
(1988) 11 MAD CK 0017
In the Madras High Court

Baghavathy Ammal

APPELLANT

Vs

The Chingleput Co-operative House Building Society Limited
and Another

RESPONDENT

Date of Decision : 11-11-1988

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1961 — Section 73, 73(1)(b)

Citation : (1990) 1 MLJ 156

Hon'ble Judges : K. M. Natarajan, J

Bench : Division Bench

Judgement

K. M. Natarajan, J.—This revision is directed by the petitioner/second defendant in I.A.No. 959 of 1981 in O.S.No. 241 of 1981 on the

file of the II Additional Sub Judge, Chingleput, dismissing the said petition.

2. The facts which are necessary for the disposal of this revision are briefly as follows:- The first respondent, namely, the Chingleput Co-operative

House Building Society Limited, Chingleput represented by its secretary, filed the suit O.S.No. 241 of 1981 against the petitioner herein and the

first defendant C.K. Selvarangammal for a declaration of title of the plaintiff to the suit property and for directing the defendants to deliver vacant

possession after demolishing the unauthorised construction put up by them. The case of the first respondent (plaintiff) is that the plaintiff-society has

been formed for the benefit of the members in the trade of building, buying, selling, hiring, letting and developing lands in accordance, with the

cooperative principles, to give loans for members for construction of dwelling houses and also to take construction of houses on behalf of

members. The first defendant has been allotted plot No. B.57 as per Resolution of the society dated 19.2.1973. The conveyance deed for the plot

has also to be executed by the plaintiff, as per By-laws of the Society, only after the house has been completed by the member to the satisfaction

of the Board of Directors and paid the other charges. But, instead of completing the construction and obtaining the conveyance deed, the first

defendant executed a sale deed to the second defendant under Document No. 293 of 1981 on 31.3.1981. The said sale deed is not valid and

binding on the plaintiff. The first defendant had no manner of right, title or interest in the property to transfer the same. The second defendant is not

a bona fide purchaser for value and she has no right to put up any construction. The acts of the defendants are in violation of the By-laws of the

Society. Hence the suit was filed. The said suit was resisted by both the defendants and among other grounds, it is contended in the additional

written statement filed by the second defendant that as per By-law 63, the Registrar of the Co-operative Societies is the competent authority to

decide the dispute in question and the civil court has no jurisdiction to try the suit and hence the suit is not maintainable. She also filed a petition,

I.A.No. 959 of 1981, under Order 14, Rule 2, C.P.C. to try the issues regarding jurisdiction as well as the issue regarding bar of the suit under the

provisions of the Act in view of the allegations stated in the additional written statement. The said application was resisted by the first

respondent/plaintiff and it was contended that the civil court alone has got jurisdiction to try the suit and the suit is not barred by the provisions of

the Tamil Nadu Co-operative Societies Act, Act 53 of 1961. The Subordinate Judge upholding the contentions of the first respondent/plaintiff

dismissed the petition after finding both the issues in favour of the plaintiff. Hence this revision.

3. Learned counsel for the revision-petitioner mainly contended that as per By-law No. 63 of the plaintiff-society and u/s 73 of the Tamil Nadu

Co-operative Societies Act, Act 53 of 1961, in the case of dispute touching the business of the registered society between a member, past

member or person claiming through a member and the society, reference in writing should be made by either party to the Registrar and the

Registrar has to decide the dispute by himself or refer it to the arbitrator appointed by him. According to the learned counsel, the reasons given by

the lower court for holding that the said provisions are not applicable are two-fold. The first is that the second defendant is a stranger and as such,

no reference is possible u/s 73 of the Act, or By-law 63. Further, the dispute in the case would not amount to touching the business of the society

so as to warrant the applicability of section 73 of the Act. According to the learned counsel, since the second defendant purchased the plot allotted

by the society to the first defendant, she is a person claiming through a member and as such she cannot be termed as a stranger. In this connection,

it is worthwhile to quote section 73 (1) (b) of the Tamil Nadu Co-operative Societies Act which reads as follows:

Section 73: (1) If any dispute touching the constitution of the committee or the management or the business of a registered society (other than a

dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises--

(a)

(b) between a member, past member or person claiming through a member, past member or deceased member of the society, its committee or any

officer, agent or servant of the society, or

(c)

(d)

such dispute shall be referred to the Registrar for decision

Explanation: For the purposes of this section, a dispute shall include- (1)

(ii) A claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the

delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of

such land or other immovable property.

