MD. MOINUDDIN AND ORS. A

v.

THE COMMISSIONER FOR COOPERATION AND REGISTRAR OF COOPERATIVE SOCIETIES AND ORS.

(Civil Appeal No. 5448 of 2014) B

MAY 07, 2014

[SURINDER SINGH NIJJAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.] C

Cooperative Societies – Group-housing co-operative society – Initially having 28 members, rising upto 75 members – Initially land purchased with the funds provided by 11 founder members – Membership of 37 members disputed – Claim of the 11 founder members for exclusive D *right in the land, as it was purchased with the funds provided by them – Held: Claim by individual members is not acceptable – Once the land was purchased by the Society, the property vests in the Society – It is for the Society to deal with the land in accordance with the co-operative principles* E *and the objects with which the society was formed – Direction to General Body of the Society to consider allotment of plots to members taking into consideration their seniority.*

Allowing the appeals, the Court

HELD: 1. The admission of the 37 members can no longer be in controversy as it was a concluded issue. If at all the membership of the 37 persons were to be cancelled, the same could have been done by applying any of the relevant provisions in the Bye-laws of the Co- F **operative Society. Out of 37 members, 10 have accepted their refund of share capital and as on date, only 27 out of the 37 remain who have returned the cheques issued by the society. In the absence of any such valid order of approval by the Registrar relating to the expulsion of the** G H

A **newly added members, there is no question of the remaining 27 members having ceased to be the members of the society. [Paras 29, 30 and 31][253-B-H]**

2. The members, who contributed their funds to the society, have no exclusive right to claim any share in
B **the property on the ground that they made the investments for the purchase of the land. Such a claim would run counter to the cooperative principles, which is the object of the society when it came to be formed. Once the land was purchased by the society, the**
C **property vests in the society. Therefore, it is for the society to consider how to deal with the said land in accordance with the cooperative principles and the objects with which the society was formed as mentioned in the By-Laws. It is not for the individual members to**
D **claim in what manner the land should be dealt with for the purpose of distribution amongst its members. [Paras 35 and 36][257-D-H]**

3. Therefore, neither the founder members nor
E **those who were subsequently inducted/admitted as members, can claim any preference or right of allotment in any particular manner, other than the manner i.e. after the layout is sanctioned, the General Body would consider the allotments of plots in favour of the members**
F **of the society by taking into consideration their seniority as per the Bye-Laws concerning allotment of plots. [Paras 38 and 39][258-H; 29-A, C-D]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5448 of 2014.

G From the Judgment and Order dated 15.09.2009 in Writ Appeal No. 798 of 2007 of the High Court of Andhra Pradesh at Hyderabad.

WITH

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C.A. Nos. 5451, 5449, 5450 of 2014 A

Conmt. Pet. No. 251 of 2011 and Conmt. Pet. No. 302 of 2010.

Mr. A.T. M. Rangaramanujam, R. Basant, Jaideep Gupta, Sr. Adv., Ms. Neha Sharma, D. Verma, A.V. Rangam, Buddy B A. Ranganadhan, G.V. Giridhar, D. Mahesh Babu, Ms. Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, Aditya Jain, Ramakrishna Rao, Gaurav Agrawal, Anup Kumar, Ms. Neha Jaiswal, Devvrat, Ms. Kasturika Kaumudi, Mrs. K. Sharda Devi, Anurag Pandey, Rameshwar Prasad Goyal, Venkita C Subramoniam T.R., Rahat Bansal, Gagandeep Sharma , Nikhil Jain, Advs.for the appearing parties.

K. Srinivasa Rao, Petitioner- in - Person.

The Judgment of the Court was delivered by D

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. Delay condoned. Leave granted.

2. In all the above appeals and the connected contempt petitions, the issue concerns with the members of a cooperative E society called 'The Voltas Employees Cooperative House Building & Construction Society Ltd. No.TAB 508'. It is a classic case where the members of the above referred to society got themselves entangled in a series of litigations and to add to this, some orders were passed by the officials of the F Department of Cooperative Society of Andhra Pradesh, which has created pandemonium by virtue of the divergent orders passed at different points of time and, therefore, requires the consideration of this Court to pass appropriate orders and put an end to this complicated litigation once and for all. The G entire dispute amongst the members of the society pertains to a piece of land, which was purchased by the society in pursuance of its object of getting some benefit for its members for providing housing accommodation. Before delving deep into the controversy, raised in this litigation, it is necessary to H

A set out the different Special Leave Petitions filed before us, wherein orders have been challenged by different Appellants which ultimately, as pointed out by us, pertains to the issue relating to the land purchased by the society for providing housing accommodation.

B 3. Civil Appeal (@ SLP(C) No.4679 of 2010) has been filed challenging the Division Bench order of the Andhra Pradesh High Court dated 15.09.2009, passed in Writ Appeal No.144 of 2007 by which the High Court dismissed the Writ Appeal filed by the Appellant herein which is the very society, C namely, the Voltas Employees Cooperative House Building Society (hereinafter referred to 'the society'). Civil Appeal (@ SLP(C) No.3105 of 2010) has been filed by three individuals, namely, Shri M. Balaji, Bilquees Sultana and Konda Sureka, who were the Appellants in Writ Appeal No.809 of 2007 before D the Division Bench of the Andhra Pradesh High Court and whose writ appeal was also dismissed by the High Court in its common judgment dated 15.09.2009, along with Writ Appeal No.144 of 2007.

