



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 297 of 2025

Praveen Singh @ Praveen Singh Bafila and another
.....Appellant(s)

Versus

Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd. Thru. its
Secy. and 21 others
.....Respondent(s)

Counsel for Appellant(s)	: Pt. S. Chandra, Ravi Kant Mishra, Ravindra Nath Shukla
Counsel for Respondent(s)	: Sharad Pathak, C.S.C., Gaurav Mehrotra, Utsav Mishra

**Reserved on:19.09.2025
Delivered on:18.12.2025**

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE PRASHANT KUMAR, J.**

(Per: Rajan Roy, J.)

(1) Heard Sri Pt. S. Chandra, learned Senior Counsel assisted by Sri Ravi Kant Mishra, learned counsel appearing for the appellants, Sri Pritish Kumar, learned Additional Advocate General assisted by Sri Nishant Shukla, learned Additional Chief Standing Counsel for the State-respondents Sri Sharad Pathak, learned counsel appearing for respondent no.3 and Sri Utsav Mishra, learned counsel appearing for respondent nos.7 and 8.

(2) This is a special appeal under Chapter VIII Rule V of the Allahabad High Court Rules, 1952 (in short 'the Rules, 1952') challenging an order dated 20.08.2025 passed in Writ-C No.7497 of 2025 [Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd. & Ors. vs. State of U.P. & Ors.].

(3) A preliminary objection has been raised by Sri Sharad Pathak, learned counsel appearing for the private opposite parties regarding maintainability of this appeal in view of Chapter VIII Rule V of the Rules, 1952 as, according to him, the impugned order has been passed by the writ court in a writ petition arising out of an order passed by a Statutory Arbitrator under Section 70 of the U.P. Cooperative Societies Act, 1965 (in short 'the Act, 1965') which is an enactment referable to Entry-32 of the State List as such view of the language used in Chapter VIII Rule V aforesaid, this appeal is not maintainable. Secondly, the order impugned is an interim order, therefore, for this reason also this appeal is not maintainable as there is no finality attached to such an order especially as the appellants herein have moved an application for vacation of the same on 15.09.2025 which is still pending.

(4) On the other hand, learned counsel for the appellants submits that the order passed by learned Single Judge is beyond the scope of the writ petition as also the roster assigned to him by order of Hon'ble the Chief Justice as he has proceeded to issue directions and made observations with regard to certain issues under the criminal law to the extent that he has ensured lodging of F.I.R. against the appellants herein and its investigation by a specialized agency which was not the subject matter of the writ petition and certainly not within the jurisdiction of learned Single Judge. He also

submitted that by means of the impugned order, learned Single Judge has stayed the proceedings of arbitration pertaining to the election in question to the managing committee of the co-operative society under Section 70 read with Section 71 of the Act, 1965 which was impermissible especially as a writ petition against an interlocutory order passed in such proceedings would not be maintainable especially in view of Section 71(3) of the Act, 1965 which permits passing of interlocutory orders in such proceedings. As regards the contention that the order impugned is an interim order, therefore, not amenable to an intra-court appeal, he submitted that direction of final nature that too without jurisdiction has been issued, therefore, the order impugned has the trappings of a final order and in any case is without jurisdiction, therefore, the appeal is very much maintainable.

(5) We have perused the memo of the writ petition in which the impugned order has been passed. The relief clause of the writ petition reads as under:-

"I. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 10.03.2025 passed by opposite party no. 2 in case No. 1831 of 2023 and impugned order dated 12.05.2023 passed by opposite party no. 2 in case No. 1831 of 2023 (Pravin Singh & others Vs. Uttar Pradesh Cooperative Societies, Election Commission & others) under purported exercise of Section 70 of Uttar Pradesh Cooperative Societies Act 1965 contained as Annexure No. 1 & 2 to this writ petition respectively.

II. Issue a writ order or direction in the nature of Certiorari quashing the arbitration proceedings filed by opposite party No. 9 and 10 before the opposite party no. 2 being numbered as case no. 1831 of 2023.

III. Any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case may also be passed.

IV. Allow the cost of writ petition in favour of petitioner."

(6) We have also perused the orders dated 12.05.2023 and 10.03.2025 which are interlocutory orders passed by Statutory Arbitrator in exercise of his powers under Section 70 read with 71 of the Act, 1965.

(7) As per the roster determined by Hon'ble the Chief Justice on 31.07.2025, learned Single Judge who has passed the impugned order was allotted fresh and listed matters for order, admission and hearing pertaining to (a) all tax matters (b) all company matters (c) matters pertaining to Commercial Divisions (d) applications upto the stage of winding up proceedings under Section 439 of the Companies Act, 1956 (e) Rent control matters (f) small causes courts revisions (g) R.E.R.A. appeals (h) Application u/s Section 24 C.P.C. (i) Matters related to Indian Stamp Act (j) civil revisions, (k) Writs relating to Disputes of Committee of Management, (m) Matters pertaining to educational institutions and Education matters (n) Matters pertaining to Society matters and (o) All Civil writ petitions. By that very roster, matters pertaining to Co-operative societies were specifically assigned to a Division Bench. As is evident from the subject matter of the writ petition before the writ court out of which this appeal arises, it pertained to a dispute relating to election/ management of a co-operative society and validity of an interim order passed by the S.D.M. who is the statutory arbitrator for deciding such disputes under Section 70 / 71 of the Act, 1965. As the order impugned before the writ court was neither an appellate nor a revision order, therefore, in view of order of Hon'ble the Chief Justice dated 18.09.1981 read with the roster determined by him on 31.07.2025, such a writ petition was cognizable by a Division Bench which had been assigned

matters relating to co-operative societies and by the learned Single Judge. The Reporting Section, it appears, incorrectly passed the writ petition as being cognizable by a Single Judge being misled by the fact that the order assailed was that of S.D.M. oblivious of what was the nature of the order i.e. it was referable to proceedings under Section 70/71 of the Act, 1965 pertaining to dispute relating to management/ election of a co-operative society.

(8) Apart from the above, the scope of writ petition was confined to a challenge to the said interlocutory orders by which respondents- petitioners herein had been restrained from functioning and transferring the movable and immovable properties of the society and from operating the Bank accounts. This interim order dated 12.05.2023 was reconsidered on 10.03.2025 by the Statutory Arbitrator and was continued. The scope of the writ petition before the writ court was thus confined to the validity of these orders which were passed in proceedings for arbitration of an election dispute or a dispute pertaining to constitution/ management of the co-operative society based on the elections held recently wherein the respondents-petitioners claim to have been elected, which had been put to challenge by the appellants herein in the said proceedings and nothing more. We have also gone through the petition which was preferred under Section 70 of the Act, 1965 based on which the proceedings are being undertaken before the Statutory Arbitrator i.e. the Sub-Divisional Magistrate concerned. The relief clause in the said petition reads as under:-

"1. बहुजन निर्बल वर्ग सहकारी गृह निर्माण समिति, लखनऊ के निर्वाचन क्षेत्र संख्या- एक, दो, तीन, चार, पाँच, छः, सात, आठ व नौ से निर्वाचित संचालक सदस्य के निर्वाचन परिणाम दिनांक 15.03.2023 एवम उपसभापति एवं सभापति के

निर्वाचन परिणाम दिनांक 19.03.2023 को न्यायहित में विधिशून्य घोषित किया जाये।

2. विपक्षी संख्या-11 से 19 क्रमशः श्री सत्य प्रकाश, श्री अजय जायसवाल, श्री लालबहादुर, श्री राजकुमार तिवारी, श्रीमती ऑचल, श्री महेन्द्र प्रसाद तिवारी, श्री धरमशील, श्री अमरकान्त शर्मा, संगीता जायसवाल को प्रस्तुत वाद के लम्बित रहते हुए बहुजन निर्बल वर्ग सहकारी गृह निर्माण समिति, लखनऊ के संचालक सदस्य के रूप में मान्यता नहीं प्रदान की जाये।
3. प्रस्तुत वाद के लम्बित रहते हुए बहुजन निर्बल वर्ग सहकारी गृह निर्माण समिति, लखनऊ के फर्जी एवं कूटरचित अभिलेखों के आधार पर निर्वाचित प्रबंध कमिटी एवं उसके सभापति एवं उप सभापति को किसी भी चल व अचल सम्पत्ति का हस्तान्तरण एवं बैंक खातों के संचालन पर रोक लगायी जाये।
4. वाद व्यय प्रार्थी को दिलाया जाये।
5. अन्य कोई अनुतोष जो प्रार्थीगण के हित में हो पारित किया जाये।"

(9) As is apparent from the said petition, its subject matter is a challenge to the election to the governing body of the co-operative society held on 19.03.2023 and as an interim measure, it had been sought that the respondents in the said proceedings who are respondents before us should be restrained from functioning as part of governing body of the society and from transferring any property or operating the Bank account which is the interim order granted by the Statutory Arbitrator.

