotment of plot in question in his favour has already been set aside struck down finally by the Court of Commissioner (Appeals) vide order dated 9.6.1988 then respondent No. 4 can neither legally claim any membership of the society nor can she lay her any claim on the plot in question. Besides the aforesaid orders, even the society vide its resolutions dated 27.11.1989

and 10.4.1992 did not recognize the enrolment/substitution of 17 new members made by Sh. C.L. Azad, the then Administrator of the society and declared them unauthorized.

(iii) Through two separate orders dated 15.5.1995 Addl. Registrar (Credit), Co-operative Societies, Punjab, Chandigarh while dismissing two revision petitions preferred by six members enrolled illegally on 13.3.1984 out of the aforesaid 17 members by feeling aggrieved from the allotment of plots by the society in public draw held on 9.5.1993 upheld the said public draw in which petitioner was allotted plot in question.

(iv) Since the Commissioner (Appeals) vide his order dated 9.6.1988 set aside all the 281 allotments including that of the plot in question which was allegedly allotted in favour of Ram Lal then respondent No. 4 cannot possibly lay any legally enforceable claim over the said plot as her claim over the plot in question rests solely upon the alleged transfer of membership of Ram Lal in her favour. Since Ram Lal himself was not held to be legally enrolled members then respondent No. 4 being a transferee member of said Ram Lal has to swim in the same boat meaning thereby that she also ceases to be a member of the society much less having any claim over the plot in question."

In light of the aforementioned conclusions. Joint Secretary not only set aside order dated 20.11.1997 passed by the Joint Registrar but also directed that no further proceedings shall be taken by the Assistant Registrar in the reference filed by the petitioner vis-a-vis plot in question as the same being farce, an abuse of the process of Court as well as law. Joint Secretary felt that the matter in issue stood already decided by order dated 9.6.1988 passed by the Commissioner and, therefore, second reference in that regard is not maintainable. Hence, the present writ petition,

5. Mr. D.V. Sharma, Advocate, appearing on behalf of the petitioner contended that the Joint Secretary is not justified in holding that the Administrator was not competent to enrol new members. He contended that Section 27(3) of the Act gives power of the Managing Committee not to the Administrator. He further contended that in the case of petitioner, it was not a case of enrolment of new member but a case of transfer of membership of one of the old members, namely Jag-dish Chand Rai to Ram Lal and subsequently by Ram Lal to the petitioner. He contended that the Commissioner in its order dated 9.6.1988 had not cancelled the membership which was transferred by the Administrator in favour of Ram Lal. Counsel contended that since membership of Ram Lal was not cancelled, transfer of membership from Ram Lal to petitioner, too cannot be said to be invalid.

6. In answer to this, learned counsel appearing on behalf of respondent No. 5 contended that the predecessor in interest of the petitioner, namely, Ram Lal, had lost in the earlier reference in regard to plot in question and second reference by

the petitioner who is claiming her title through Ram Lal, was clearly an abuse of the process of law and, therefore, Joint Secretary committed no illegality in directing the Assistant Registrar not to proceed with the reference. He contended that the controversy in regard to the authority of the Administrator to allot plots Had already been decided in the earlier reference and cannot be agitated time and again.

7. In order to appreciate the contention of learned counsel for the parties, it is expedient to notice Section 26(ID) and 27(3) of the Act which read as under :-

Section 26(ID) :

"Where any committee has ceased to hold office and no committee has been constituted in accordance with the provisions of this Act and rules and bye-laws made thereunder, the Registrar may, by an order in writing, appoint a Government employee as an Administrator for such period as may, from time to time, be specified in the order and the Administrator shall, before the expiry of the period of his appointment, arrange for the Constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder."

Section 27(3) :

"The Administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society."

From the reading of aforesaid provisions, it is clear that where any Managing Committee of Cooperative Society has ceased to hold office and new Managing Committee has not been constituted before the expiry of the term of previous Managing Committee, Registrar is authorised to appoint a government employee as an Administrator of the Society for such period as may be specified and before expiry of period of his appointment. Administrator is to arrange for the election of the new Managing Committee in accordance with the provisions of the Act and the Rules and the by-laws made thereunder. The Administrator so appointed is empowered to perform all or any other function of the Society but he is to act under the general supervision and control of the Registrar. Full effect has to be given to the words" "subject to the control of the Registrar" appearing in Sub-section (3) of Section 27 of the Act. It would mean that the action of the Administrator is subject to check and control exercised by the Registrar.