By-law 63 of the plaintiff society reads as follows:

In the case of a dispute touching the business of the society between members or past members of the society, or persons claiming through a

member or past member or between a member or past member or persons so claiming and the Board of Directors, a reference in writing may be

made by any party to the Registrar. Similarly, in the case of a dispute relating to a debt due to the society by a member or past member, a

reference in writing maybe made by either party to the Registrar. The Registrar shall have power on receipt of such reference either to decide the

dispute himself or refer it to an arbitrator appointed by him or to several arbitrators of whom one shall be appointed by him and one other by each of the parties to the dispute.

Now, the question that arises for consideration is whether the second defendant is a person claiming through a member as contemplated in section

73 of the Act or By-law 63 of the plaintiff-society. In this connection, the learned counsel for the revision-petitioner drew my attention to a

decision reported in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, where Their Lordships held as follows:

Before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with

the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then he must be covered, if at

all, by the provisions of Section 91 (1) (a) or (c). But, once it is held that the original transaction was entered into by the member with the society

as a member then any person who claims rights or title through that member must come within the provisions of section 91 (1) (b).

It is clear from the ratio laid down in the above decision that if the original transaction was entered into by a member with the society as a member,

then any person who claims rights or title through that member must come within the provision of section 73 (1) (b) which is in pari materia with

section 91(1) (b) of the Maharashtra Co-operative Societies Act. The contention of the learned counsel for the first respondent is that this plot was

originally allotted to the husband of the first defendant, and after his death, she became entitled to the same as his legal representative and as such it

cannot be said that the second defendant became entitled to the plot by virtue of the sale in his favour. On the other hand, the learned counsel for

the revision-petitioner drew the attention of this Court to the allegations in Para. 5 of the plaint where in it is categorically stated:

As per the condition, namely, the condition under By-law 36-B which provides for allotment of plots to members, the first defendant has been

allotted plot No. B.57 as per the resolution of the Society No. 17, dated 192.1973. The first defendant has applied for approval of the plan for

construction of building. It has been duly sent to Municipality with the consent of the plaintiff. With the approval of Chingleput Municipality, first

defendant has been constructing a small building.

Hence it cannot be said that the first defendant was not the member to whom the plot in question was allotted by the defendant who sold the said

plot to the second defendant on 31.3.1981 for Rs. 20,000. Hence, it is clear that the second defendant is a person claiming right and title through

the first defendant who is a member and as such certainly she comes under the category of persons referred to in the above provision as claiming

through a member. If once it is held that she is a person claiming through a member as per section 73 (1)(b), any dispute touching the business of

the society between persons claiming through a member and the society shall be referred to the Registrar for decision.

4. The next question which arises for consideration is whether the dispute in question is touching the business of the society. It is the case of the first

respondent (plaintiff-society) that though the plot was allotted to the first defendant, she has not completed the building and that she has not paid

any other proportionate costs for common amenities. According to the plaintiff, as such the conveyance deed has not been executed in her favour.

Further, contrary to the By-laws of the society she had created a deed of alienation even before she got a deed of conveyance from the plaintiff,

and under By-law 37-B the Board is empowered to resume the site allotted to her and accordingly by Resolution dated 10.8.1981 it was done

and the same was intimated not only to the first defendant but also to the second defendant. Hence, the plaintiff is entitled to the relief of declaration

of title as well as delivery of vacant possession. According to the learned counsel for the revision-petitioner, even as per the allegations stated in

Para.3 of the plaint, the plaintiff-society has been formed for the benefit of the members in the trade of building, buying, selling, hiring, letting and

developing lands in accordance with the cooperative principles. Accordingly, it acquired the land and plotted out for the purpose of selling the

same to the members and thereafter allotted the same to its members. Thus it is clear that the business of the society is selling plots and the dispute

arose in respect of the sale of plot between the society and the member and also the person claiming through the member. As such, it is a clear

case that the dispute is in respect of a matter touching the business of the society. On the other hand, the learned counsel for the first respondent

submitted that since the dispute is only in respect of the sale by the first defendant in favour of the second defendant, it cannot be construed as one

touching the business of the society. In this connection, reliance was placed on two decisions of the Supreme Court reported in Deccan Merchants

Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay, .

In Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, the Court had to consider the competing jurisdiction under

the Bombay Rent Act and the Maharashtra Co-operative Societies Act and in the circumstances, Their Lordships held:

But under the Rent Act a different social objective is intended to be achieved and for achieving that social objective it is necessary that a dispute

between the landlord and the tenant should be dealt with by the courts set up under the Rent Act and in accordance with the special provisions of

the Rent Act. This social objective does not impinge on the objective underlying the Act.

Hence, it is observed:

It seems to us that the two Acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the

provisions of the Act, should apply. In view of these considerations we are of the opinion that section 91 of the Act does not affect the provisions

of section 28 of the Rent Act.