(10) As is evident from the language used in Chapter VIII Rule V of the Rules, 1952, the order which was impugned before the writ court having been passed by the Statutory Arbitrator under Section 70 read with 71 of the Act, 1965 which is an enactment referable to Entry-32 of the State List under the Constitution of India, any order passed in such writ petition by Statutory Arbitrator made or purported to be made in purported exercise of jurisdiction under any U.P. Act (Act No.65) with respect to any of the matters enumerated in the State List or Concurrent List in the Seventh Schedule to the Constitution, a special appeal would not lie to the extent impugned order relates to the interim order passed by the

statutory arbitrator in the proceedings under Section 70 read with 71 of the Act, 1965, subject of course to the writ petition itself being maintainable and cognizable before the learned Single Judge and the order impugned by the writ court not being without jurisdiction. As already mentioned the order passed by the writ court was itself without jurisdiction and the writ petition had wrongly been placed before Learned Single Judge, though it was cognizable by a Division Bench. It being so, irrespective of what has been noticed hereinabove, a special appeal against an order which is without jurisdiction will be maintainable as it cannot be said to be an order passed by the writ court in exercise of jurisdiction conferred upon him under Article 226 as it is an order passed without jurisdiction or to put it differently on order passed beyond such jurisdiction as assigned by Hon'ble the Chief Justice. For this reason it cannot be treated as covered by the exclusionary clause contained in Chapter VIII rule 5 of the Rules, 1952. We may in this very context refer to a Full Bench decision of this Court reported in (2017) 2 ALL LJ 409 '**Dinesh Kumar Singh @ Sonu vs. State of U.P. & Ors.**' wherein the procedure to be followed in this regard has been discussed and orders passed beyond the jurisdiction assigned have been held to be without jurisdiction, relying upon decision of Hon'ble the Supreme Court reported in (2010) 10 SCC 320 '**State of U.P. & Ors. vs. Neeraj Chaubey & Ors.**' and the Full Bench decision of this very Court reported in (2010) 83 ALR 664 '**Smt. Maya Dixit & Ors. vs. State of U.P. & Ors.**', (1998) 1 SCC 1 '**State of Rajasthan vs. Prakash Chand & Ors.**' and (2001) 4 AWC 2688 '**Prof. Y.C. Simhadri, Vice-Chancellor, B.H.U. & Ors. vs. Deen Bandhu Pathak, Student**'. We may also in this very context refer to the decision of Hon'ble the Supreme Court reported in

(1998) 1 SCC 1 '**State of Rajasthan vs. Prakash Chand & Ors.**' (Para 59) [Point (3) and (4)].

(11) In view of the above, Full Bench decision rendered in Special Appeal No.1942 of 2008 '**Sheet Gupta vs. State of U.P. & Ors.**' does not apply to the facts and issues involved herein. The Full Bench in **Sheet Gupta (supra)** did not deal with the question regarding maintainability of an appeal when judgment of learned Single Judge is without jurisdiction.

(12) Further when we peruse the impugned order we find that it dwells on something more than what was the subject matter of the writ petition and beyond the civil jurisdiction listed in the writ court by the roster determined by Hon'ble the Chief Justice. We have already quoted the relief clause of the writ petition wherein the impugned order has been passed. We have also referred to the subject matter of the orders which were impugned before the writ court. We have also referred to the relief clause of the petition based on which proceedings are going on before the Statutory Arbitrator but when we see the order impugned passed by the writ court what we find is that apart from staying the proceedings before the Statutory Arbitrator and the orders passed by him dated 12.05.2023 and 10.03.2025, he has gone ahead and considered certain issues under the criminal law. He has also issued certain directions as to investigation into certain activities allegedly undertaken or done by the appellants herein in respect of sale etc of property and misappropriation of such sale consideration etc. Not only an F.I.R. has been lodged but investigation is sought to be monitored by the learned Single Judge. Para 2 of the impugned order itself mentions that- "*Present case demonstrates a deep malaise of corruption*

that is rampant in the Co-operative Housing Societies in the State of Uttar Pradesh". In para 3 with reference to the Society at hand, namely, Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd. which was incorporated for the benefit of persons of scheduled castes, it has been observed that "huge inconsistencies and bungling were done by the society as are evident from the report dated 27.08.2024 which highlighted the manner in which the lands have been allotted to the persons who are not entitled to, the society has not followed the restrictions with regard to the quantum of land that can be allotted to the member of the society, etc." Learned Single Judge in para 4 of his order has stated *"It is also disturbing to notice that despite there being a detailed report in an inquiry conducted by as many as seven responsible officers of the LDA, no action has been taken"*. In para 5, he has noticed the allegations of the petitioners that inspite of being elected in an election held on 18.03.2023, the respondents who are not even the office bearers, executed two sale deeds-one of them is on record whereby the person namely respondent no.10 who is not even a member or the elected member of the society after elections executed sale deeds of the properties of the society. The recital of the sale deed indicate that substantial amounts were issued in favour of the executant i.e. respondent no.10 herein through various cheques and demand drafts. None of the said amount was credited to the account of the society. Learned Single Judge then put a query to learned counsel for respondent nos.9 and 10 in the writ petition as to whether the cheques referred to in the sale deeds have vanished. In response to which he stated that on instructions of respondent no.10, that none of the said amounts have been credited to the account of

respondent no.10. He has then noticed that learned counsel was unable to give any statement as to what happened to the cheques which were admittedly collected by respondent no.10 and have not been credited to the accounts of society.

(13) Learned Single Judge has thereafter seen the sale deeds executed by respondent no.10 which were handed over to him across the Bar i.e. they were not on record and were dated 12.12.2024 by which another piece of land belonging to the society was sold. He has then observed that the said land was sold for a sale consideration of Rs.5,05,000/- but the said amount is also not reflected in the accounts of the society.

(14) In para 8, he has gone on to mention that the statement of account of the society reveals huge siphoning off of the funds. All the money deposited towards the execution of the sale deeds have been withdrawn by respondent nos.9 & 10 through cash withdrawal. He has then observed that despite all these facts being in the knowledge of the State and there being a bar in execution of the sale deeds of the society, huge funds have been siphoned off by the members who were then manning the society by executing sale deeds contrary to the bye-laws.

(15) Learned Single Judge has then recorded the statement of Sri Prithish Kumar, learned Addl. Advocate General for the State of U.P. who informed that State is in process of registering the F.I.R. He has then directed the Addl. Advocate General to file a status report with regard to the steps taken in pursuance to the FIR lodged today i.e. the date of the order on the next date of listing. In this context, the contention of learned counsel for the appellant was that the F.I.R. was lodged on that day only on account of the oral

observations and directions of the Court in the proceedings which are impugned before him without having jurisdiction in such matters.

(16) Be that as it may, in para 12, learned Single Judge has observed that in case the police authorities/State Authorities feel necessary, steps shall also be taken for conducting the land audit of the society which shall include the total land owned by the society and the number of the sale deeds executed by the society in the last ten years and the deposit of sale proceeds in society's account. He has then directed that the authorities shall also collect the date and the receipts by which new members were included in the society.

