

(1992) 11 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2474 of 1986

Assistant Registrar, Co-operative Societies

APPELLANT

Vs

Gurukul Griha Nirman Sahakari Bhadekaru Malki Sanstha
Limited

RESPONDENT

Date of Decision : 20-11-1992

Acts Referred:

Citation : (1994) 3 BomCR 324 : (1993) 95 BOMLR 628

Hon'ble Judges : H.D. Patel, J

Bench : Single Bench

Advocate : R.C. Madkholkar, A.G.P, for the Appellant; P.C. Madkholkar, for respondent No. 3, V.A. Naik, for respondent Nos. 4, 5 and 11, S.D. Paliwal and R. Lambat, for respondent Nos. 12 and 13, for the Respondent

Final Decision : Allowed

Judgement

H.D. Patel, J.—A short question arises in this petition and that question is whether an appeal lies against the order of Assistant Registrar directing an enquiry u/s 88 of the Maharashtra Co-operative Societies Act, 1960. The question arises on the facts stated below.

2. The respondent No. 1 is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act"). The object of the respondent society is to purchase land, divide the same into plots and allot those plots to its members for constructing the houses. The respondent society was superseded and the charge of the society was taken over by the Administrator on 6-5-1985 from the members of the managing committee.

3. Vide order passed on 11-11-1985 to the respondent No. 2 was appointed as an Enquiry Officer u/s 88 of the Act by the petitioner to assess the damages and losses caused to the society during the period from 1-7-1982 to 30-6-1985 as per audit note of the society for the relevant period. According to the said audit note the damage suffered by the society is to the tune of Rs. 10,71,301.95. The

respondent Nos. 3 to 14 were the members of the managing committee during the period from 2-11-1980 to 6-5-1985 except Shri Deorao Bhayyaji Bhandekar, the respondent No. 11, who was a member from 18-10-1981 to 6-5-1985 and were managing the affairs of the respondent society u/s 73 of the Act.

4. The audit of the respondent society was carried out by the Auditor, Co-operative Societies, Chandrapur, for the the years 1981-82 to 1984-85. He is alleged to have found number of irregularities including instances of misfeasance, breach of trust etc., the details of which are given in a schedule annexed to the petition. According to the audit report, the respondent Nos. 3 to 14 are liable and accountable for the losses of the respondent society and the amount has to be recovered from them.

5. On receipt of the audit note the petitioner after satisfying himself that a prima facie case exists for initiating proceedings u/s 88 of the Act appointed the Authorised Officer to frame charges of misapplication of funds, misfeasance, breach of trust etc., after making necessary enquiries against the respondent Nos. 3 to 14.

6. During the course of proceedings u/s 88 of the Act before the respondent No. 2, the Authorised Officer, the respondent Nos. 3 to 14 filed an appeal purported to be u/s 152(2) of the Act before the Maharashtra State Co-operative Appellate Court, Bombay, Bench at Nagpur, challenging the orders of the petitioner dated 11-11-1985 appointing an Enquiry Officer to go into the details of the damages caused to the society by the members of the managing committee, who were in management of the affairs of the society during the period in question. The appeal filed by respondent No. 3 Dadaji was registered as Appeal No. 34 of 1986, whereas the appeal filed by respondent No. 4 Shobhatai was registered as Appeal No. 26 of 1986. The learned Member of the Maharashtra State Co-operative Appellate Court passed an order on 23-7-1986 allowing the appeal and setting aside the order passed by the petitioner on 11-11-1985. It is against this order that the present petition is filed.

7. In order to decide the point in controversy, that is, whether an appeal lies against the order of the Assistant Registrar initiating proceedings u/s 88 of the Act, it is necessary first to look at section 152(2) of the Act under which the appeal was filed. Section 152(2) reads thus :

"152 (1)

(2) An appeal against an order or decision under sections 79, 85 and 88 and any order passed by the Registrar for paying compensation to a society, and any other order for which an appeal to the Co-operative Appellate Court has been provided under this Act, shall lie to the Co-operative Appellate Court.

(3)

... .."

The section provides for an appeal against an order or decision under sections 79, 85 and 88 and that order or decision must be for payment of compensation to the society. Unless such an order or decision is made the Co-operative Appellate Court does not derive any jurisdiction. Any other order or decision made in the course of proceedings under the aforesaid sections is not made appellable u/s 152(2) of the Act. No doubt the legislature has used both the words, namely, an "order" or "decision" in section 152(2) of the Act, but it seems that these words are used simply because they are equivalent to or synonymous to each other. The expression "decision" has a wide connotation. Whenever a question is determined or a definite opinion is formed or a judgment is rendered or a conclusion is arrived at, after weighing the reasons for and against the proposition, it is a decision. The word "order" on the other hand is comprehensive enough to include every decision or even an "award" made under the Act. In 67 C.J.S. 895 it is observed that an "order" as a noun has been held to be equivalent to or synonymous with decision. This is further clear if sections 79, 85 and 88 referred to in section 152(2) of the Act are perused. All the three sections refer only to an order passed by the authority and not the decision. Section 79 provides for power of the Registrar to enforce performance of the obligations enumerated in that section and orders passed must be complied within the stipulated period specified in the order itself. u/s 85 the Registrar has powers to apportion costs for holding enquiry u/s 83 or cause inspection to be made and for that purpose orders are to be passed, but not without following a particular procedure. Even section 88 requires the authority or the person authorised to hold enquiry and make an order that the person concerned to repay or restore the money or property with interest to the society. In none of the three sections the word "decision" has been used. Yet the word finds place in the section. As stated above both these words are equivalent and synonymous to each other and hence used in the section. Actually user of both the words does not have any effect on interpretation of the section. It is thus clear that no appeal lies against the order of the Assistant Registrar dated 11-11-1985 initiating proceedings u/s 88 of the Act.