E 4. SLP (CC) No.10023 of 2011 has been preferred by four individuals, namely, Nerella Venkateswarlu, S Jagadish, Pasupula Anjaneyulu and Shanigarapu Ramesh seeking leave of this Court to file an appeal against the final judgment and order dated 15.09.2009 in Writ Appeal No.144 of 2007, as F well as Writ Appeal (MP) No.2325 of 2009 in the said writ appeal. The Division Bench while dismissing the Writ Appeal No.144 of 2007, by its common order, also dismissed the above Miscellaneous Petition No.2325 of 2009 by which the Petitioners wanted to get themselves impleaded as parties in the Writ appeal.

G 5. Civil Appeal (@ SLP(C) No.692 of 2010) has been filed by five persons, namely, Md. Moinuddin, A Narasimha, Md. I. Shareef, Khalander Hussain and R. Shankar, seeking to challenge the common judgment dated 15.09.2009 of the

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Division Bench of High Court of Andhra Pradesh in Writ Appeal No.798 of 2007, along with Writ Appeal Nos.144 of 2007 and 809 of 2007. A

6. To narrate the facts in brief, the Voltas Employees Cooperative House Building & Construction Society Ltd. was registered on 29.10.1982 under the Andhra Pradesh Cooperative Societies Act 7 of 1964. Its address was 4-161, Madhavi Nagar, Firozguda, Hyderabad. Its operations were confined to the municipal limits of Hyderabad. The object of the society is to carry on activities for the benefits of its members in the field of building including buying, selling, hiring, letting and developing land in accordance with the cooperative principles and also to give loans to its members for construction of dwelling houses. Under Bye-Law No.4, the share capital of the society was to be made up of 5000 shares of Rs.100 each. Bye-Law No.5 prescribes the eligibility of a member. Bye-Law No.6 deals with the procedure as to how an eligible employee of Voltas can become a member of the society. Bye-Law No.8 with its sub-clauses (i) to (iv), prescribes the disqualification for membership. Bye-Law No.12 prescribes the procedure for withdrawal of the share capital. Bye-Law No.16 describes as to how a member can be expelled from the society. Bye-Law No.17 lists out the various sources by which the society can ordinarily obtain funds. Bye-Law No.22 states the maximum period up to which the Managing Committee can function and the consequences of the proceedings becoming invalid on account of any vacancy or vacancies in the Committee, which remained unfilled. The powers of the Managing Committee has been set out in Bye-Law No.28 and sub-clause (d) of Bye-Law No.28 empowers the Managing Committee to admit members and allot shares. Bye-Law No.36 describes the powers of the General Body and the manner in which the General body is to be convened. Sub-clause (vi) empowers the General Body to deal with the expulsion of a member. Bye-Law No.37(b) makes it clear that the General Body Meeting should consist of all the members of the society. B C D E F G H

A 7. Keeping the abovesaid prescriptions in the Bye-Laws, when we proceed to analyze the various facts involved, we find that the society in the first instance had a membership of 28 members at the time of formation of the society in the year 1982, which rose to 43 as on 30.06.1982 and gradually the B membership went up to 75 as on 31.03.1997, when 37 members stated to have got admitted in the year 1996. In fact, the whole controversy pertains to the admission of those 37 persons as members whose aspirations to get an allotment in the land originally purchased with the funds provided by the 11 C founder members gave scope for this controversial and complicated litigation amongst themselves. In the year 1982, the society purchased a land measuring 1 acre 14 guntas in Survey No.233 of Thokatta Village. The entire land cost was paid by 11 of the founder members.

D 8. In one of the statements placed before this Court, discloses that as on 30.06.1984, the advances collected from the members towards the land cost were Rs.64,000/- and that the contributors were 33 in number, two of whom stated to have got back the advance deposited by them with the society.

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9. Be that as it may, the Deputy Registrar of Cooperative Societies Housing in a letter dated 25.09.1996, addressed to the President and Secretary of the Society, referred to a representation received from Shri Srinivasa Rao and others, F alleging that the Managing Committee in their Meeting refused to enroll them as members of the society. This was referred to the Cooperative Sub-Registrar by the office of the Deputy Registrar. On receipt of the report of the Cooperative Sub-Registrar, in the said communication dated 25.09.1996, the G Deputy Registrar indicated to the society that the request of Shri Srinivasa Rao and others are genuine and that they are eligible to become members of the society and, therefore, they should be admitted as members. The admission of their membership was also directed to be intimated to the office of H the Deputy Registrar.

10. In the minutes of the Executive Committee Meeting, stated to have been held on 03.10.1996 at 6 p.m., it was stated that as per the agenda dated 18.09.1996, the matter of admitting the 37 new applicants into the society was thoroughly discussed and unanimously decided to admit them as members. The said minutes, however, state that with the cooperation of new entrants, a suitable piece of land can be purchased for the interested new members and that the 37 members or any other member who wish to share a plot will be accommodated in the land to be purchased as a second venture of the society.

11. By a letter dated 04.10.1996 addressed to the Deputy Registrar, Housing, the society confirmed the above resolution passed admitting the 37 new applicants as members in the Meeting held on 03.10.1996. Subsequently, the General Body Meeting was stated to have been held on 04.04.1997 at 6 p.m. in the society's premises. The agenda was to ratify the admission of the new members and also to explore the possibilities for a new venture. The resolution relating to ratification was passed and it was ratified. The other issues were discussed in the General Body Meeting. It was deliberated that since the new members did not join at the time when the land was purchased and for purchasing the said land the contribution was made only by the 11 members who continued to be members on the date of the General Body Meeting, they alone will have the right to get allotment in the said lands.