(17) In para 14, he has observed/ ordered that in case the police authorities deem it appropriate, steps shall also be taken for recovery of the money including action, if necessary, under The Prevention of Money Laundering Act.

(18) He has then observed/ directed in para 15 that the entire investigation in pursuance to the FIR shall be supervised by the officer of the level of Superintendent of Police and that status report shall be furnished on the next date of listing.

(19) With utmost respect, the scope of the writ petition was confined to considering the validity of interim orders passed in proceedings under Section 70 read with 71 of the Act, 1965 disputing elections to the governing body of the society and nothing more. Apart from the fact that such a writ petition was cognizable by a Division Bench and not a Singel Judge Bench. He was not assigned criminal jurisdiction whether under Section 482 Cr.P.C. or any other provision of

criminal law or the Constitution. One can understand the anxiety of learned Single Judge/ writ court, on seeing the facts before him, but, certain things are not comprehensible, firstly, on what basis conclusive opinions were formed with regard to the transactions referred in the impugned order, in a writ proceedings which did not pertain to the said issue rather it was confined to validity of certain interim orders passed in an election dispute which was pending statutory arbitration under the Act, 1965. The interim orders which were challenged before the writ court did not delve on these aspects. In fact, the election petition itself was not concerned with the illegality/ irregularities which may have happened or may be going on the co-operative society. Such illegality/ irregularity was a separate cause of action which could be agitated separately. One could understand that learned Single Judge for some reason felt that those aspects also required to be considered but then in that case the course of action open for him was to refer the matter to the Bench which has jurisdiction in the matter whether on criminal or civil side but it is unfathomable as to how in view of the scope of the writ petition and the jurisdiction assigned to him, learned Single Judge could have issued such extensive directions preceded by conclusive observations as to validity of certain transactions that too at the interim stage pertaining to the criminal law when he had no criminal jurisdiction assigned to him. The matter pertaining to co-operative societies were assigned to the Division Bench (Court No.2) specifically. Public interest litigation were assigned to a Division Bench (Court No.1) specifically by the order of Hon'ble the Chief Justice dated 31.07.2025. Likewise, criminal matters such as writ petitions of criminal nature were also assigned to a Division Bench i.e.

Court no.3. Learned Single Judge who passed the order did not have any jurisdiction under the criminal law for initiating or monitoring any criminal action. Here again, we rely upon the decision already relied by us earlier in this judgment rendered in **Dinesh Kumar Singh @ Sonu (supra)** and **Smt. Maya Dixit (supra)** etc.

In this very context, we may refer to a Division Bench judgment of this Court reported in 2016 SCC Online All 2813 '**Mahendra Pratap Bhatt vs. Saroj Mahana**' wherein the question of maintainability of a special appeal under Chapter VIII Rule 5 of the Rules, 1952 against the order of learned Single Judge passed under Section 24 C.P.C. came up for consideration and the Division Bench held the special appeal was maintainable as the order of learned Single Judge was beyond the territorial jurisdiction vested in the Court and as the order suffered from patent lack of territorial jurisdiction. This Division Bench judgment came up for consideration in another case before another Division Bench i.e. '**Akshay Gupta vs. Swati Gupta**' Special Appeal Defective No.826 of 2018 decided on 16.11.2018 (2018 SCC Online All 5723) wherein similar question as to maintainability of a special appeal against the order of learned Single Judge passed under Section 24 C.P.C. was involved. The Division Bench in the said case considered the earlier decision in **Amit Khanna (supra)** as also the subsequent decision in **Mahendra Pratap Bhatt (supra)** and ultimately, opined in para no.12 as under:-

"12. From a joint reading of the judgments of this Court in Amit Khanna (supra) and Mahendra Pratap Bhatt (supra), it would be evident that a special appeal under Chapter VIII Rule 5 of the Rules, 1952 against an order passed by a Single Judge on an application filed under Section 24 CPC would not

be maintainable except where the order passed by the Single Judge is without jurisdiction."

The Division Bench categorically held that special appeal would be maintainable in the event the order passed by learned Single Judge under Section 24 CPC was without jurisdiction. Of course, in that case, the facts were otherwise, therefore, the appeal was held to be not maintainable but the Division Bench did concur with the law enunciated by the earlier Division Bench in **Mahendra Pratap Bhatt (supra)** on the aforesaid score.

In this very context, we may refer to a recent decision of Hon'ble the Supreme Court rendered Civil Appeal No.14545-14546/2025 '**Abhishek Gupta vs. Dinesh Kumar**' decided on 03.12.2025. In the said case, special appeal was filed against an order of learned Single Judge which was held by a Division Bench of this Court as not maintainable in view of Chapter VIII Rule 5 of the Rules, 1952 and the decision of the Full Bench of this Court in Sheet Gupta (supra). The facts of the said case were that the special appeal had been filed by the appellant who though a necessary party before the learned Single Judge had not been impleaded. Hon'ble the Supreme Court on a perusal of the aforesaid Rule and after considering the Full Bench decision in Sheet Gupta (supra) held that in a case where a necessary party had not been impleaded and orders were passed by learned Single Judge, an appeal at the behest of such a party along with an application seeking leave to appeal would be maintainable and also that Full Bench in Sheet Gupta (supra) was not concerned with this issue.

(20) As regards the contention of Sri Sharad Pathak, learned counsel appearing for the private opposite parties that the appeal is against an interim order, with respect, the appeal against an order passed at an interlocutory stage which is without jurisdiction as the matters pertaining to co-operative societies were cognizable by a Division Bench and the learned Single Judge did not have criminal jurisdiction and the impugned order has trappings of finality wherein extensive observations of conclusive nature as to criminality and illegality in respect of certain sale deeds etc have been recorded with a further direction to submit a status report regarding investigation into the F.I.R. which was lodged on that day itself, therefore, this objection is also without any substance. Further, the impugned order passed by learned Single Judge is beyond the scope of the writ petition as already discussed hereinabove. Reliance is placed in this regard upon a judgment of Hon'ble the Supreme Court rendered in the case of **'Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.'** reported in (2006) 5 SCC 399 [paras 15(iii) and 16 thereof], according to which, intra-court will lie against an order which finally decides a collateral issue or question which is not the subject matter of the main case and against orders which though may not finally or can conclusively determine the rights of parties with regard to all or any matters in controversy may have finality in regard to some collateral matter which will affect the vital and valuable rights and obligations of the parties. Reliance is placed on a Division Bench judgment of this Court rendered in Special Appeal Defective No.40 of 2023 **"Anjali Chaurasiya vs. State of U.P. & Ors."** wherein catena of decisions rendered by Hon'ble the Supreme Court and this Court have been considered as to

when a special appeal against an interim order is maintainable. The said decision supports the maintainability of this appeal against the impugned order.

None of the decisions cited by Sri Pathak, learned counsel for the petitioners-private opposite parties reported in (1962) SCC Online SCC 134 '**Engineering Mazdoor Sabha & Anrs. vs. Hind Cycle Ltd.**'; (2002) SCC Online All 1773 '**M/s Vazara Yojana Seeds Form & Ors. vs. Presiding Officer**'; (1996) SCC Online CAL 376 '**M/s Burawan Samabaya Himghar Samiti Ltd. & Ors. vs. State of W.B.**'; (1965) SCC Online SC 61 '**Dwarka Nath vs. Income Tax Officer Special Circle Kanpur & Anr.**'; (2013) 14 SCC 737 '**Bangalore Development Authority vs. Viajaya Leasing Ltd. & Ors.**'; (2021) 12 SCC 780 '**Benedict Denis Kinny vs. Tulip Brain Miranda & Ors.**'; (2004) 4 SCC 697 '**Deoraj vs. State of Maharastra**', judgment and order dated 24.01.2025 passed in Special Leave Petition No.1283 of 2025 and Full Bench judgment passed in Special Appeal No.1942 of 2008 '**Sheet Gupta vs. State of U.P. & Ors.**' help his cause and they do not persuade us to take any other view of the matter in view of the reasons given hereinabove. The appeal is held to be maintainable.