8. In [K. Shantharaj and another Vs. M.L. Nagaraja and others](#), identical provision contained in Karnataka Cooperative Societies Act came up for consideration before the Supreme Court. Their Lordships of the Supreme Court affirmed the judgment of the High Court whereby it was held that enrolment of new members by the Administrator is without authority of law and in utter disregard to the bye-laws of the Society and they had not right to participate in the election. Before their

Lordships, it was contended by the learned counsel for the appellants therein that since the Administrator had power to conduct election, by necessary implication, he was also empowered to update the electoral list by enrolling new members or substituted legal representatives of the members in accordance with the bye-laws. Their Lordships rejected the contention of counsel for the appellants and held that the power of the Administrator given under the statute to conduct election should be confined within the para-materia set under the relevant provision of the Act and the Rules and the bye-laws. They affirmed the judgment of the High Court whereby it was held that the Administrator had no power to enrol new members but he could conduct election to the Committee of the Society as per the schedule of the programme.

9. Likewise in [Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others](#), the words "power to exercise all or any of the functions" contained in Section 32 of Kerala Cooperative Societies Act, 1969 were considered by the Supreme Court. Their Lordships of the Supreme Court held as under :-

"If we carefully analyse the provisions of the Act, it would be clear that the Administrator or a Committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression have "power to exercise all or any of the functions". Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are inter-changeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Cooperative Society (and not merely functions), took the view that the Administrator or a Special Officer can exercise powers and functions only as may be required in the interests of the Cooperative Society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a Cooperative Society is expected to function in a democratic manner through an elected committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an Administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it

did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowered of Special Officer to exercise and perform all the powers and functions of Committee of Management of a Cooperative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under the Acts, Rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an Administrator or a Committee is imposed thereon. The duty of such a Committee or an Administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an Administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

In view of the law settled by the Supreme Court in K. Shantaraj's case and Joint Registrar of Cooperative Societies's case (supra) contention of learned counsel for the petitioner that u/s 27(3) of the Act, Administrator was vested with the power to enrol new members, is clearly erroneous.

10. The transfer of membership from one person to another also involves alteration in the composition of the Society and such power cannot be exercised by an Administrator and has to be left to the elected Committee. The transfer of membership by C.L. Azad, the then Administrator in favour of Ram Lal was, thus, clearly without jurisdiction. Allotment of plots too was a function to be exercised by the elected Committee rather than by the Administrator and, therefore. Deputy Registrar or the Commissioner did not commit any illegality in cancelling the allotment of plots made by the Administrator. Petitioner has stepped into the shoes of Ram Lal Galhotra who in the earlier reference had lost upto the Court of Commissioner and petitioner whose status *lis pendens*, cannot be said to have acquired better title than what Ram Lal Galhotra had.

11. It deserves to be mentioned that the transfer of membership by Ram Lal in favour of petitioner was approved by S.S. Mann who had then been appointed as Administrator in place of C.L. Azad. Matter regarding mala fide allotment of plots made by C.L. Azad and also by S.S. Mann by ignoring the stay order passed by the Commissioner was enquired into by the S.D.O. (Civil), Ludhiana in pursuance of order dated 17.6.1988 of Deputy Commissioner, Ludhiana to whom a complaint in

this regard was made. The S.D.O. (Civil), Ludhiana in his report dated October, 1988 held that in revision petitions filed in this Court of Commissioner, operation of order dated 2.1.1985 passed by the Joint Registrar was stayed but inspite of the stay order, Assistant Registrar S.S. Mann in connivance with the officials of Improvement Trust, went ahead in allotting the plots to the member of the Society: He also held that despite stay order, sale deeds of individual members were got registered and Improvement Trust continued to Obtain No Objection Certificates from S.S. Mann. The Improvement Trust was also not able to produce the original No Objection Certificates before the S.D.O. (Civil) and the photo copies which were produced, were mostly undated and created a doubt as to the time of their issue. The S.D.O. (Civil) also opined that possibly No Objection Certificates were issued after Mr. Mann was transferred from Ludhiana. He accordingly held that the residential plots were allotted with mala fide intention by C.L. Azad in connivance with the officials of the Improvement Trust to 17 newly enrolled members mentioned at Serial Nos. 732 to 748.

12. There is also no material on record to show that the elected Committee had approved the transfer of membership firstly from Jagdish Chand Rai to Ram Lal Galhotra and then by Ram Lal Galhotra in favour of the petitioner. Petitioner's enrolment as a member by the Administrator was beyond the power of the Administrator and therefore, she has no locus standi to lay her claim to the plot in dispute.