12. By proceedings dated 17.04.1997, a general direction under Section 4(2) of the Andhra Pradesh Cooperative Society Act, 1964 (hereinafter referred to 'the Act') was issued by the Registrar of Cooperative Societies, which inter alia contained a direction that no society shall admit any new members to be in waiting in service, except to the extent of maximum of 10% of members provided with the plots at any given time. It was further directed that no member of the

society, who is not allotted a house or house site, shall be eligible to vote in the ensuing elections unless he completes one year as a member in the society. The electoral authorities were directed to take into consideration the said aspect while preparing the electoral roll of the members of the society. By virtue of Section 4(2) of the Act, all the cooperative societies were directed to comply with the above directions. Pursuant to the general direction issued on 17.04.1997, the Deputy Registrar came forward with a fresh communication to the society dated 01.12.1998, stating that the instructions issued by its office in its letter dated 25.09.1996, stood withdrawn with immediate effect. Closely followed by that, by a communication dated 20.07.1999, the members who were admitted in the Meeting held on 03.10.1996 were informed that subsequent to their admission, a resolution was passed in the committee Meeting held on 16.07.1999 to expel all the 37 members. The membership fee of Rs.100 was also returned in the form of a cheque. The said letter dated 20.07.1999 made a reference to a Writ Petition, namely, W.P. No.3720 of 1999, filed by Mr. K. Srinivasa Rao, challenging the Deputy Registrar's direction dated 01.12.1998, which was stated to have been dismissed by the learned Single Judge of the High Court on 13.07.1999.

13. As against the order of the Single Judge dated 13.07.1999, in W.P. No.3720 of 1999, Srinivasa Rao preferred a Writ Appeal No.1056 of 1999. The Division Bench passed the following order in the said Writ Appeal:

> "In view of the peculiar facts and circumstances, the observation of the learned single Judge that the petitioner has not been adversely affected by the withdrawal of the instructions cannot be sustained as has been demonstrated by the subsequent order passed by the society, which has been placed on record in this appeal. In our considered view and the observations made above, the order dated 20.7.1999 passed during the

pendency of the appeal is liable to be set aside and it is accordingly set aside. In view of the fact that the membership of the petitioner-appellant was cancelled without taking a decision on merits, it is left open to the society to decide with respect to the membership of the petitioner- appellant on merits in accordance with law and without taking into consideration the instructions issued by the Deputy Registrar or the Registrar of co-operative Societies and after hearing the appellant.

The writ appeal is disposed of accordingly. No costs."

25 other members who were identically placed like that of Mr. Srinivasa Rao, filed Writ Petition No.18294 of 1999. A Single Judge of the Andhra Pradesh High Court relying upon the Division Bench order dated 02.08.1999 in Writ Appeal No.1056 of 1999, set aside the proceedings of the Society dated 20.07.1999 and directed them to follow the directions of the Division Bench referred to above.

14. Thereafter, the society issued a show cause notice dated 06.10.1999 to the 37 members, wherein after making reference to the order of the Division Bench in Writ Appeal No.1056 of 1999 dated 02.08.1999 and the order dated 01.09.1999 in Writ Petition No.18294 of 1999, called upon the members to show cause as to why they should not be expelled in as much no land is available to admit any member to the society. That apart, at the instance of one K. Sivarama Raju and C. Viswam, a Writ Petition in W.P. No.11268 of 2000 was filed, who claimed to be the founder members. The said writ petition was disposed of by a Single Judge of the Andhra Pradesh High Court by order dated 18.11.2000, in which reference was made to the order of the Division Bench in Writ Appeal No.1056 of 1999 and the connected Writ Petitions and certain other Miscellaneous petitions filed in that writ petition. Ultimately, the learned Judge observed as under in the penultimate paragraph of the judgment:

A "It is also urged by Sri Prasad, the learned counsel for the applicant herein, that there are infirmities in the electoral roll which requires that electoral rolls are rectified. This argument is advanced on the premise that the 37 new members ought not to have formed part of
B the Electoral College. This contention is misconceived and does not command consideration by this court. The 37 members, including the writ petitioners are as on date valid members of the society not having been divested of such membership by any formal proceedings issued
C in due conformity with law. Be that as it may alleged deficiencies in the electoral roll are not a ground relevant to interdict the democratic process of election to a cooperative society. The contention is accordingly rejected."

D 15. Yet another proceeding relating to the launching of prosecution at the instance of the Registrar of Cooperative Societies on the basis of the alleged misappropriation of societies funds was initiated and subsequently an order came to be passed by the Government of Andhra Pradesh, Housing
E Department dated 29.03.2004, in Memo No.2768/CH1/2003-9. By the said order, the Government while setting aside the proceedings initiated by the Registrar of Cooperative Societies also observed that the existing committee which came into being with the support of the invalid votes of the 37 disputed
F members, who participated in the elections should be declared as null and void and that the 37 disputed members should be replaced to set right the affairs of the society.

16. The said part of the order dated 29.03.2004
G declaring the membership of the 37 persons as invalid was challenged by the society by filing Writ Petition No.7794 of 2004 before the High Court of Andhra Pradesh. By order dated 15.12.2006, the learned Single Judge while affirming the order dated 29.03.2004, insofar as it set aside the proceedings of the Registrar dated 15.01.2002 and 25.01.2002, however, held
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that the findings arrived at by the State Government, insofar as it related to the election of the existing committee members and allotments of plots to the 11 member have to be treated as non est in law, since the First Respondent has gone into the question which was not canvassed before it. A

