

(1973) 11 BOM CK 0016

In the Bombay High Court

Case No : Misc. Civil Application No. 18 of 1971

Bapusaheb Balasaheb Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-11-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151

Constitution of India, 1950 — Article 136

Evidence Act, 1872 — Section 3

Maharashtra Co-operative Societies Act, 1960 — Section 100, 146, 163, 163(1), 163(1)(b)

Penal Code, 1860 (IPC) — Section 19, 20

Citation : (1974) MhLj 698

Hon'ble Judges : R.M. Kantawala, C.J.;V.D. Tulzapurkar, J;S.B. Bhasme, J

Bench : Full Bench

Advocate : Babasaheb A. Bhonsale, for the Appellant; M.B. Kadam, Addl. Govt. Pleader for Respondents Nos. 1 and 17, A.V. Datar for Respondents Nos. 14 and 15 and M.A. Rane for Respondents Nos. 3 to 9 and 16, for the Respondent

Judgement

V.D. Tulzapurkar, J.—The question that has been referred to us for our decision by the Division Bench is as follows:

Whether the Officers on Special Duty appointed under the Maharashtra Government Notification dated 11th March 1969 are Courts within the meaning of the Contempt of Courts Act, while discharging their duties under the Act.

2. The question arises in these circumstances: Respondent No. 3 Kumbhi Kasari Sahakari Sakhar Karkhana Ltd. is a Co-operative Sugar Factory of which the petitioners and respondents Nos. 4 to 16 are the members. Triennial election to the Board of Directors of respondent No. 3 was held on November 18, 1970, under the Election Rules framed in that behalf at which two of the petitioners and respondents Nos. 4 to 14 were the contesting candidates. The result of that election was declared on November 19, 1970 in the General Body Meeting of respondent No. 3 held on that date and respondents Nos. 4 to 13 were declared

elected to be the directors of the Board. On November 25, 1970 the petitioners applied to the District Deputy Registrar of Cooperative Societies, Kolhapur, respondent No. 17, to have the said election of the Board of Directors of respondent No. 3 set aside on the ground that several illegalities were committed and malpractices were indulged in during the election. The dispute so referred by the petitioners to respondent No. 17 was referred by respondent No. 17 to respondent No. 2 for her decision. Respondent No. 2 happens to be an Officer on Special Duty appointed by the State Government in exercise of powers vested in it u/s 3 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act"). The petitioners prayed for an ad interim injunction restraining the Society (respondent No. 3) from giving charge of the affairs of the Society to the newly elected Board of Directors which comprised respondents Nos. 4 to 16 and further restraining the newly elected Board of Directors from taking charge from respondent No. 3 and an injunction was also sought restraining respondents Nos. 4 to 16 from exercising any power or rights as elected members of the Board of Directors. On November 27, 1970 respondent No. 2 passed an order granting interim injunction to the following effect:

Respondent No. 3 being the Society was temporarily restrained from giving charge to the newly elected Board of Directors viz. respondents Nos. 4 to 13 and respondents Nos. 4 to 13 were restrained from taking charge from respondent No. 3 till the final disposal of the case.

Since respondent No. 16 was erstwhile Managing Director of respondent No. 3, the first part of the injunction really operated against him, in the sense that he was restrained from handing over charge of the affairs of the society to the newly elected Board of Directors. This order of injunction issued by respondent No. 2 was served on respondents Nos. 3, 4, 14, 15 and 16 on the very day i. e. November 27, 1970 while it was served on respondents Nos. 6, 9, 12 and 13 on November 28, 1970. It also appears that this order was published in a local newspaper, "Pudhari Daily" of Kolhapur, on November 29, 1970. According to the petitioners, in spite of service of this injunction order on the several respondents, as mentioned above, on November 30, 1970 the first meeting of the newly elected Board of Directors of respondent No. 3 was convened which was attended by respondents Nos. 4 to 13, 15 and 16 at which the charge of the affairs of the factory was taken over by the newly elected Board of Directors and at that meeting the new Chairman, Vice-Chairman and subcommittees were elected and even the resolution authorising withdrawal of funds from the Bank account was passed. The petitioners, therefore, filed Misc. Civil Application No. 18 of 1971 in this Court praying for action being taken against respondents Nos. 4 to 13, 15 and 16 for contempt of Court alleging that they committed several of the aforesaid acts in the meeting that was convened on November 30, 1970 in utter disregard and disobedience of the, injunction order issued by respondent No. 2 on November 27, 1970. On behalf of the alleged contemnors a two-fold plea was raised in the affidavit in reply that was filed. In the first place, it was contended that respondent No. 2 was not a Court within the meaning of the Contempt of