(21) In this view of the matter, we are of the opinion that as learned Single Judge has traveled beyond the scope of writ petition as also beyond the jurisdiction assigned to him by Hon'ble the Chief Justice and the writ petition itself was not cognizable by a Single Judge Bench, therefore, special appeal is maintainable. The special appeal is admitted.

(22) In view of the discussion already made, the impugned order is stayed subject to the following conditions:-

(a) Appellants shall not manage the Society. If necessary, the Registrar of the Co-operative Society shall make interim management till the next date of listing or till conclusion of the proceedings before the S.D.M. under Section 70/71 of the U.P. Co-operative Societies Act, 1975 whichever is earlier.

(b) If an F.I.R. has already been lodged making out a cognizable offence and there is no other legal impediment then the Investigating Officer/ any agency as the case may be shall conduct the investigation as per law but uninfluenced by the observations made by learned Single Judge on the aspect of criminality or any criminal offence having been committed in the matter.

(c) It shall also be open for the competent authority whether in the police department or the State Government to get the investigation conducted by any specialized agency, if it so wants, but here again, without being influenced by any observations made by learned Single Judge in this regard.

(d) It shall be open for the private respondents herein to initiate proceedings for ensuring fair and proper investigation or get it monitored and to seek such other remedies with regard to any cause under the criminal law as may be otherwise permissible in law and our order shall not come in the way in any manner in this regard.

(e) It shall also be open for the appellants herein to challenge such F.I.R. or seek such other remedies in respect thereof as may be permissible in law under the criminal law without being prejudiced by the impugned order passed by the writ court.

(f) Our order shall not be an impediment to the State Government or any other authority who may have competence and jurisdiction in the matter to get an inquiry/ investigation conducted pertaining to the functioning of the co-operative society nor will it be understood as impeding the rights, if any, of the private respondents herein to get any legal proceedings initiated in this regard before any court or authority, if otherwise permissible.

(23) Let the Joint Registrar (Listing) submit a report / explanation as to how the writ petition bearing Writ-C No.7497 of 2025 was placed before a Single Judge Bench, instead of a Division Bench, by the next date.

(24) We could have disposed of the appeal but for the fact that we had reserved our order only on admission and interim relief.

(25) Learned Standing Counsel shall seek instructions as to the status of the proceedings under Section 70/71 of the Act, 1965 which were pending before the S.D.M.

(26) Writ-C No.7497 of 2025 be tagged with this appeal so that both matter be decided by the same Bench. Matter be placed before Hon'ble the Chief Justice for requisite orders in this regard.

(27) List this appeal and Writ-C No.7497 of 2025 together on **07.01.2026** amongst first ten cases of the day.

(Prashant Kumar,J.) (Rajan Roy,J.)

December 18th, 2025
Shanu/-



2025:AHC-LKO:85518-DB

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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

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Counsel for Appellant(s)	: Pt. S. Chandra, Ravi Kant Mishra, Ravindra Nath Shukla
Counsel for Respondent(s)	: Sharad Pathak, C.S.C., Gaurav Mehrotra, Utsav Mishra

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE PRASHANT KUMAR, J.**

(Delivered by Hon'ble Prashant Kumar, J.)

1. Heard Sri Pt. S. Chandra along with Sri Ravi Kant Mishra, learned counsel appearing for the appellants, Sri Pritish Kumar, learned Additional Advocate General assisted by Sri Nishant Shukla, learned Additional Chief Standing Counsel for the State-respondents, Sri Sharad Pathak,

learned counsel for the respondent no. 3 and Sri Utsav Mishra, learned counsel appearing for respondent nos.7 and 8.

2. The instant special under Chapter VIII, Rule V of the Allahabad High Court Rules, 1952 has been filed against the interim judgment and order dated 20.08.2025 passed by the learned Single Judge in Writ-C No.7497 of 2025 (Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd. Lucknow Vs. State of U.P. and others).

3. I have had privilege of going through the draft judgement prepared by esteemed Senior Brother. With utmost reverence, I find myself unable to concur with the same. The reasons are as follows:-

Factual Matrix :-

4. The respondent no.1 (petitioner no.1 in the writ petition) is the registered cooperative society under the provisions of U.P. Cooperative Society Act, 1965. As per the bye-laws of the Society, the tenure of the Committee of Management was five years. The last election of the committee was held on January 29,2018 and the appellant no.1 (respondent no.9 in the writ petition) was elected as President and appellant no.2 (respondent no. 10 in the writ petition) wrote a letter (undated) to the Assistant Cooperative Election Officer for holding the election along with eight enclosures and voter list. After his term expired, the appellant no.2 wrote a letter to the Assistant Cooperative Election Officer for holding the election along with the voter list.

4. Since the term of the last committee of Management came to an end, the Assistant Commissioner/Registrar Cooperative proceeded vide its order dated 30.01.2023, appointed Three Member Interim Committee for discharging the functions of the Society. Members of Interim Committee took charge on 07.02.2023 and then on 22.02.2023 election program was issued by the cooperative society and same was published in daily newspaper 'Hindustan' in its edition dated 23.02.2023. After this the Additional commissioner/Registrar Cooperative (Mr. Lokesh Tripathi) proceeded for leave from 06.03.2023 to 12.03.2023 and requested that he may be allowed to leave the Head Office from the afternoon of 06.03.2023 and he also authorized Mr. Dinesh Kumar Verma, Additional District Cooperative Officer, Lucknow to discharge his duties. The resolution to change the place of voting from the office of cooperative society to the office of Block Development Chinhat Sabhagar, Sarvodaya Nagar, Lucknow was passed on 09.03.2023 by the Interim Committee and there was signature of appellant no.2 (respondent no.10 in the writ petition), whereas the appellant no.2 (respondent no.10 in the writ petition) was trying to raise a dispute on the address of the office.

5. Thereafter, a Public notice for change of resolution was issued on 06.03.2023 and the same was published in Hindi Daily Newspaper 'Hindustan' on 07.03.2023. Verification of the voter list was done by the Election Officer. Later on, on 11.03.2023 the provisional voter list was published on the same day. After that on 12.03.2023 objections were invited and since there was no objection then the same was declared and published as final Voter list on 13.03.2023.

6. Thereafter, the election for the post of Chairman was held and respondent no.3 (Petitioner No.3 in the writ petition) was elected as Chairman and results were declared by the Election Officer respondent no.7 (respondent no.11 in the writ petition). After declaration of results, the Committee of Management was duly constituted showing the name of respondent no.4, and respondent nos.12 to 18 as the office bearers, who immediately taken over the charge joined their respective offices and started discharging their functions and duties.

7. On 06.04.2023 respondent No.4 (petitioner no.4 in the writ petition) submitted his resignation from the post of Director of the Society and the same was accepted in the meeting of the Committee of Management of the cooperative society on 11.04.2023 and after that he was nominated/appointed as Secretary of the said society. On 13.04.2023 the Assistant Commissioner/Assistant Registrar, Cooperative, Lucknow was duly informed about the same that the resignation of Sri Mahendra Prasad Tiwari respondent no.4 was accepted from the post of Director and further he is appointed as Secretary of the Society vide order dated 11.4.2023. Thereafter a fraud was committed by the appellant no. 2 (respondent no. 10 in the writ petition) who allegedly had executed a sale deed of some prime land of the society, though he was not authorized to do so.

8. One of the prime land was sold by the appellant no 2 and a sale deed was executed by him on 11.04.2023 for a sale consideration of Rs.1,31,00,000/- but he did not deposit the amount of sale consideration in the account of the society, and the entire amount was illegally syphoned

off by him, as such he committed fraud as he was no more office bearer in the cooperative society and at that time, and he had no authority to execute the sale deed.