17. In pursuance of the order passed in Writ Appeal No.1056 of 1999 and Writ Petition No.18294 of 1999, the Divisional Cooperative Officer, by his order dated 02.04.2004, decided to authorize the Sub-Divisional Cooperative Officer, Secunderabad Mandal, to convene the General Body Meeting of the society to decide the issue of membership. The Divisional Cooperative Officer passed further order on 22.12.2004 and gave further directions authorizing the Sub-Divisional Cooperative Officer, Secunderabad Mandal, to convene the General Body Meeting for deciding the membership in pursuance of the orders of the High Court in Writ Appeal No.1056 of 1999 dated 02.08.1999 and the order of the Single Judge in Writ Petition No.18294 of 1999 dated 01.09.1999. Pursuant to the said direction, the date and time for the General Body Meeting was fixed on 22.05.2005 at 11.30 a.m. Though, as scheduled, the members stated to have assembled on 22.05.2005, the Presiding Officer did not commence the Meeting. Therefore, the Meeting, as directed by the Sub-Divisional Cooperative Officer, did not take place. Nevertheless, 15 of the members stated to have proceeded with the Meeting and passed some resolution adverse to the interest of the 37 members and forwarded the same to the Officers of the Cooperative Society. But, by a communication dated 04.06.2005, the Deputy Registrar of Cooperative Society addressed the society and made it clear that the issue of convening the General Body Meeting was re-examined by the Deputy Registrar and in the light of the order dated 08.11.2000 in Writ Petition No.11268 of 2000 and the interim order dated 26.04.2004 in Writ Petition No.7794 of 2004 it was decided not to proceed with the proposed General Body B C D E F G H

A Meeting on 22.05.2005. The said communication also revealed that the Sub-Divisional Cooperative Officer, who convened the General Body Meeting, explained the said position to the members on 22.05.2005, that there would be no discussion on the agenda and the General Body Meeting B would not take place. Ultimately, the so-called resolution claimed to have been passed by 15 of the members was held to be invalid.

18. There was also Writ Petition filed in W.P. No.701 of 2003, wherein there was a challenge to an order of the Andhra C Pradesh Cooperative Tribunal in C.T.A. No.160 of 2000, by which the Tribunal set aside an award A.R.C 3 of 1998 dated 10.03.2002, passed by the Joint Registrar. The said Writ Petition came to be dismissed upholding the order of the Tribunal. The sum and substance of the order of the Tribunal D was that the so-called allotment of lands, to the promoting members, anticipating the approval of the layout was not valid and, therefore, the resolution passed by the Society allotting the plots to the founder members, subject to the approval of the layout was held to be arbitrary and illegal. The Writ Petition E preferred by the so-called founder members was dismissed with an observation that the said order would not preclude the General Body from considering the allotment of plots in favour of the members of the society after the layout is sanctioned by taking into consideration their seniority as per the Bye-Laws F concerning allotment of plots.

19. Having noted the development after the emergence of the society and after its registration, as well as the issue relating to the admission of the new members to the society and the various orders passed by the officers of the department G of the society, as well as the High Court, before examining the correctness of the orders impugned in these appeals, it will be necessary to note the provisions of the Bye-Laws to ascertain as to the rights of the original members and the members who claim to have been subsequently admitted into H

the society. There is no controversy that the object of the society is for the benefit of getting housing facility for its members in accordance with the cooperative principles. The object has been succinctly stated in Bye-Law No.2. As far as membership is concerned, the eligibility has been prescribed in Bye-Law No.5, which reads as under:

"MEMBERSHIP ELIGIBILITY:

5. Any individual who has attained majority; and who is competent to contract and of sound mind and who did not have any house in city in his name or in the name of his wife or minor children and who is not a member in any other house building society in the same area shall be eligible for admission as member, minor may be admitted as associate member through their legal guardians, but they shall not be eligible to vote or have any interest in profit."

20. A reading of Bye-Law No.5 disclose that in order to be eligible to become a member, an individual should be a major, he should be of sound mind, he should not have any house in the city in his name or in the name of his wife or minor children and that he should not be a member of any other house building society in the same area. If the above conditions are satisfied, he would be eligible to become a member.

21. Though, the Bye-Laws do not specifically state that such an individual should be an employee of the Voltas Company, since the very society was formed by the employees of Voltas and the name itself makes it clear that the society was formed by the employees of the Voltas for providing housing facility, it is imperative that the individual should be an employee of Voltas. As per Bye-Law No.6 read along with Bye-Law No.4, one who seeks to become a member should be a shareholder and the cost of such share has been fixed at Rs.100, made up of 5000 shares, which would form the capital of the society. When an application for admission as a member

for allotment of the share is made to the Secretary of the society in the prescribed form, such an application should be disposed of by the Managing Committee, who has been empowered to grant admission and allot shares or refuse the sane. In the event of refusing to allot a share, reasons will have to be adduced. Bye-Law No.6(b) also states that if no such decision is communicated within the prescribed time, then within 50 days from the date of application for membership, the society shall be deemed to have admitted such applicant as a member on the date of expiration of 60 days from the date of application and the Secretary should give effect to such admission. Once a person is admitted as a member of the society by virtue of Bye-Law No.7, he will be eligible for the services of the society.

22. After the membership of a person into the society is confirmed, his exit from the society can be either by way of disqualification as provided under Bye-Law No.8, or by way of withdrawal of share capital under Bye-Law No.12 or by way of an expulsion under Bye-Law No.16. If the exit of a membership is by way of a disqualification, it should come under any one of the sub-clauses (i) to (iv) of Bye-Law No.8. If it is by way of withdrawal of share capital, as provided under Bye-Law No.12, then again the stipulation contained in the said Bye-Law should be fulfilled. If a member is to be expelled, specific procedure has been prescribed under Bye-Law No.16(1) and in the event of any resolution for expulsion having been passed as prescribed under Bye-Law No.16(1), such expulsion should have the approval of the Registrar of Cooperative Societies under Bye-Law No.16(2). Therefore, an expulsion of a member cannot be claimed to be made by a mere stand taken by the society. There must be an order of approval of the Registrar of Cooperative Society confirming the expulsion resorted to as proscribed under Bye-Law No.16(1) or otherwise, such an expulsion of membership claimed by the society cannot be valid.