Courts Act, 1952 and as such no action in contempt could lie against them under the provisions of the Contempt of Courts Act, 1952 ; and secondly, it was on merits emphatically denied that they had committed any contempt as alleged by the petitioners. It was urged that several alleged acts said to have been indulged in by the contemnors did not constitute any contempt or disobedience of the order passed by respondent No. 2.

3. When the petition came up for hearing before the Division Bench a question was raised whether respondent No 2 who was the Officer on Special Duty appointed under the Maharashtra Government Notification dated March 11, 1969 was a Court within the meaning of the Contempt of Courts Act while the said officer was discharging her duties under the Act and since the Division Bench felt that the question was a question of considerable importance because it was of frequent occurrence and the jurisdiction under the Co-operative Societies Act exercised by the Officers on Special Duty was rapidly increasing the question required to be finally and authoritatively settled so as to guide not only the Officers concerned but the public at large. That is how the question mentioned at the commencement of the judgment has come to be referred to us for our decision.

4. On behalf of the petitioners, Mr. Bhonsale has contended before us that the Officers on Special Duty, who have been appointed by the State Government in exercise of powers u/s 3 of the Act and on whom the powers specified in column (4) of that Notification have been conferred, will have to be regarded as Courts for the purpose of the Contempt of Courts Act. He pointed out that under the scheme of the Act and the relevant sections contained in Chapter IX of the Act which pertain to disputes and arbitration, these Officers on Special Duty are called upon to perform judicial functions and have been given powers to give definitive judgments which have, subject to appeals that have been provided, a finality and authoritativeness and what is more, the source of that authority to perform these judicial functions has been the State which has been pleased to confer the same under a statute and in support of this contention he has principally relied upon the decision of the Supreme Court in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . He has pointed out that in that case the Supreme Court was concerned with the question as to whether the Assistant Registrar discharging the functions of the Registrar u/s 48 read with section 6 (2) of Bihar and Orissa Cooperative Societies Act (6 of 1935) was a Court for the purpose of the Contempt of Courts Act or not and the Supreme Court after reviewing the provisions of that Act and particularly section 48 thereof had come to the conclusion that the Assistant Registrar was a Court, and according to Mr. Bhonsale, the position of the Officers on Special Duty appointed by the State Government in exercise of the powers u/s 3 of the Maharashtra Co-operative Societies Act, 1950 was in no way dissimilar to the position of the Assistant Registrar under Bihar and Orissa Co-operative Societies Act and, therefore, these Officers on Special Duty should be held to be Courts for the purpose of the Contempt of Courts Act. On the other hand, Mr. Rane

appearing for some of the contemnors (being respondents Nos. 3 to 9 and 16) has contended that the Officers on Special Duty appointed by the State Government u/s 3 of the Act could not be regarded as Courts for the purpose of the Contempt of Courts Act. He urged that not only the Officers on Special Duty who perform the judicial functions within the ambit of powers that had been conferred upon them by the State Government under the relevant Notifications but even the Registrar as well as the Registrar's nominees who also perform similar judicial functions qua disputes arising u/s 91 of the Act would be no better than the arbitrators or rather statutory arbitrators undertaking statutory arbitration and, therefore, they could not be regarded as Courts. He pointed out that the decision of the Supreme Court in Jugal Kishore's case was on the peculiar provisions contained in the Bihar and Orissa Co-operative Societies Act and in fact Justice Mitter, who spoke for the Court, has made the position very clear by observing towards the end of the judgment to this effect (p. 1504) :

...It must be borne in mind that we do not propose to lay down that all Registrars of all Co-operative Societies in the different States are "Courts" for the purpose of the Contempt of Courts Act, 1952. Our decision is expressly limited to the Registrar and the Assistant Registrar like the one before us governed by the Bihar and Orissa Co-operative Societies Act.