9. It has also been brought to the notice that appellant no. 2 has executed as many as 98 such sale deeds, and fraudulently the entire money was again syphoned off by him. The Bank statements of two accounts of the society also supports it, as in the Indusind Bank the balance was zero and in the HDFC Bank the balance was Rs.12,214/-. The entire money has been withdrawn by them through the cash and to cover up the misdeeds, appellants (respondent nos. 9 & 10 in the writ petition) raised a dispute and initiated a frivolous arbitration proceeding/election petition under Section 70 of U.P. Cooperative Societies Act, 1965 read with Rule 50 of U.P. Cooperative Society Rules, 2014.

10. The District Magistrate, Lucknow vide its order dated 06.05.2023 appointed respondent no. 6 (respondent No. 2 in the writ petition who was the Sub Divisional Magistrate, Sadar, Lucknow) as Arbitrator to hear the matter. In furtherance thereto the first date for arbitration was fixed on 12.05.2023. It is to be noted that no notice of these arbitration proceedings were ever served on the respondents (petitioners in the writ petition). On 12.05.2023 behind the back of the respondents/petitioners, an order was passed by respondent no. 6 (respondent No. 2 in the writ petition) in which elected Committee of the Management has been prevented from discharging its functions and duties. After that the respondents (Petitioners of the writ petition) appeared in the arbitration proceedings, however, the proceedings were adjourned for a number of times. On 26.06.2023 respondents (Petitioners

of the writ petition) filed written statements and objections on stay application, along with an application for vacation of ex-parte interim order, was also filed, but despite several hearings no order was passed on the stay vacation application.

11. Aggrieved by the inaction, of the Arbitrator, the respondents (Petitioners of the writ petition) preferred a writ petition bearing Writ Petition No.6303 of 2024 and that the same was taken up for hearing and this Court vide order dated 20.12.2024 disposed of the same by directing the respondent no. 6 (respondent No. 2 in the writ petition), the Arbitrator to decide the application within a period of four months.

12. In compliance of the order passed by this Court, the Arbitrator, (Sub Divisional Magistrate, Tehsil Sadar, District Lucknow) passed an order on 10.03.2025 confirming the earlier ex parte order passed on 12.05.2023 and further the next date of arbitration proceedings was fixed on 01.08.2025. It is worthwhile to mention here that by now 99 dates have already been fixed in the arbitration proceedings but there was no progress in the arbitration proceedings.

13. Aggrieved by the inaction of the Arbitrator the respondents (petitioners in the writ petition) had filed the writ petition bearing Writ-C No.7497 of 2025, challenging the ex-parte injunction order passed by the Arbitrator, and also the Arbitration proceedings initiated by the appellant herein.

14. In this writ petition, it is pointed out that appellant no. 2, despite not being elected in the election and not being a party in the newly formed committee dated 19.3.2023 has illegally executed the sale deed on 11.04.2023 by which he has sold a prime property of the society and the sale consideration was not deposited in the accounts of the society and has been illegally and fraudulently siphoned off the entire money.

15. The contents of the writ petition also shows that the appellant no.2 herein, had executed as many as 98 such sale deeds. A chart has also been annexed as Annexure No.23 of the writ petition, and the entire money was illegally syphoned off by the appellant No. 2. The Bank accounts of the society shows zero balance which further goes to prove that the money was siphoned off by him.

16. Apart from these illegal sale deeds, the appellants (respondent nos. 9 and 10 of the writ petition) has shown Rs. 8,34,94,288/- to have been deposited towards the developmental charges, for the land of the society. Once, there was no sanction of map of the cooperative society as such there was no question of depositing the same, the development charges can be deposited only after the map has been processed or sanctioned. In fact, an amount of about ₹8.35 crores has also been illegally siphoned off by the appellants (respondent nos. 9 and 10 of the writ petition). Apart from this, the appellants (respondent nos. 9 and 10 of the writ petition), have also been involved in fraudulently siphoning away the huge amount of the society for which an F.I.R. was also lodged.

17. When these illegalities were brought to the notice, the Joint Commissioner of Police on 02.05.2025 wrote a letter for cancellation of all the registries and thereafter also wrote a letter on 7.5.2025 to the Assistant Commissioner for taking appropriate action against them. Annexure No. 41 of the writ petition shows that an inquiry was conducted on 27.8.2024 by a Seven Members committee of the Lucknow Development Authority, which *ex facie* shows that appellants (respondent nos. 9 and 10 of the writ petition) were guilty of misappropriation of funds and have committed the fraud. On the basis of inquiry report, the Additional Housing Commissioner wrote a letter dated 14.10.2024 to the Joint Commissioner/Joint Registrar of the Cooperative for taking appropriate action against the perpetrators. The record further shows that the appellant no.1 is a hardened criminal, and a number of criminal cases had earlier been filed against him including the case under the Gangster Act as well.

18. The chart showing the criminal cases lodged against appellant no.1 is as under:

Sr.No.	Case Crime No.	Under Section
1.	168 of 2020	135,139,141 of I.P.C.
2.	26 of 2021	420 of I.P.C.
3.	41 of 2021	2/3 of U.P. Gangster and Anti Social Activities (Prevention) Act,1986

4.	43 of 2021	406,409,420 of I.P.C.
5.	213 of 2024	406,420,467,468,471 of I.P.C.

19. The respondents (petitioners in the writ petition) had filed the writ petition bearing Writ-C No.7497 of 2025, praying for the relief which reads as follows:

"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 10.03.2025 passed by opposite party no. 2 in case No.1831 of 2023 and impugned order dated 12.05.2023 passed by opposite party no.2 in case No.1831 of (Pravin Singh & others Vs. Uttar Pradesh Cooperative Societies, Election Commission & others, under purported exercise of Section 70 of Uttar Pradesh Cooperative Societies Act 1965 contained as Annexure No.1 & 2 to this writ petition respectively.

II. Issue a writ order or direction in the nature of certiorari quashing the arbitration proceedings filed by the opposite party no.9 and 10 before the opposite party no. 2 being numbered as Case No.1831 of 2023."

20. After hearing the parties, the learned Single Judge vide order dated 20.08.2025 was pleased to pass the following order:

"1. Heard Shri Sharad Pathak, learned counsel for the petitioners; Shri Pritish Kumar, learned AAG assisted by Shri Rahul Shukla, learned CSC for the State and Shri Nirankar Singh, learned counsel for respondent nos.9 & 10.

2. Present case demonstrates a deep malaise of corruption that is rampant in the Co-operative Housing Societies in the State of Uttar Pradesh.

3. In the present case, the society in the name of Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Limited was incorporated, perhaps for the benefit of persons of Scheduled Castes. Subsequently, on account of the lands being acquired and thereafter being given to the society, huge inconsistencies and bungling were done by the society as are evident from the report dated 27.08.2024 which highlighted the manner in which the lands have been allotted to the persons who are not entitled to, the society has not followed the restrictions with regard to

the quantum of land that can be allotted to the member of the society, etc

4. It is also disturbing to notice that despite there being a detailed report in an inquiry conducted by as many as seven responsible officers of the LDA, no action has been taken.

5. Present petition was filed by the petitioners alleging that despite the petitioners being elected in the election result declared on 18.03.2023, the respondents who are not even the office bearers, executed two sale deeds - one of them is on record as Annexure - 22, whereby the person namely respondent no.10 who is not even a member or the elected member of the society after elections executed sale deeds of the properties of the society. The recital of the sale deed indicate that substantial amounts were issued in favour of the executant i.e. respondent no.10 herein through various cheques and demand drafts. None of the said amount was credited to the account of the society.

6. A specific query was raised to Shri Nirankar Singh, learned counsel for respondent nos.9 & 10 as to whether the cheques referred to in the sale deeds have vanished. He states that, on instructions of respondent no.10, that none of the said amounts have been credited to the account of respondent no.10. He is unable to give any statement as to what happened to the cheques which were admittedly collected by respondent no.10 and have not been credited to the account of society.