23. One other provision in the Bye-Law to be noted is the term of the Managing Committee, which has been prescribed under Bye-Law No.22. It states that such term shall be for a period of 3 years and that any proceedings of the Managing Committee should be invalidated on account of any vacancy or vacancies of the Committee, which may remain unfilled. Under the said Bye-Law, it is stipulated that all the members of the committee would vacate their office on the expiry of the term of the office of the committee. These are all the salient features in the Bye-Laws. Apart from the above specific provisions, under Bye-Law No.36, it is stated that the ultimate authority in all matters relating to the administration of the society, shall vest in the General Body. Even an expulsion of a member is one of the specific powers to be exercised only by the General Body.

24. Keeping the abovesaid prescription in the Bye-Law, when we examine the emergence of the society and the subsequent events, it is not in dispute that at the time of formation of the society, the founder members were 28 in number in the year 1981. A list of members, as from the year 1981-82 onwards, disclose that as on 30.06.1982, the membership went up to 43, which remained constant, though there was a slight increase in the membership up to 56 sometime in the year 1988. As on 31.03.1997, the total number of members were 75. Be that as it may, when the society purchased the land admeasuring 1 acre 14 guntas in Survey No.233 of Thokatta Village in the year 1982, it is stated that the cost of the land was incurred by 11 of the members of the society, namely, M. Balakrishnan, K. Sivarama Raju, V. Sivaramakrishna, P.S. Sastry, N. Suryaprakash Rao, K. Bhaktavatsalam, T.S. Benerjee, T.N. Shankar, C. Viswam, U. Talapathi and K.G.K. Murthy. It is also mentioned in one other statement that the land cost was collected from the other members in the year 1983-84, as per which statement the total investment was in a sum of Rs.64,000/-.

A 25. While the purchase of the land came to be made, as above, by the society and the process of providing housing facility was being examined and was pending till the year 1996, the issue relating to the admission of 37 persons as members of the society cropped up. Therefore, before arriving at any B definite conclusion as to how the housing facility in respect of the land already purchased, namely, 1 acre and 14 guntas in Thokatta Village is to be dealt with, we will have to steer clear of the membership of the society, in particular about the claim of the 37 persons as having become members of the society, C who also claim their right to have a share in the land already purchased by the society for distribution in the form of housing accommodation.

26. Insofar as the said claim of the 37 members is concerned, the first document is the letter dated 25.09.1996 D of the Deputy Registrar of Cooperative Society, addressed to the society by which the society was requested to admit them as members and intimate the same to the Deputy Registrar. Pursuant to the said letter, the minutes of the Executive Committee Meeting of the Society dated 03.10.1996, disclose E that as per the agenda dated 18.09.1996, the matter relating to admission of 37 applicants was thoroughly discussed and unanimously decided to admit them as members. The minutes of the said Meeting, however, stated that their claim for a share in the land already purchased, cannot be considered as such F a claim would be considered in a different venture. Confirming the admission of those 37 members, a communication was also sent to the Deputy Registrar by the society on 04.10.1996. That apart, there was a General Body Meeting held on 04.04.1997, which discloses that the admission of the 37 G members to the society was also ratified by the General Body, though their claim in respect to the land purchased in the Thokatta Village was not acceded to in the General Body.

27. From the above proceedings, it must be stated that the admission of the 37 members to the society was a H

concluded issue as on the date of the General Body, namely, 04.04.1997. However, the offices of the Cooperative Department took a sudden u-turn in the year 1998, when the Deputy Registrar issued a communication to the society on 01.12.1998, stating that the instructions issued by it in its letter dated 25.09.1996 was to be treated as withdrawn based on the proceedings of the Registrar of Cooperative Societies dated 17.04.1997. It will have to be stated that the said stand of the Deputy Registrar Cooperative Societies is not permissible in law and we do not find any support for such a stand either based on any Statutory Provision or any other rule or regulation. That apart, when based on the said communication dated 01.12.1998, the society wanted to withdraw the membership of the 37 persons, the issue went before the High Court by way of Writ Petition No.3720 of 1999, which was rejected by the learned Singh Judge in Writ Appeal No.1056 of 1999, the proceedings of the society dated 20.07.1999, withdrawing the membership, was set aside with the observation that it is open to the society to decide one way or the other with respect to the membership of one of the 37 members. The said conclusion was followed in respect of 25 other persons among the 37 members when their Writ Petition in W.P. No.18294 of 1999 was decided by order dated 01.09.1999, wherein the conclusion in Writ Appeal No.1056 of 1999 was followed.

28. Though, the society wanted to initiate proceedings by issuing show cause notice on 06.10.1999, the fact remains that the said show cause notice was not pursued. On the other hand, in Writ Petition No.11268 of 2011 by order dated 18.11.2000, the High Court virtually declared that the 37 members, including the writ petitioners, had become valid members as on the date of the order as society not having divested of such membership in any formal proceedings in due conformity with the law. It was stated in the said order that any alleged deficiencies in the electoral roll cannot be a relevant

A ground to interdict the democratic process of elections to a cooperative society and the contention that the 37 new members cannot form part of the Electoral College was rejected. It must be pointed out that the said order of the learned Single Judge dated 18.11.2000 passed in W.P. B No.11268 of 2011 was not varied at any point of time in any subsequent proceedings, either in an appeal or by any other valid order passed by the society. In fact, subsequently, while dealing with an issue relating to the prosecution of the members for alleged misappropriation when the State C Government passed an order on 29.03.2004, it was innocuously stated that the disputed membership of 37 persons cannot be accepted, as their membership was not valid. The said order was challenged in a separate writ petition in W.P. No.7794 of 2004 and the said part of the order was also set D aside by the High Court in the order dated 15.12.2006. Here again it must be stated that the said order in W.P. No.7794 of 2004 has become final and conclusive as the same was not challenged in the manner known to law. The said writ petition was filed by the society itself. The net result was that by virtue E of the orders passed in W.P. No.11268 of 2000 dated 18.11.2000 and the order dated 15.12.2006 in W.P. No.7794 of 2004, the validity of membership of these 37 persons was beyond the pale of controversy.