He, therefore, urged that the position of the Registrar or the Officer on Special Duty appointed by the State Government u/s 3 as well as the position of the nominees appointed by the Registrar under the Act will have to be considered afresh by having regard to the provisions of the Act. He pointed out that so far as the nominee or nominees appointed by the Registrar who have also been conferred the power to determine the disputes referred to them by the Registrar u/s 93 are concerned, the position has been clarified by this Court in the case of Malabar Hill Co-operative Housing Society Ltd. Vs. K.L. Gauba and Others, , where a view has been taken by this Court that a nominee appointed by the Registrar u/s 93 (1) of the Maharashtra Co-operative Societies Act, 1960, is not a Court within the meaning of the Contempt of Courts Act, 1952, and he argued that if the position of the Registrar as well as the position of the Officers on Special Duty appointed by the State Government u/s 3 of the Act were carefully scrutinised in the light of the relevant provisions of the Act, it would appear clear that all these three authorities, who are called upon to perform the judicial functions qua the disputes covered under the provisions of section 91 of the Act, will have to be regarded as arbitrators or rather statutory arbitrators undertaking statutory arbitration and as such they could not be regarded as Courts for the purpose of the Contempt of Courts Act. In that behalf he also placed reliance upon the subsequent decision of the Supreme Court in Ramrao v. Narayan 1969 Mh. L J 597 : (1968) 71 Bom. L R 696 (S C) where the view of this Court in Gauba's case has been approved and the Supreme Court has categorically taken the view that the nominee of the Registrar appointed u/s 93 of the Maharashtra Co-operative Societies Act, 1960 is not a "Court" within the meaning of section 195 of the Criminal Procedure Code. Mr. Rane, therefore, principally contended

that all the three authorities, who are called upon to perform the judicial functions qua the disputes covered by section 91 of the Act, viz. Registrar, Officer on Special Duty as well as the Registrar's nominees, should be regarded as arbitrators undertaking statutory arbitration. In any event he contended that so far as the Officers on Special Duty were concerned, they should be held to be arbitrators undertaking statutory arbitration for their position was in no way different from the Registrar's nominees who were also performing similar functions under the Act. He elaborated his contention by referring to several provisions of the Act to which elaboration we will come to a little later in the course of our judgment.

5. In order to decide the question that has been referred to us, it will be necessary to understand the proper connotation of the expression "Court", for, we have to consider whether the Officers on Special Duty appointed by the State Government u/s 3 of the Act are "Courts" within the meaning of the Contempt of Courts Act, 1952 or not. Now it is undisputed that the expression "Court" has not been defined in the Contempt of Courts Act, 1952 and all that section 3 (1) of the said Act does is that it confers power upon the High Court to punish "Contempts of Courts subordinate to it" in the Same:- manner it punishes contempt of itself and obviously the expression "Courts subordinate to High Court" in section 3 (1) would mean Courts of law subordinate to High Court in the hierarchy of Courts established for the purpose of administration of justice throughout the Union. Since the expression "Court" has not been defined in the Contempt of Courts Act, the definition of that expression as occurring in couple of other enactments may be considered.