7. During the course of hearing, my attention is also drawn to yet another sale deed executed by respondent no.10 on 12.12.2024 - a copy of which has been handed over across the Bar and taken on record - wherein yet another piece of the land belonging to the society was sold. The said land was sold for a sale consideration of Rs.5,05,000/-. The said amount is also not reflected in the accounts of the society.

8. The statement of account of the society reveals huge siphoning off of the funds. All the money deposited towards the execution of the sale deeds have been withdrawn by respondent nos.9 & 10 through cash withdrawal.

9. It is also disturbing to notice that despite all these facts being in the knowledge of the State and there being a bar in execution of the sale deeds of the society, huge funds have been siphoned off by the members who were then manning the society by executing sale deeds contrary to the bye-laws.

10. Shri Prithish Kumar, learned AAG informs that the State is in process of registering the FIR.

11. Learned AAG shall file a status report with regard to the steps taken in pursuance to the FIR lodged today on the next date of listing.

12. In case the police authorities/State Authorities feel necessary, steps shall also be taken for conducting the land audit of the society which shall include the total land owned by the society and the number of the sale deeds executed by the society in the last ten years and the deposit of sale proceeds in society's account.

13. The authorities shall also collect the date and the receipts by which new members were included in the society.

14. In case the police authorities deem it appropriate, steps shall also be taken for recovery of the money including action, if necessary, under The Prevention of Money Laundering Act.

15. The entire investigation in pursuance to the FIR shall be supervised by the officer of the level of Superintendent of Police.

16. The status report shall be furnished on the next of listing.

17. List for further hearing on 16.09.2025 in top of the list.
Order on dispute involved:

18. Present petition has been filed by the petitioners challenging that in an election of the society held and result declared on 18.03.2025, respondents filed an application under Section 70 of U.P. Cooperative Societies Act and the SDM concerned has passed an order directing the parties to maintain status quo as a result whereof, the elected members are unable to take over the society in terms of the election.

19. It is argued that although the election disputes are also amenable to Section 70 of U.P. Cooperative Societies Act, however, in the manner in which the interim order has been passed has resulted in staying the election which is not permissible even in an election petition.

20. The impugned orders being Annxures - 1 & 2 also do not reflect any application of mind prior to passing of the said orders which results in staying the election, as such, as an interim measure, the operation and effect of the orders dated 10.03.2025 and 12.05.2023 shall remain stayed till further orders. Meaning thereby that the petitioners shall be permitted to continue as the office bearers of the society and the record shall be handed over to the petitioners who are the elected office bearers and they shall cooperate with the police authorities in furnishing whatever documents are required for the proper investigation, as directed above.

21. Further proceedings before the SDM concerned shall remain stayed till the next date of listing.

22. The State shall also submit a report as to what action has been taken in pursuance to the provisions contained in U.P. Revenue Code which bar the execution of the sale deed in favour

of the persons not belonging to the Scheduled Caste and Scheduled Tribe.

23. In the meanwhile, learned counsel for the petitioner shall file a supplementary affidavit bringing on record the subsequent sale deed executed on 12.12.2024. A copy whereof is taken on record."

21. This order dated 20.08.2025 passed by the learned Single Judge has been assailed by means of the instant special appeal.

Arguments of the learned counsels for the appellants :

22. Learned counsel for the appellants submits that the manner in which criminal law has been set into motion by the learned Single Judge is bad in law, as the prayers made in the writ petition did not seek the relief which has been passed by the learned Single Judge.

23. It is further submitted that the learned Single Judge has gone beyond the relief claimed in the writ petition and the same could not have been dealt with by the learned Single Judge.

24. He further submits that while passing the impugned interim order dated 20.08.2025, the learned Single Judge did not look into whether the Sub-Divisional Officer had the legal authority to decide the dispute.

25. He further submits that the orders dated 12.05.2023 and 10.03.2025 passed by the Sub-Divisional Magistrate, Sadar, Lucknow were passed only interim protection order. Under Section 70 of the Uttar Pradesh Cooperative Societies Act, 1965, the Sub-Divisional Officer has the power to pass such interim orders and the SDO (arbitrator) is in the process of deciding the lis.

Arguments of the learned counsels for the respondents :

26. Per contra, learned counsel for the respondents appearing in this appeal have vehemently opposed the prayer of the appellants and categorically pointed out the way the arbitration was proceeding which is bad in law and also pointed out all the frauds which have been committed by the appellants/respondent nos.9 & 10.

27. Learned counsels for the respondents further submits that there is no illegality or infirmity in the order passed by the learned Single Judge as the same has been passed in order to meet the ends of justice.

28. He submits that the learned Single Judge has rightly dealt with the matter and, after finding prima facie fraud, sought a police investigation. It was when the court realized the influence which the appellant wielded, as inspite of so many FIRs nothing proceeded against him, and the Sub Divisional Magistrate, the way he proceeded in the Arbitration proceedings showed his conduct not bonafide.

29. He further submitted that the initiation of the Arbitration proceedings in the present appeal is nothing but a part of the larger game plan to cover up all the frauds committed by the appellants.

Analysis:

30. Heard learned counsel for the parties and perused the records.

31. In the instant special appeal case, there is no assertion whatsoever that the sale deeds were not executed as referred to in the order passed by the learned

Single Judge in the writ petition or that the sale consideration was not ever deposited in the account of the society. Thus, these facts were distinctly evident from the allegation leveled against the appellant and have not been denied by learned counsel for the appellants.

32. The Court also noticed that the amount deposited has been withdrawn by the appellants (respondent nos. 9 & 10 in the writ petition) through the cash withdrawal which is neither permissible by the President nor the Secretary which functions were being discharged. There is also no assertion that the land which was primarily meant for the members of Bahujan Samaj / Scheduled Caste were shown to be not belonging to the Scheduled Caste which is not being permissible in the State of Uttar Pradesh.

33. Having failed to controvert the facts noticed by the learned Single Judge in Paras 5,6,7,8 & 9 in the impugned order, the appellants have not been able to *prima facie*, argue that the said directions are in any way illegal or irrational.

34. The elemental grievance of the appellants herein is that the learned Single Judge ought not to have granted relief without any former prayer being made in the Writ Petition.

35. To sort out this issue, the law on this subject has to be looked into. It is well settled that the power of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary, subject only to self-imposed limitations. Judicial review is part of the basic structure, and therefore the High Court has a constitutional duty to

enforce the law by appropriate directions, and to mould the relief instead of leaving the aggrieved party remediless. This principle establishes that absence of an express statutory provision or specific prayer does not denude the High Court of its constitutional authority to grant effective relief.

36. The origin of the principle of "Moulding of Relief" can be traced back to ***Patterson v. State of Alabama* 294 US 600 (1935)** wherein Hughes C.J. held that:

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

(emphasis added)

37. In the case of ***Dwarka Nath v. ITO, (1965) 57 ITR 349 : 1965 SCC OnLine SC 61***, the Hon'ble Supreme Court has succinctly opined that:

"4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:

"...every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as

*understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in **Basappa v. Nagappa [(1962) 2 SCR 169]** and **Irani v. State of Madras [(1955) 1 SCR 250]** ."*

(emphasis added)

38. The Hon'ble Supreme Court of India in the case of **Laxmi & Co. v. Anant R. Deshpande reported in (1973) 1 SCC 37** has held that, where the court finds that because of altered circumstances, the Court can take notice of such changes. If the Court finds that the judgment of the Court cannot be carried into effect, the relief could be moulded, to preserve rights of both the parties and to subserve the ends of justice.

39. In the case of **Pasupuleti Venkateswarlu v. The Motor & General Traders reported in (1975) 1 SCC 770**, the Hon'ble Supreme Court further elaborately dealt with the issue and authoritatively held that;

"4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date of a suitor institutes the legal proceeding. Equally clear is the principle that procedure is

the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink as it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view.