29. One other factor which has also to be noted is that F belatedly, an attempt was made by the department in a proceeding dated 02.04.2004, to deal with the validity of membership of these 37 person by directing one of its officers, namely, the Sub-Divisional Cooperative Officer to call for a General Body Meeting of the society and decide the issue G relating to the membership. Pursuant to the said proceeding, though a General Body Meeting was called for by the said officer and a date was also fixed as 22.05.2005, the said Meeting was not convened, since the proceedings of the Deputy Registrar dated 04.06.2005 made it clear the that the H Sub-Divisional Cooperative Officer who convened the General

Body Meeting, explained to the members on 22.05.2005 and made it clear that there would not be any discussion on the agenda, namely, about the validity of the admission of the 37 members and that there was no General Body Meeting as proposed to be convened. Therefore, as pointed out by us earlier, the admission of the 37 members based on the Meeting dated 03.10.1996, can no longer be in controversy as it was a concluded issue.

30. Even while holding so, it must be noted that if at all the membership of the 37 persons were to be cancelled, the same could have been done by applying any of the relevant provisions in the Bye-Law, namely, on the ground of eligibility as provided under By-Law No.5 or by way of disqualification as provided under Bye-Law No.8 or by withdrawal of share capital as provided under Bye-Law No.12 or by way of an expulsion as stipulated in Bye-Law No.16. As far as the eligibility criteria is concerned, it was not pointed out before us that any of the 37 members lacked such eligibility as stipulated in Bye-Law No.5. It was also not pointed out before us in the form of any acceptable material that any of the 37 members suffered disqualification as provided under Bye-Law No.8. As far as application of Bye-Law No.12 is concerned, it must be stated that out of 37 members, 10 have accepted their refund of share capital and as on date, only 27 out of the 37 remain, who returned the cheques issued by the society during the year 1999, along with proceeding dated 20.07.1999.

31. When we come to the expulsion of membership, it is not the case of either the society or any of the rival claimants that any such proceeding for such expulsion, as stipulated under Bye-Law No.16, was carried out and that such proceeding was also approved by the Registrar. In such circumstances, in the absence of any such valid order of approval by the Registrar relating to the expulsion of the newly added members, there is no question of the remaining 27 members having ceased to be the members of the society.

A 32. Keeping the above factors in mind, relating to the 37 members, now 27, the only other question which remains to be considered is as to the entitlement of the members of the society for a housing accommodation in the land admeasuring 1 acre 14 guntas in Survey No. 233 of Thokatta Village. When
B we consider the said issue, the claim of the so- called 11 founder members is that the entire value of the land was borne by them and, therefore, they are exclusively entitled to the distribution of the land amongst themselves. Such a claim was distinctly mentioned in the General Body Meeting of the society
C held on 04.04.1997. In fact, there was a serious deliberation and discussion in the said Meeting relating to the said issue and the minutes of the General Body Meeting states as under:

> "It was explained that since new members did not join in the venture, the then existing 11 members, who have
D decided to continue in the venture, contributed all the extra amounts to refund the amounts to the members, who resigned from the land advance on their own accord. Thus the following 11 (eleven)
>
> E
> 1. V. Sivarama Krishna
> 2. M. Balakrishnan
> 3. K. Sivarama Raju
> 4. P.S. Sastry
> F
> 5. K. Bhaktavatsalam
> 6. N. Suryaprakash Rao
> 7. T.N. Shankar
> 8. T.S. Banerjee
> G
> 9. C. Viswam
> 10. U. Talapathi
> 11. K.G.K. Murthy

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are the only members who have right to the existing land venture in S. No.233 of Thokatta village and it is not possible to admit any further members after lapse of so many years in the existing venture. However, the chair expressed that interested members can explore the possibility of any new venture and all assistance will be given for the same."

33. Though, such a stand was expressed by the Chair in the General Body Meeting, no definite conclusion to that effect was arrived at in the General Body Meeting. Besides such a claim made by the so called 11 founder members, it must be stated that such a claim will have to be tested on the anvil of the provisions contained in the Bye-Laws. For this purpose, when we examine the provisions in the Bye-Laws, the object clause in Bye-Law No.2 states that the object of the society is to carry on for the benefit of its members, the trade of building and of buying, selling, hiring, letting and developing land in accordance with the cooperative principles, apart from giving loans to members for construction of new dwelling houses. Therefore, the object is very explicit to the effect that it is for the benefit of the members and it should be in accordance with the cooperative principles. Bye-Law No.4 prescribes the total share capital to be made up to 5000 shares of Rs.100 each, the other source of fund can be as prescribed in Bye-Law No.17. Bye-Law No.17 under the head 'FUNDS' states that the society will ordinarily obtain funds from 10 sources, namely, share capital from the members, loan from the Government, deposits from members, entrance and other fees, AP Cooperative Housing Society's Federation Ltd., Scheduled and Nationalised Banks, BDA, LIC, Hadco and Voltas Ltd. There is no information as to whether any fund was gathered from any other source, except the share capital from the members and the funds invested by such of those members who initially formed the society and by those members who subsequently joined the society. In fact, pursuant to a direction

A of this Court in the order dated 04.09.2012, to one of the queries, which was directed to be answered by the Registrar, it has come to light that the contribution for the sale deed was Rs.48,000/- though as per cash book the consideration paid was shown as Rs.2,60,000/-. That apart, a list was annexed
B along with the answer to another query by way of Annexure 2, which disclose that the contribution in a sum of Rs.3,06,795/- came to be made by 34 members of the society, on different dates between 24.08.1982 and 30.04.1982.

