
(1991) 12 GUJ CK 0005
In the Gujarat High Court

Anjar Municipality

APPELLANT

Vs

Anjar Taluka Co-Opertave Sales Purchase Union and Another

RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 167

Maharashtra Co-operative Societies Act, 1960 — Section 91(1)

Citation : (1993) 2 GLR 1551

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The original plaintiff of Regular Civil Suit No. 153 of 1977 decided by the learned Civil Judge (S.D.) at Bhuj on 26th October, 1977 qua present respondent No. 1 has preferred this Second Appeal against the judgment and the decree passed by the learned Assistant Judge of Kachchh at Bhuj on 21st March, 1979 in Civil Regular Appeal No. 214 of 1977. Thereby the lower Appellate Court was pleased to dismiss the appeal and to affirm the order passed by the learned Civil Judge (S.D.) at Bhuj on 26th October, 1977 below the application at Exh. 11 dismissing the present appellant's suit against present respondent No. 1.

2. The facts giving rise to this appeal may be summarised thus:

The present appellant is a Municipality constituted under the Gujarat Municipalities Act, 1963. It claimed ownership of one piece of land admeasuring 93.3 sq. yds. situated outside the Ganga. Naka near the temple of Ambaji Mata in Anjar (the "suit land" for convenience). According to the present appellant, the suit land came to be vested in it under the relevant provisions, contained in the Gujarat Municipalities Act, 1963. The suit land was sold by the Collector of Kachchh on behalf of the State Government to present respondent No. 1 on 30th June, 1976. The present appellant thereupon filed a suit against the present respondents for a declaration that the suit land belonged to it and for a further declaration that the order passed by the Collector of Kachchh on 30th June, 1976

selling the land to present respondent No. 1 was null and void and for other incidental reliefs. That suit was filed in the Court of the Civil Judge (S.D.) at Bhuj. It was registered as Regular Civil Suit No. 153 of 1977. Present respondent No. 1 resisted the suit by raising a preliminary objection against its maintainability on the ground of want of the required statutory notice u/s 167 of the Gujarat Cooperative Societies Act, 1961 (the Act" for brief). It thereupon gave one application at Exh. 11 in that regard. The learned Civil Judge (S.D.) at Bhuj by his order passed below the application at Exh. 11 on 26th October, 1977 in Regular Civil Suit No. 153 of 1977 was pleased to accept the preliminary objection raised by and on behalf of respondent No. 1 against maintainability of the suit and was pleased to order dismissal of the suit against present respondent No. 1. That aggrieved the present appellant. It therefore carried the matter in appeal before the District Judge of Kachchh at Bhuj. Its appeal came to be registered as Civil Regular Appeal No. 214 of 1977. It appears to have been assigned to the learned Assistant Judge of Kachchh at Bhuj. By his judgment and decree passed on 21st March, 1979 in Civil Regular Appeal No. 214 of 1977, the learned Assistant Judge of Kachchh at Bhuj was pleased to dismiss the suit. The aggrieved Appellant has thereupon preferred this Second Appeal questioning the correctness of the judgment and the decree passed by the lower Appellate Court in Civil Regular Appeal No. 214 of 1977.

3. The substantial question of law framed by This Court at the time of the preliminary hearing of this Second Appeal pertains to the requirement of the statutory notice u/s 167 of the Act before filing the suit against present respondent No. 1.

4. Shri Mankad for the appellant has urged that no notice u/s 167 of the Act Was required to be given to respondent No. 1 before filing the suit for the simple reason that to purchase a property could not be said to be the business of the society. Again, runs the submission of Shri Mankad for the appellant, there was no direct dealing between the present appellant and respondent No. 1 giving rise to the dispute between the parties, and as such Section 167 of the Act could not be attracted in the present case. As against this, Shri Shah for respondent No. 1 has submitted that the Courts below have rightly held that the suit against respondent No. 1 was hit by Section 167 of the Act and it is not necessary for This Court to interfere with this, concurrent conclusion reached by the Courts below.