(emphasis added)

40. Following this settled position of law, in the case of **State Bank of India v. N. Sundara Money reported in AIR 1976 SC 1111**, the Hon'ble Supreme Court applied the principle of "moulding of relief", and reinstated a bank employee, (despite the same not being mentioned in the prayer), in order to secure the ends of justice.

41. Similarly, in the case of **Rameshwar v. Jot Ram reported in (1976) 1 SCC 194**, the Hon'ble Supreme Court held that where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments, it will be fair that the relief is moulded, varied or reshaped in the light of updated facts.

42. Similarly in the matter of **Amarjit Singh v. Smt. Khatoon Quamarain reported in (1986) 4 SCC 736**

and ***Ramesh Kumar v. Kesho Ram reported in 1992 Supp (2) SCC 623*** the Hon'ble Supreme Court reiterated its earlier ratio, and observed that there cannot be any hard and fast rule governing the procedure to be adopted while dealing with the facts or law which would have material bearing on the entitlement of the parties, in such case the Court can mould the relief. The Court observed that technicalities should not burden the procedure which is required. It is aptly said that procedural law is nothing but a hand maiden of justice.

43. Further, the Hon'ble Supreme Court in the case of ***B.C. Chaturvedi v. Union of India reported in 1995 (6) SCC 749*** observed that this Court while exercising the jurisdiction under Article 226 of the Constitution has inherent power to do complete justice. Doing complete justice is the requirement of the fact situation of the present case. Technical hurdle of improper drafting of relief clause and pleading should not come in the way to secure justice. The same can be done even by moulding the relief prayed for. The Supreme Court in the aforesaid case has also held that;

"The mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material. The High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. Power to do complete justice also inhere in every court, not to speak of a court of plenary jurisdiction like a High Court."

(emphasis added)

44. In ***Air India v. United Labour Union, (1997) 9 SCC 377***, the Hon'ble Supreme Court authoritatively held that:

"59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a catena of decisions of this Court starting from Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1 : AIR 1975 SC 2299] to Bommai case [(1994) 3 SCC 1] . It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law.

65. Thus, we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under Section 10(1) of the Act, in a proper case, the Court as sentinel on the qui vive is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted."

(emphasis added)

45. Even over the period of time, the position of law on that aspect remains the same, that a writ court while exercising its jurisdiction under Article 226 of the Constitution is empowered to mould the relief that is not claimed by a party. The same was the ratio of Hon'ble supreme Court in the matter of **Food Corporation of India v. S. N. Nagarkar reported in (2002) 2 SCC 475.**

46. The Hon'ble Supreme Court in the matter of **Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58** reiterated the classical position that:

"90. Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of Jodhey v. State [AIR 1952 All 788] observed: (AIR p. 792, para 10)

"10. There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein."

(emphasis added)

47. The Hon'ble Supreme Court in the matter of ***RBF Rig Corpn. v. Commr. of Customs (Imports), (2011) 3 SCC 573 : 2011 SCC OnLine SC 308 at page 577*** has categorically stated :

"19. Article 226 of the Constitution confers powers on the High Court to issue certain writs for the enforcement of fundamental rights conferred by Part III of the Constitution or for any other purpose. The question, whether any particular relief should be granted under Article 226 of the Constitution, depends on the facts of each case. The guiding principle in all cases is promotion of justice and prevention of injustice.

23. The High Court, in the present case, has moulded the relief in such a manner to meet out justice to an aggrieved person. It is not open to the subordinate Tribunal to examine whether a direction issued by the High Court under its writ powers was correct and refuse to carry it out as such amounts to denial of justice and destroys the principle of hierarchy of courts in the administration of justice."

(emphasis added)

48. The Hon'ble Supreme Court in the matter of ***K.B. Ramachandra Raje v. State of Karnataka, (2016) 3 SCC 422 : 2015 SCC OnLine SC 1323 at page 434*** has stated that to balance the equity the courts can mould the relief. The relevant extract of para is as under :

"34.It may, at times, become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be moulded, in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law..... "

(emphasis added)

49. Therefore, in view of the ratio laid down by the Hon'ble supreme Court, so far as "**moulding of relief**" is concerned, this Court is of the considered view that even if there is no such specific prayer has been made in the writ petitions, the Court can and ought to grant such relief to meet the ends of justice. The principle of "moulding of relief" has been rightly invoked by the learned Single Judge because when there is a fraud apparent the court can't close its eyes and allow it to perpetuate on the ground no relief was sought for in the writ petitions.

50. It is settled now that relief under Article 226 of the Constitution of India is not confined to the prayers made but depends on the facts and circumstances of each case. Therefore, once illegality or fraud is established, the High Court may grant consequential or ancillary relief, even if not expressly prayed for, to ensure that justice is not rendered illusory.

51. The next issue argued is that the learned Single Judge in a writ jurisdiction does not have the power set the criminal proceedings in action.

52. Answer to this issue is that the High Court exercising its writ jurisdiction can, in appropriate circumstances, direct the initiation of criminal proceedings, particularly if a serious fraud is detected and the authorities or the local police have failed to act. In this case a number of FIRs were registered against the appellants, but no action seems to have been taken, the appellants had sold out the property of the society on a day when they were not even an office bearers, and inspite of the authorities having full knowledge of the same did not take any action, on the

contrary the Arbitrator / SDM has tried to give them a long rope by simply adjourning the Arbitration Proceedings.

53. When the fraud is glaring, and no effective action was taken against the perpetrators, on the contrary the authorities are trying to shield such accused, an FIR ought to have been registered when this fraud was brought to notice, however, inspite of the knowledge no FIR was registered or any investigation was carried out on a serious offence of fraud, (specially when the appellants have a history of criminal cases), the High Court is left with no other alternative but to initiate criminal proceedings against such a person. High Court can't be blind to such blatant offence, or draw back its feet from taking any action on the ground of technicalities. The learned Single Judge was well within its right to issue a writ of mandamus commanding the authority to perform their legal duty.

54. The Hon'ble Supreme court in the matter of ***Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya, reported in (2002) 5 SCC 521***, had observed that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. The relevant extract is as under :-

"5.While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry..."

(emphasis added)

55. The Hon'ble Supreme Court in the matter of ***Rubabbuddin Sheikh v. State of Gujarat, reported in (2010) 2 SCC 200***, has held that when the accused are senior officers of the State then, and when the investigation by the State investigating agency may not be satisfactorily held, in order to do justice and instill confidence in the minds of the victims as well of the public, the court can direct the investigation should be handed over to any other independent investigating agency.

56. In the matter of ***Ms. Baba Beti v. State of U.P. and others, 2024:AHC:48697-DB, bearing Criminal Misc. Writ Petition No. – 9949 of 2021*** it was held by the Division Bench of this Hon'ble Court that, the fair investigation is essential for upholding rule of law, the principles of justice, protecting individual rights, and maintaining the integrity of the legal system. By adhering to the principles of impartiality, due process, transparency, and commitment to such truth, investigating should be conducted fairly and effectively. It further held that in cases of financial fraud, fair investigations are essential not only to safeguard financial institutions but also the nation's interest. Furthermore, fair investigations serve to uncover the truth behind such transactions. A meticulous and unbiased investigation is necessary to untangle the web of deceit and reveal the extent of the crime. This not only facilitates the prosecution of the perpetrators but also helps prevent similar fraudulent activities in the future by exposing vulnerabilities within regulatory frameworks and corporate governance structures.

57. Thus it is clear, that the High Court may direct investigation by any agency, where such direction is

necessary to uphold the rule of law and to do substantive justice. Applying the same principle learned Single Judge has correctly passed the impugned order for a police investigation, as material on record satisfies the existence of an apparent fraud and siphoning off the funds. Once such satisfaction is reached, the High Court acts well within its constitutional jurisdiction in issuing appropriate directions to the investigating agency, for a proper investigation, which was but necessary to ensure that justice is not defeated.

58. Further, in the instant matter, apparently there is significant and a systematic fraud has been played by the appellants, wherein they have sold out various properties of the society, and have pocketed the entire sale consideration. Which evidently is a fraud played, but surprisingly the authorities who had the full knowledge of the same chose to look the other way, and did not proceed to initiate any criminal proceedings, with the result the learned Single Judge by means of the impugned order had asked for the police investigation.