8. An alternative submission was made that even if the appeal does not lie, the Co-operative Appellate Court has ample jurisdiction to call the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself the legality and propriety of any decision or order passed u/s 149(9) of the Act. In other words, the respondents 3 to 14, want this Court to uphold the order passed by the Co-operative Appellate Court in its revisional jurisdiction u/s 149(9). I find it difficult to accept this submission as well.

9. Sub-section (9) of section 149 of the Act reads thus -

"149(9) The Co-operative Appellate Court may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case it appears to the Co-operative Appellate Court that any such decision or order

should be modified, annulled or reversed, the Co-operative Appellate Court may pass such order thereon as it may deem just."

The sub-section envisages exercise of revisional jurisdiction by the Co-operative Appellate Court. It can call for and examine the record of any proceeding in which appeal lies to it. The section contemplates a proceeding and also a decision or order passed in such a proceeding, the legality or propriety of which could be scrutinised. These conditions are not available in the present case. The order by which the proceedings are initiated u/s 88 cannot be an order or decision in a proceeding contemplated by section 149(9) of the Act. My view is fortified if the decision of the Supreme Court in *Jai Mahavir Co-operative Housing Society Ltd. Vs. Panchal Keshavlal Narbheram and Others*, is perused wherein an identical provision, namely, section 150(9) of the Gujarat Co-operative Societies Act came up for interpretation. It is hence not possible for me to accept that the appeal filed by the respondents could be treated as a revision application u/s 149(9) of the Act and the Co-operative Appellate Court having examined the legality and propriety of the order impugned therein can still be maintained.

10. From the aforesaid discussion, it is clear that the Co-operative Appellate Court had no jurisdiction either to decide the appeal u/s 152(2) of the Act or the revision u/s 149(9) of the Act. Does it mean that the respondents are without any remedy? No, the remedy available is u/s 154 of the Act. That section empowers the State Government or the Registrar to call for and examine not only the record of any enquiry, but also the proceedings of any other matter of the officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings. Bhagwati, C.J., as he then was, in *Chimanbhai Dadubhai Desai and Another Vs. Chaturbhai P. Patel and Others*, while construing section 155 of the Gujarat Co-operative Societies Act, which provision is identical to section 154 of the Act, have stated thus :

"The words "the proceedings of any other matter" are words of great width and amplitude and they take in all proceedings before any officer subordinate to the State Government or the Registrar. Now where an order u/s 86 sub-section (1) is made by the District Registrar on the basis of the material before him, there is obviously a proceeding before him relating to the question whether an enquiry should be ordered or not and the Registrar can certainly call for and examine the record of that proceeding for the purpose of satisfying himself as to the legality or propriety of the order passed by the District Registrar in such proceeding. The same would be the case where the order u/s 86 sub-section (1) is made by the Registrar, in such a case the State Government would have the power to call for and examine the record of the proceeding before the Registrar and to satisfy itself as to the legality or propriety of the order made by the Registrar. It is no doubt true that power is conferred on the Registrar or the District Registrar u/s 86 sub-section (1), to make an order for inquiring suo motu; but it is apparent

that he would act only on the basis of material which may be placed before him either by some person interested or an appropriate officer. Here in the present case the order of the District Registrar shows that he acted on the basis of an application dated 7th August, 1969 made by Manubhai Maganbhai Patel and Jairambhai Manibhai Patel. This application obviously initiated a proceeding before the District Registrar and in this proceeding the District Registrar made an order directing an inquiry. The order made by the District Registrar, therefore, clearly fell within the plain language of section 155 and was revisable by the Registrar since the District Registrar was an officer subordinate to Registrar."

In my view, therefore, the order passed by the Assistant Registrar was revisable only u/s 154 of the Act and the forum available would be the Divisional Joint Registrar, Co-operative Societies, Nagpur.

11. In the result, the writ petition is allowed and the impugned order is quashed. The authorised person, namely, respondent No. 2 can now proceed with the inquiry. The respondent Nos. 3 to 14 are at liberty to move the revisional authority if they so choose. Rule is accordingly made absolute. In the circumstances of the case, the parties are directed to bear their respective costs.