34. To yet another query made by this Court by way of
C Annexure 4, it is disclosed that contributions were also made after 30.04.1982, i.e. between 11.10.1982 and 30.11.1989, in different sums ranging from Rs.5000/- to Rs.39,000/-, though many of the members got back their investments by way of refund, while some of the members continue to retain such
D investments. To yet another query by way of Annexure 6, the Registrar has disclosed that as many as 34 members who sought such membership after 25.09.1996, have invested sums ranging from Rs.1500/- to Rs.2,40,000/-, in all a sum of Rs.17,48,569/-. For the said sum the break-up of the expenses
E has also been disclosed in the annexure. De hors the question whether such investments made and the expenses incurred is to be scrutinized and the veracity of such expenses incurred by the society are to be accepted or not the fact emerges that the founder members, as well as those who subsequently came
F to be admitted as members, have invested large sums by way of deposits into the society. The question for consideration, therefore, is how to treat those sums, once it was brought into the funds of the society.

35. In this context, Bye-Law No.17 assumes significance.
G It will have to be stated that whatever maybe the intention of the members of the society, while making various deposits into the accounts of the society, since, the funds of the society can be regulated only as per the Bye-Laws of the society whatever sum invested by the members of the society, can be either
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towards the share capital, which cannot exceed 5000 shares of Rs.100 each or by way of deposits by the members as provided under Bye-Law No.17. Since, the membership has been confirmed based on the shares acquired by each of the individuals, whatever other sum brought into the accounts of the society, can only be taken as the deposits of the members. Therefore, the amount deposited by the individual members of the society can be utilized only to meet the cost of the land originally purchased nearly 1 acre and 14 guntas in Survey No.233 of Thokatta Village or for any future investment to be made in any other lands to be purchased or to be used for advancing any loan for the purpose of construction of building by the members. In other words, the individual members cannot seek to claim that because the purchase of land in Survey No.233 was from and out of the amount advanced by them to the society, the land so purchased should be held to exclusively belong to those members. Such a claim of individual members cannot be accepted. In fact, such a claim would run counter to the cooperative principles, which is the object of the society when it came to be formed.

36. Once the land in Survey No.233 in an extent of 1 acre and 14 guntas in Thokatta Village was purchased by the society, the property vests in the society. Therefore, it is for the society to consider how to deal with the said land in accordance with the cooperative principles and the objects with which the society was formed as mentioned in the Bye-Laws. It is not for the individual members to claim in what manner the land should be dealt with for the purpose of distribution amongst its members. At the risk of repetition, it will have to be stated that the members, who contributed their funds to the society, have no exclusive right to claim any share in the property on the ground that they made the investments for the purchase of the land. The said claim of the members both founder members and those who came to be subsequently admitted in the society, therefore, stands rejected.

37. Therefore, to put it in clear and unambiguous terms, all those investments made either by the founder members or by the subsequent members other than those relating to the share capital, can only be taken as their deposits forming part of the funds of the society. The society is, therefore, bound to account for such deposits made by the members from the relevant dates and whatever prevailing interest in the market should accrue to such deposits and depending upon the volition of the member, it is for the society to take a decision either for refund of the sum so deposited after a fixed period or for using the same to meet the cost of the land in the event of its ultimate distribution to its various members.

38. In this context, it will be appropriate to note the order of the learned Single Judge dated 14.12.2006, passed in W.P. No.701 of 2003, wherein the learned Judge held as under:

> "It is an admitted fact that the resolution was passed without there being an approved layout, as required under the bye- laws. If that be so, there was no necessity for convening the Meeting and passing a resolution allotting certain plots in favour of the petitioners herein. In view of this, the question as to whether there was a valid committee or not for passing the resolution need not be gone into. Therefore, I am of the considered opinion that the appellate tribunal has not committed any error in passing the impugned orders warranting interference of this Court under Article 226 of the Constitution of India.
>
> The Writ Petition is devoid of merits and it is accordingly dismissed.
>
> However, this order will not preclude the general body, after the layout is sanctioned from considering the allotments of plots in favour of the members of the society

by taking into consideration their seniority as per the bye-laws concerning allotment of plots." A

(underlining is ours)

39. We find that such a conclusion and direction made by the learned Single Judge in the said order in Writ Petition No.701 of 2003, is not only the only course but the appropriate course to be followed by the society. In our considered view, any other attempt to deal with the land already purchased by the society, will not only run counter to the cooperative principles but will only create further complications and result in utter chaos and confusion. Therefore, neither the founder members nor those who were subsequently inducted/admitted as members, can claim any preference or right of allotment in any particular manner, other than the manner in which the learned Judge has directed in the said order. B C D

40. From what has been found in the above paragraphs, we ultimately issue the following directions:

(i) In order to comply with our other directions in this concluding paragraph, in the foremost, we direct the Registrar of the Cooperative Societies of Andhra Pradesh, to depute one of its responsible officer in the rank of Sub-Divisional Cooperative Officer to call for a General Body Meeting of the Society of all the members ascertained by it from the records of the society and conduct the election of the members of the Managing Committee as per the Bye-Laws of the society. Such officer nominated by the Registrar should meticulously follow the required procedure for issuing the notice calling for the General Body Meeting for the purpose of electing the Managing Committee members, hold the election and declare the results of such election and report the same to the Registrar who shall publish the same in the society to enable the Managing Committee to take control of the society. E F G H