Learned counsel for the petitioner then contended that the revision petition u/s 69 of the Act filed by respondent No. 5 before the Joint Secretary was not competent. According to him, u/s 69 of the Act, State Government and the Registrar is empowered to entertain a revision petition only if no appeal u/s 68 lies to Government or the Registrar. He submitted that on reference made by the petitioner, Assistant Registrar was yet to pass an order and against the order, if any passed, appeal was maintainable u/s 68 of the Act and, therefore, order of the Joint Secretary in entertaining the revision petition and then directing the Assistant Registrar not to proceed with the reference made by the petitioner u/s 55/56 of the Act, is clearly erroneous.

I do not find any merit in the contention of learned counsel for the petitioner.

13. u/s 68 of the Act, an appeal is competent only if any decision or Award is made u/s 56 of the Act. In this case, no decision or Award had been made u/s 56 of the Act. In the revision petition, the grievance of respondent No. 5 was regarding entertainment of reference preferred by the petitioner by the Assistant Registrar. The plea of respondent No. 5 was that second reference regarding allotment of Plot No. 69-A was not competent. Joint Secretary exercising the powers of Revisional Authority, after calling for the record and examining the same, found that second reference on the same subject matter was not competent as the same had already been decided finally vide order dated 9.6.1988 passed by the Commissioner. It also

opined that the petitioners enrolment as a member by the Administrator was beyond his power and, therefore, she had no locus standi to raise the dispute u/s 55/56 of the Act and entertaining the dispute referred by her by the Assistant Registrar was totally erroneous. It is well settled that the Revisional Authority is always clothed with the power of calling for the records of any case suo-motu or on petition moved by aggrieved person where it finds that the Authority below is exercising the power which is not vested in it or there is abuse of process of law. In the present case, since the reference had already been decided finally, therefore, in these circumstances, the Revisional Authority did not commit an error in looking into the legality is also the propriety of entertaining of second reference which already stood decided by the competent authority. In my view, the revision before the Government u/s 69 of the Act was competent.

14. In the writ petition, petitioner has also concealed the factum of filing civil suit and orders passed therein. This court in *Raj Rishi Gupta v. Hindustan Petroleum Corporation Ltd.*, New Delhi 1996(3) RCR 45 (P&H)(DB) : 1995(3) PLR 256 has held that suppression of material facts is by itself a sufficient ground to decline relief by the High Court to the writ petitioner in exercise of its jurisdiction under Article 226 of the Constitution of India. A party seeking discretionary relief has to approach the Court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision. This Court further held that the Court would be fully justified in refusing to exercise discretion in favour of a person who has concealed material facts, The Court cannot and should not be made a party to extend its helping hand to a person who has not come to Court with clean hands and failed to disclose the material facts. Petitioner thus is not entitled to any relief whatsoever on this ground also.

15. In this case, the conduct of the Society has not been above board. Before filing this writ petition, petitioner filed civil suit against the Society. In the said suit, the Society filed a detailed written statement contesting the claim of the petitioner. The Society denied, the allegation of the petitioner that possession, of the plot in question was delivered to her. It had submitted that the petitioner is not in possession of the plot in question and her allegation that she has raised construction of boundary wall was wrong. The Society also denied the allegation of the petitioner that she had informed the Society regarding the change of her address. In the written statement, the Society had further submitted that neither Ram Lal Galhotra had any right to transfer nor the petitioner had acquired any right in Plot No. 69-A. In regard to the claim of respondent No. 5, the Society had said that in the meeting of General Body held on 9.5.1993 as per draw of lots. Plot No. 69-A was allotted to respondent No. 5. Regarding allotment of Plot No. 203-A to the petitioner in Rajguru Nagar, Ludhiana, the Society had submitted that no such allotment was made and if made, it was a mistake and the same has already been cancelled by the Society. It had submitted that the petitioner has no right even in Plot No. 203-A in Rajguru Nagar, Ludhiana for which neither any allotment letter was issued to her

nor any possession was delivered to her nor any conveyance Deed was executed in her favour. However, in the written statement filed in response to the notice to this writ petition, it has taken a stand that the membership of the persons enrolled by the Administrator was not set aside by the Commissioner and that transfer of shares from old members to new members made by C.L. Azad was duly considered for allotment being eligible for the same. The stand now taken by the Society is totally in contradiction to what had been taken in the suit filed by the petitioner. In fact, it appears that it is now trying to help the petitioner for reasons best known to it.

No other point was argued.

In view of the foregoing discussion, there is no merit in this writ petition and the same is hereby dismissed with costs which are assessed as Rs. 5,000/-.

16. Petition dismissed.