In that view, it was held that the Court of Small Causes has exclusive jurisdiction u/s 28 of the Rent Act to entertain a proceeding by a landlord

against a tenant. Learned counsel for the first respondent drew the attention of this Court to some observations made in the said judgment. -It is

observed in the said judgment:

The word "touching" is very wide and would include any matter which relates to or concerns the business of a society, but it is doubtful whether

the word ""affects"" should also be used in defining the scope of the word ""touching"". The question whether a dispute touching the assets of a society

would be a dispute touching the business of the society would depend on the nature of the society and the rules and by-laws governing it.

Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out

of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out

to its members. In that case letting out property may be part of its business. Where the society is a Co-operative Bank it cannot ordinarily be said

to be engaged in business when it lets out properties owned by it. Therefore the dispute between a tenant and a member of the bank in a building

which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Farkhundali Nannhay Vs. V.B.

Potdar and Another, , Ref.

Even in that case, while construing the word ""dispute"" it was observed as follows:

Further the word ""dispute"" covers only those disputes which are capable of being resolved by the Registrar or his nominee. It is very doubtful if the

word ""dispute"" would include a dispute between a landlord society and a tenant when the landlord society has not been set up for the purpose of

construction or buying and letting out houses. In the presence of various Rent Acts which give special privileges to tenants it would be difficult to

state that such disputes were intended to be referred to the Registrar.

The said decision is not at all helpful to the case of the first respondent, as in the above quoted case the society has not been set up for the purpose

of constructing or buying and letting out houses. It is only a Co-operative Bank. Further, the dispute to be resolved is about the benefit claimed by

the tenant under the Rent Control Act and, that can be dealt with by the special provisions under the Rent Act. Hence, Their Lordships of the

Supreme Court held that it can be tried by the Small Causes Court (Civil Court).

6. The learned counsel for the first respondent laid more stress on the decision reported in Sabharwal Brothers and Another Vs. Smt. Guna Amrit

Thandani of Bombay, and submitted that in the above quoted case in similar circumstances Their Lordships held that the dispute could not be said

to touch the business of the society. It was held in that case

Where the objects of a society were to carry on the trade of buying, selling, hiring and letting land in accordance with the co-operative principles,

the letting by a member of such society of the flat purchased from the society could not be said ""to touch the business of the society"". The fact that

such letting was forbidden by a regulation of the society was immaterial.

That was a case where admittedly the first respondent acquired the flat and became the owner of the same. She had put the appellant in possession of the flat for a period of 11 months. When the first respondent asked the appellant to vacate possession on the ground that she required the same for her personal occupation, her request was not complied with. Then she filed a statement of claim before the Registrar of Co-operative Societies on the ground that there was a dispute within the meaning of section 91 (1) of the Maharashtra Co-operative Societies Act which required adjudication. There the jurisdiction of the Registrar was challenged by the appellant-tenant. The appellant, also anticipating an award, filed a suit in the court of small causes stating that they are entitled to the protection under the Bombay Rent Act and the first respondent has no right to evict them. The small cause court held that the suit was maintainable. A Bench on revision took a different view. The High Court confirmed the same. In the circumstances, the matter came up for consideration before the Supreme Court and the Supreme Court in para. 9 of the judgment observed as follows:

With all respect to the High Court, it seems to us that there was a fundamental error in the above approach. No doubt it was the business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the bye-laws and a breach of the bye-laws could affect the defaulting member's right to membership. But, we are not able to see how letting by a member to another member would touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with co-operative principles. The letting of flat by respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but such letting by itself did not concern the business of the society in the matter of its; letting out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the latter had himself been a tenant of the flat under the society. "To touch" means "to come in contact with" and it does not appear there is a point of contact between a letting by the respondent No. 1 and the business of the society when the society was not itself the landlord of the flat.

The decision is not helpful to the case of the first respondent. In the above quoted case, the society has sold the flat and the member, who acquired the building, let out the flat to a third party. There was no transaction connecting the society and the society was not in any way concerned in that proceedings. In the circumstances, their Lordships held that the society was not the landlord and not in any way connected with the letting. Their Lordships also observed that the position would have been different if the appellant became the tenant under the society and that the society was the owner. In the above quoted case the society has admittedly parted with its right over the flat and the society had not challenged the letting. In the circumstances, their Lordships allowed the appeal. But, in the instant case, the very society itself filed the suit challenging that it has not executed any conveyance deed in favour of the first defendant and that the first defendant has not completed the construction as per the conditions of the by-laws and in spite of the same, she had alienated the property in favour of the second defendant. By virtue of the by-law, the society is empowered to resume the plot and as such has come forward with the suit for declaration and for recovery of possession. In view of the object of the society and in view of the very dispute in respect of allotment of the plot in question between the society on one hand and the person claiming through a member on the other, there is certainly a dispute touching the business of the society as contemplated u/s 73 of the Act.