A Such nominated officer shall also thereafter guide the Managing Committee for electing their other office bearers such as President, Secretary, etc., and after their successful election to the respective position, officially handover the management of the society to
B the Secretary so elected. The abovesaid exercise shall be carried out by the Registrar within a period of three months from the date of communication of this order. After the completion of the said exercise, file a compliance report to this Court. After the successful
C compliance of this direction, the rest of the directions contained in sub-clause (ii) to (xi) shall be adhered to and carried out by the successfully elected office bearers and members of the Managing Committee in accordance with the Bye-Laws of the society. It is
D made clear that while carrying out the direction contained in this clause, the officer nominated by the Registrar shall have complete authority in enumerating. the members of the society, determine the date for the General Body Meeting, hold the
E election in the General Body for electing the members of the Managing Committee, thereafter enable the Managing Committee to elect the office bearer, namely, President, Vice- President, Secretary or any other office bearer and declare the results. It is
F needless to emphasize that this direction would apply to all concerned. Only after complying with this direction, the Registrar shall file the compliance report into the Registry of this Court within one month after the compliance. Thereafter, if any further directions are
G to be issued on this aspect, that will be considered by this Court as per law.

(ii)The society which emerged as from 29.10.1982, has to exist in perpetuity irrespective of anybody's claim as founder member or by way of membership

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acquired subsequently and thereby, claim any preferential right. A

(iii)As the object of the society is to provide housing facilities to the members of the society in accordance with the cooperative principles, such a right should be made available to all the members in accordance with the bye laws of the society. B

(iv) The right of 37 members as having been admitted to the society by its resolution dated 03.10.1996 is a concluded issue having been affirmed by various orders of the High Court, the same has now become final and absolute. C

(v) Though the admission of the 37 members has become final and conclusive, such of those members who have accepted their deposits, both towards share capital or any other sum, which was forwarded to them by the society along with the notice dated 20.07.1999, ceased to be the members of the society. Consequently, out of the 37 members admitted, only 27 members continue to remain. D E

(vi) Similarly, of the founder members who were stated to be 28 in number, as on date, accepting the claim of the remaining 11 members, who stated to have invested further sums into the society by way of deposits to enable the society to settle the claims of the other founder members, ceased to be the members of the society. Thereby, among the founder members, only 11 members whose names have been mentioned in paragraph 24 continue to remain. F

(vii) The purchase of the land in Survey No.233 of Thokatta Village to the extent of 1 acre and 14 guntas belongs to the society and it is for the society to deal with the distribution of the said land in the manner known to law. G H

A (viii) As far as the distribution is concerned, as has been rightly held in the order of the Learned Single Judge in W.P. No.701 of 2003 dated 14.12.2006, it will be appropriate for the society to prepare a layout of the said land with the help of chartered engineers and B submit the same to the appropriate authorities for approval and based on such approved layout, depending upon the availability of either plots for sale or in the form of units to be constructed, the society shall decide to make such allotment of either plot or C unit of the construction to be made based on the seniority of the members of the society.

(ix) Once such a distribution of the land in Survey No.233 is to be made by the society, it will be for the society to ensure that the amounts deposited by its members in D whatever form, which is to be treated as deposit as provided under Bye-Law No.17, shall be taken into account with accrued interest on such deposits from the date of such deposit and give credit to while deciding the consideration to be paid by the members E who would be eligible for the allotment of land/housing unit, based on the value that would be worked out by the Chartered Engineer. While giving credit to such deposits made by the individual members, if any excess remains to be collected from the individual F members, such payments shall be recovered before making such allotment and in the event of such members failing to make the payment within the time stipulated or express their desire to give up their right for allotment, it will be for the society to decide in an G appropriate manner, in accordance with the Bye-Laws as to how the left out plot/housing unit should be allotted to the next member in the seniority for whom the right to claim such allotment would be available.

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(x) It is made clear that none of the members either founder members or the subsequent members can claim any right based on their investments on the footing that their investments enabled the society to purchase the land or that their investment was higher in value or on any other ground. A B

(xi) Any other investment to be made for housing projects, in accordance with the object of the society as per Bye- Law 2, shall be made by the society in future in accordance with the Bye-Laws and as well as in accordance with the other statutory provisions governing the housing society. C

(xii) Since the above exercise will be carried out as per the directions of this Court in this judgment, we make it clear that any further orders/directions relating to this matter can be passed only by this Court and by no other Court/Tribunal in this Country. D

41. In as much as our conclusion and directions were based on the various factors such as the interpretation of the Bye-Laws, the concluded orders of the High Court and the other uncontroverted facts culled out based on the records placed before us, as well as the report of the Registrar of the Cooperative Society of Andhra Pradesh pursuant to our order dated 04.09.2012, we are of the considered view that the orders impugned in these appeals cannot sustain. Further, we find that very many factors which have been brought to our notice, the details of which could be appreciated by this Court, could not be found in the orders impugned in these appeals. E F

42. We, therefore, set aside the orders impugned in these appeals, while holding that the directions contained in paragraph 40 shall alone govern this case. In the light of our above orders, we find that no orders need be passed in the contempt proceedings initiated in Contempt Petition(C) Nos.302 of 2010 and 251 of 2011 in SLP(C) No.4679 of 2010. G H

A The Contempt Petitions are therefore, closed. In this context, we are reminded of the legal maxim 'interest reipublicae ut sit finis litium' which means it is for the general welfare of the State that there be an end to litigation. We, therefore, pass the above directions to put an end to this everlasting litigation at the
B instance of the cooperative society. The appeals are allowed with the above directions. No Costs.

Kalpana K. Tripathy Appeals allowed.