5. In this connection a reference deserves to be made to the Division Bench ruling of This Court in the case of M.G. Patel and Co. v. Alka Coop. Society reported in 1980 (2) XXI (2) GLR 498. It appears that in that case a suit against a Co-operative Society was filed without serving the statutory notice as required u/s 167 of the Act. The fatality of the suit on account of such omission was sought to be resisted on the ground that the act complained of was not "touching the business of the society". In that context This Court has held:

The business of the society, as could be gathered from the Certificate of

Registration, Ex. 107, was to construct buildings on Co-operative basis, to purchase lands, to sell lands, to hire lands, to develop lands end to prosecute, other objects, which would ultimately ameliorate the physical, education and cultural well-being of its members. The purchase of land is one of the main objects of the society. Any cause of action that has got a direct bearing with the purchase of land has to be said as touching the business of the society. The word "touching" from its common sense connotation is suggestive of concerning". The plaintiffs claim for the unpaid amount of consideration is directly rooted in the defendant-society's purchase of land. The question of payment of consideration arose because the society was out to purchase the land in prosecution of its objects. So the question of consideration, its payment or non-payment, is invariably associated with the purchase of land by this defendant-society. In our view, therefore, it is too spacious a plea to be urged that the present subject-matter of the suit is not touching the business of the society. It vitally concerns itself with the business of the society as we are almost compelled to hold, despite our dislike for the rejection of an otherwise tenable claim only on a technical plea.

The aforesaid Division Bench ruling of This Court should provide a complete answer to the submission urged before the by Shri Mankad for the appellant.

6. Shri Mankad for the appellant has however urged that the Division Bench deciding the case of M.G. Patel & Co. (supra) has not taken into consideration the binding ruling of the Supreme Court in the case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . According to Shri Mankad, the expression "touching the business of the Society" has been interpreted by the Supreme Court in its ruling in the case of D. M. Co-op. Bank (supra) in the narrower sense and the same expression occurring in Section 167 of the Act should also be construed in a narrower sense.

7. It may be noted that the Supreme Court had an occasion to construe the expression "touching the business of the society" occurring in Section 91(1) of Maharashtra Co-operative Societies Act, 1961 in its aforesaid ruling in the case of D.M. Co-op. Bank (supra).

8. It is true that the Supreme Court has construed that expression in a narrower sense. It may however be remembered that Section 91 of the Maharashtra Co-operative Societies Act, 1961 is similar to Section 96 of the Act. It deals with the matters placed within the exclusive jurisdiction of the Registrar's nominee for the purpose of resolution of disputes between the parties enumerated therein. Section 166 of the Act bars the jurisdiction of Civil as well as Revenue Court inter alia in respect of any dispute required to be referred to the Registrar or his nominee or Board of nominees for decision. When some exclusive jurisdiction is sought to be conferred to an authority to the exclusion of the jurisdiction of the Civil Court, according to the settled principles of law, such provision will have to be construed narrowly and strictly, In that view of the matter, the Supreme Court has construed the expression "touching the business of the society" occurring in

Section 91(1) of the Maharashtra Co-operative Societies Act, 1961 in a narrower sense. That interpretation of the expression "touching the business of the society" cannot be pressed into service for the purpose of interpreting the same expression occurring in Section 167 of the Act.

9. In this connection a reference again deserves to be made to the aforesaid Division Bench ruling of This Court in the case of M.G. Patel & Co. (supra). Therein is dealt with the paramount idea underlying the provisions of Section 167 of the Act. It is held:

The paramount idea underlying the provisions of Section 167 of the Act is to pointedly bring to the notice of the Registrar, a public functionary, that he is under a legal duty to see that a litigation between a Cooperative Society on one hand and a private party on the other hand is averted as far as possible by exercise of his supervisory powers. Unless his pointed attention is drawn to this duty of his by means of a notice, which would clearly purport to be one u/s 167 of the Act, though it may not specifically bear that label, he will not be prompted or inspired to invoke his supervisory jurisdiction and intervene to arrest the future filing of the litigation.

If no notice is served as required u/s 167 of the Act, the paramount object underlying it will be frustrated. Even at the cost of repetition, the paramount object underlying it is to see that the society is not unnecessarily dragged to a Court of law in a matter touching its business. In that context of the matter, the expression "touching the business of the society" has received interpretation from This Court in its aforesaid Division Bench ruling in the case of M.G. Patel & Co. (supra). This Division Bench ruling of This Court is binding to the sitting as a single Judge. In my humble opinion, it provides a complete answer to the submission urged before the by Shri Mankad for the appellant in support of this appeal.

10. I may mention at this stage that respondent No. 1 has purchased the land for erecting its godown thereon for storing its goods. That would certainly be its act touching its business. Both the Courts below have also held so. In that view of the matter, there is no escape from the conclusion that Section 167 of the Act would be attracted in the instant case.

11. In the result, the appellant fails. Its Second Appeal is dismissed with costs.