6. Section 3 of the Evidence Act (I of 1872) defines "Court" as including all Judges and Magistrates and all persons except arbitrators, legally authorised to take evidence. It is, however, well settled that this definition has been framed only for the purpose of the Evidence Act and cannot be extended where such an extension would not be warranted. Sections 19 and 20 of the Penal Code define the expression "Judge" and "Court of Justice" as under:

S. 19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

S. 20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

These definitions given in the Indian Penal Code make it amply clear that the pronouncement of definitive judgment is considered the essential "sine qua non"

of a Court. In Halsbury's Laws of England, 3rd edn., Vol. 9, Article 809 on page 342 runs as follows :

809. Meaning of Court. Originally the term "court" meant, among other meanings, the Sovereign's palace; it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. All tribunals, however, are not Courts, in the sense in which the term is here employed, namely, to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs, and the like, although they may be tribunals exercising judicial functions, are not "Courts" in this sense of that term. On the other hand, a tribunal may be a Court in the strict sense of the term although the chief part of its duties is not judicial.

Article 812 on page 344 runs as Follows:

812. Creation of Courts. Courts are created by the authority of the Sovereign as the fountain of justice. This authority is exercised either by statute, charter, letters patent, or Order in Council. In some cases a Court is held by prescription,, as having existed from time immemorial, with the implication that there was at some time a grant of the Court by the Sovereign, which has been lost.

In the Privy Council decision in *Shell Co. of Australia v. Federal Commissioner of Taxation* 1931 A C 275 Lord Sankey L. C. laid down some negative propositions to the following effect (p. 297) :

1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body." (See *Rex v. Electricity Commissioners: London Electricity Joint Committee Co. (1920), Ex parte*) (1924) 1 K B 171.

It has been further observed in that case on page 298 as follows:

An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of judicial power.

In the case of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, the question that arose was whether an Industrial Tribunal constituted under the Industrial Disputes Act, 1947 whose functions and duties were very much like those of a body discharging judicial functions was a Court or not for the purpose of article 136 of the Constitution and in that case the following relevant observations were

made by Justice Mahajan, which appear at page 475 of the Report:

As pointed out in Halsbury's Laws of England, the word "Court" originally meant the King's Palace but subsequently acquired the meaning of (1) a place where justice was administered, and (2) the person or persons who administer it. In the Indian Evidence Act it is defined as including all Judges and Magistrates and all persons except arbitrators legally authorized to take evidence. This definition is by no means exhaustive and has been framed only for the purposes of the Act. There can be no doubt that to be a Court, the person or persons who constitute it must be entrusted with judicial functions, that is, of deciding litigated questions according to law. However, by agreement between parties arbitrators may be called upon to exercise judicial powers and to decide a dispute according to law but that would not make the arbitrators a Court. It appears to me that before a person or persons can be said to constitute a Court it must be held that they derive their powers from the State and are exercising the judicial powers of the State.

Justice Mahajan also referred to the definition of the expression "judicial powers" as given by Griffith C.J. in *Huddart, Parkar & Co. Proprietary Ltd. v. Moorehead : Appleton v. Moorehead* (1908) 8 C L R 330, 357 which was regarded as the best definition of the expression and the expression was defined by Griffith C. J. as follows:

.the words "judicial power" as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.

7. In *Brajnandan Sinha Vs. Jyoti Narain*, the question was whether a Commissioner appointed under the Public Servants (Inquiries) Act (37 of 1850) was a Court within the meaning of the Contempt of Courts Act, 1952. In that case after referring to the authorities like *Coke on Littleton* and *Stroud*, the Privy Council decision in the case of *Shell Co of Australia v. Federal Commissioner of Taxation*, earlier decisions in *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.*, the case of *Maqbool Hussain Vs. The State of Bombay*, and *Cooper v. Wilson* (1937) 2 K B 309 the Court observed in para. 18 of its judgment as follows (p. 70) :