6. It was contended by the learned counsel for the first respondent that under Explanation (ii) to Section 73 of the Tamil Nadu Co-operative

Societies Act, there is no reference at all about the person claiming through a member, though it was mentioned in the earlier part of section 73 (1)

(b) and as such, any claim by a registered society against a person claiming through a member for the delivery of possession to the society of land

or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land, section 73 cannot be invoked. I

do not find any merit in the said contention as it is clearly mentioned in section. 73 (1) (b) that if any dispute touching the business of a registered

society between a person claiming through a member of the society arises, such dispute shall be referred to the Registrar for decision. It is only by

way of explanatory note, Explanations (i) and (ii) were included and that is only for the purpose of including certain persons by way of explanation

and not to exclude the earlier part of the provision of the section. By virtue of the explanation, a claim may be made by the society not only against a member or past member but also against the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it. It cannot be said that by virtue of this Explanation a claim cannot be made against a person claiming through a person. It is clear that the Explanation provides that a claim may be made by the society not only against a member or past member but also against the nominee, heir or legal representative of a deceased member, who are not referred to in section 73 (1) (b). It is only for facilitating to proceed against those persons, the explanatory note was given. The explanation would not take away the effect of the very section, as rightly contended by the learned counsel for the revision-petitioner and there is absolutely nothing to infer that the person claiming through a member was excluded by that explanation. Hence I do not find any merit in the said contention.

7. Next it was contended by the learned counsel for the respondent that section 100 deals with bar of jurisdiction of civil Court, and that the present proceeding is not the one contemplated u/s 100 and as such, there is no bar for the civil court to take cognizance. Further, there is no specific exclusion of the civil court even u/s 73 of the Act. The civil court having taken cognizance of the matter already is not barred by proceeding with the suit. As already stated u/s 73 of the Act, if any dispute arises between a member or past member or a person claiming through a member on the one hand and the society on the other, touching the business of the society, reference shall be made to the Registrar and there is provision for appeal against the said order and also for execution under the provisions of the said Act. The attention of this Court was drawn to the decision of the Supreme Court reported in Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), where, after referring to various earlier decisions, it was held in Para.9 as follows:

Generally speaking, the broad guiding considerations for determining whether Civil Court jurisdiction is excluded are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the

remedy having been created into flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an

exclusionary provision the civil court's jurisdiction is impliedly barred. If, however, a right preexisting in common law is recognised by the statute

and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court's jurisdiction, then both the common law and

the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inheritance. To what extent, and on

what areas and under what circumstances and conditions, the civil Court's jurisdiction is preserved even where there is an express clause excluding

their jurisdiction, are considered in Dhulabhai's case.

The said Dhulabhai's case was reported in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, wherein the following principles

regarding exclusion of jurisdiction of civil court are laid down:

The following principles regarding exclusion of jurisdiction of civil Court may be laid down:

(1) Where the statute gives a finality to the orders of the special tribunals the civil Court's jurisdiction must be held to be excluded if there is

adequate remedy to do what the civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the

provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of

judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the

sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express

exclusion the examination of the remedies and the scheme of the particular Act to find out the intent becomes necessary and the result of the

inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination

of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted,

and whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular. Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High

Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of

certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy

to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit ""dies not lie if

the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the

particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

Applying the ratio above quoted to the facts of this case, it is clear that the first respondent acquired a right only by virtue of the statute, namely,

Tamil Nadu Co-operative Societies Act, to the said plot and the said statute provided the Special Tribunal for deciding the dispute between the

member, past member and person claiming through a member on one hand and the society on the other. There is adequate remedy for appeal and

execution and in the circumstances, even though there is no express bar of the jurisdiction, certainly the civil Court has no jurisdiction and only the

Special Tribunal, namely, the Registrar, as contemplated u/s 73 of the Tamil Nadu Co-operative Societies Act, alone has got jurisdiction to try the

dispute in question. The lower court has not properly interpreted the relevant provisions of the Tamil Nadu Co-operative Societies Act and the

By-laws of the society and the case-laws on the point while dismissing the petition filed by the revision-petitioner and that has led to the miscarriage

of justice. As such, the order is liable to be set aside.

8. In the result, the revision is allowed, the order passed by the court below is

set aside and the court below is directed to return the plaint for presentation before proper forum for disposal according to law. In the circumstances of the case, there will be no order as to costs.