59. All the aforementioned precedents, taken cumulatively, crystallizes the position of law that where the Court hesitates or fails to mould appropriate relief, despite such relief being necessary to secure the ends of justice, it would defeat the very purpose of justice. Once a fraud is noticed and if the Court chooses to remain passive, it would not serve the constitutional mandate entrusted to constitutional courts; rather, it would result in a collapse of the judicial machinery. It is the Court's onerous and bounden duty to do complete justice between the parties to a lis.

60. Another question which arises for consideration before this Court is the scope of power of Special Appeal and whether interference can be made with the orders of the learned Single Judge, and the extent of interference which can be made in such appeals. The powers of Special Appeal have been conferred by Chapter VIII Rule V of the Allahabad High Court Rules, 1952. Undoubtedly, learned Single Judge has exercised powers conferred under Article 226 of the Constitution of India and power exercised by the Division Bench in Special Appeal are derived from the Allahabad High Court Rules, which are also relatable to exercise of power under Article 226 of the Constitution of India.

61. Hon'ble Supreme Court in the case of ***Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others, (1996) 3 SCC 52*** has laid down the scope of Special Appeal and has held that Special Appeal is not like that of First Appeal under the CPC. Jurisdiction in Special Appeal is very limited to correct the error on learned Single Judge and it cannot act as appellate Court.

62. Accordingly, it is also correct that power of Special Appeal is not akin to exercise of appellate jurisdiction by the Hon'ble Apex Court under Article 136 of the Constitution of India, where the Hon'ble Supreme Court has very wide powers to interfere with the judgment and orders of the High Courts. Where two or more views are possible, then the Division Bench in an intra Court appeal would loath to interfere in such orders. Exercise of power under Special Appeal is limited only when there is glaring lacuna or illegality discernible on the face of record which

can be corrected, but scope cannot be enlarged to that of a regular Appeal.

63. With regard to the jurisdiction and competence of the learned Single Judge, while entertaining such writ petition it is noticed that undoubtedly subject matter of the writ petition falls within the jurisdiction of the learned Single Judge as well as Division Bench. In the cause list which is published on the direction of the Hon'ble the Chief Justice, the matter was shown listed before the learned Single Judge and he proceeded to consider and decide the matter from the records. It also appears from the record that no objections were raised by any of the party before the learned Single Judge and therefore he proceeded to decide and pass necessary orders in the writ before him.

64. In the aforesaid circumstances, no interference can be made in exercise of powers of Special Appeal/Intra Court Appeal by this bench. It cannot be said that the subject matter of the writ petition was not cognizable before the learned Single Judge. In terms of the judgment in the case of ***Baddula Lakshmaiah (Supra)***, I see no infirmity in the order of learned Single Judge on the ground of jurisdiction. Further, as mentioned in Para-7 of the brother judgment, it is categorically held that the Senior Judge can hear the "matters pertaining to the society matters". The instant matter happens to be a society matter and hence the learned Single Judge has full authority to entertain the writ petition.

65. It is in the aforesaid circumstances, this Court do not find any infirmity with the order of the learned Single Judge entertaining the aforesaid writ petition and even otherwise, in Special Appeal it cannot be demonstrated that the

matter was not cognizable by the learned Single Judge. Even from the perusal of the records, it does not show that any such objection was ever taken before the learned Single Judge.

66. After completing the judgment, I have the fortune to go through the judgment authored by my Senior Brother Judge. I have reservation in agreeing with the view taken by him.

67. In utmost humility, I beg to differ in Para- 22-A. The Senior Brother Judge has given a direction that the appellants will not manage the society.

68. However, in addition to it, my Brother has directed that the Registrar, Cooperative Society shall make interim management till the next date of listing/conclusion of the arbitration proceedings pending before the S.D.M., Sadar, Lucknow. This would amount to ousting of the respondents who are duly elected members of cooperative society. In my view it will not be an appropriate direction.

69. With regard to Para 22-B of the judgement of my Senior Brother Judge, I am of the considered view that since the matter pertains to a fraud of huge magnitude which seems to have been done at the behest of very influential people, I agree with the findings of learned Single Judge that the investigation of the matter should be conducted by an Officer not below the rank of Superintendent of Police. Hence, I can not say that there is any infirmity in the directions given by the learned Single Judge.

70. With regard to Para 22-E of the judgment of my Brother Senior Judge, in my view the learned Single Judge

has not taken away any right of the appellants for quashing of the F.I.R. however such observations might wrongly be used by the appellants while challenging the F.I.R.

CONCLUSION

71. Considering the facts and circumstances of the case the learned Single Judge has noticed a large scale fraud which is not even been disputed. Thus, in the instant special appeal setting aside such directions would amount to furtherance of illegality and the fraud committed.

72. As per the law laid down by the Hon'ble supreme Court, in the aforesaid judgments, this Court is of the considered view that so far as "moulding of relief" is concerned, even when there is no such specific prayer been made in the writ petitions, the Court can in the interest of justice grant such relief to meet the ends of justice. The principle of moulding of relief has been rightly been invoked by the learned Single Judge because when there is an apparent fraud the court can't close its eyes and allow it to perpetuate on the ground of technicalities, that no relief was sought for in the writ petition.

73. The Hon'ble Supreme Court in a catena of judgements has time and again held that the High Courts in the exercise of their writ jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of a case, in a holistic manner, in order to pass appropriate orders to do complete and substantial justice. It is not only within its power but also the duty of the High Court while exercising such a power to advance the ends of justice, to take appropriate steps to check a

blatant fraud. While granting relief, the High Court is expected to balance equities by moulding the relief and passing an appropriate order which justice may demand and equities may project.

74. Thus, it is clear that the High Court has very broad power under Article 226 of the Constitution of India and to secure justice, the court may direct investigation by an independent agency, where such direction is necessary to uphold the rule of law, as the learned Single Judge has noticed a large scale apparent fraud which is not even being disputed. Thus, in the instant special appeal setting aside such directions would amount to furtherance of illegality and the fraud committed.

75. Further there is no illegality or arbitrariness in the impugned order passed by the learned Single Judge in directing the authorities, for conducting the land audit of the society, which shall include the total land owned by the society and the number of the sale deeds executed by the society in the last ten years and the deposit of sale proceeds in society's account, and also to collect the date and the receipts by which new members were included in the society.

76. The respondents who are duly elected Office bearers, should not be ousted or their powers of management be taken away and given to the S.D.M./Arbitrator.

77. It is for the aforesaid reasons, I do not find it fit to interfere with the impugned judgment and order on the ground of competence of learned Single Judge entertaining the aforesaid writ petition.

78. In view thereof, there is no reason to interfere in the impugned interim order.

79. The instant special appeal for the reasons recorded hereinabove lacks merits and the same is accordingly **rejected**.

(Prashant Kumar,J.) (Rajan Roy,J.)

Dated : December 18, 2025

Arjun/-

As we have rendered differing opinions, we frame the following questions/ points for consideration by a Bench of such strength as Hon'ble the Chief Justice may deem fit to constitute under Chapter VIII Rule 3 of the Allahabad High Court Rules, 1952:-

- i. Whether, the order of learned Single Judge in Writ-C No.7497 of 2025 [Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd. & Ors. vs. State of U.P. & Ors.] which is impugned in Special Appeal No.297 of 2025 is without jurisdiction, in toto, or in part? If so, its consequences on the question of maintainability of special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 and merits of the issues involved therein.
- ii. Whether the order passed by the writ court which is impugned in Special Appeal No.297 of 2025 is beyond the scope of the writ petition?
- iii. Which of the two opinions rendered by Members of the Division Bench in Special Appeal No.297 of 2025 expresses the correct view?

(Prashant Kumar,J.) (Rajan Roy,J.)

December 18th, 2025
Shanu/-