It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

8. We might usefully refer to the decision of the Supreme Court in *Jugal Kishore v. Sitamarhi Central Co-op. Bank*. The question which arose for determination in

that case was whether an Assistant Registrar discharging the functions of the Registrar u/s 48 read with section 6 (2) of Bihar and Orissa Co-operative Societies Act was a Court for the purpose of the Contempt of Courts Act or not and after examining the scheme and the relevant provisions of the Act the Court came to the conclusion that both the Registrar as well as the Assistant Registrar were Courts for the purpose of the Contempt of Courts Act and in coming to that conclusion two aspects were emphasised by the Court, first both the Registrar as well as the Assistant Registrar on whom powers to perform the judicial functions had been conferred were the recipients of that power from the State, that is to say, by statute itself and secondly while performing the judicial functions that were entrusted to these officers they had been given power to give definitive decisions having finality or authoritativeness which would be binding on the parties appealing before them affecting the rights that were litigated before the said officers. So far as the first aspect was concerned, this is what the Court has observed in para. 10 of its judgment (p. 1499) :

In this case, the Assistant Registrar concerned, along with several other persons, was given the power of the Registrar under various sections of the Act including section 48 [excepting sub-sections (6) and (8)] by the State Government. He was not a nominee of the Registrar.

and so far as the second aspect was concerned, this is what the Court stated in para. 11 of its judgment (p. 1499) :

It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted u/s 57 of the Act in case of disputes which fell u/s 48. A Registrar exercising powers u/s 48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the CPC including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in section 151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred u/s 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.

It is true that at the end of the judgment the Court has taken care to observe that the Court did not intend to lay down as a general proposition that all Registrars of all Co-operative Societies in the different States were Courts for the purpose of the Contempt of Courts Act and that its decision was expressly limited to the Registrar and the Assistant Registrar like the one before it governed by the Bihar and Orissa Co-operative Societies Act. All the same it was after analysing the scheme and the relevant provisions of the Act concerned that the Court came to the conclusion that the Registrar as well as the Assistant Registrar when they

discharged their duties qua disputes covered by section 48 of the Act satisfied both the criteria that are necessary to constitute the said officers Court, namely that the said officers were to all intents and purposes discharging similar functions and duties as were performed by the civil Courts and apart from having some of the trappings of the civil Court they had been given almost all powers that have been conferred upon the civil Courts including even power to review its own order as well as inherent power conferred u/s 151 of the Code of Civil Procedure. The Court was also considerably influenced by the fact that qua the disputes covered by section 48 of the Act the jurisdiction of the civil Courts and revenue Courts had been excluded or barred and therefore qua such disputes the mantle fell on these officers to adjudicate the same giving final judgments as regards rights of the parties appearing before them, and these officers had been conferred such powers to perform judicial functions by the State directly.

9. Then there are two judgments under the Maharashtra Co-operative Societies Act, 1960; one of this Court in *Malbar Hill Co-op. Society Ltd. v. Gauba* and the other of the Supreme Court in *Ramrao v. Narayan*, both dealing with the position of a nominee or Board of nominees appointed by the Registrar under the Act. In the former case the question that arose for determination was whether a nominee appointed by the Registrar u/s 93 (1) of the Maharashtra Co-operative Societies Act, 1960 was a Court within the meaning of the Contempt of Courts Act, 1952 and after considering the scheme of the Act and the relevant provisions thereof and several authorities, this Court took the view that such a nominee was not a Court within the meaning of the Contempt of Courts Act. Both aspects were considered by this Court, namely the nature of functions performed by a nominee qua disputes covered u/s 91 of the Act and the powers conferred upon him under the relevant sections thereof as well as the aspect whether such power to decide the disputes covered by section 91 had been conferred upon a nominee by the State through the statute itself or not and though the Court found that the Registrar's nominee was performing the judicial functions and though he had power to give definitive judgments having finality or authoritativeness, the Court took the view that that was not enough. According to the view expressed by the Court in that decision merely because a tribunal was enjoined with a duty to act in a judicial manner or hear parties and record evidence, and that its decision was made binding on the parties was not sufficient to hold that that tribunal was a Court, unless it was further established that in doing so, the tribunal was exercising an inherent judicial power of the State as a result of it being appointed by the State to exercise that power. In other words, the aspect was emphasised that under the relevant provisions of the Act a nominee or board of nominees was appointed by the Registrar and it was the Registrar who referred the disputes to such nominee or board of nominees for decision and since the provision of the Act relating to the appointment of a nominee itself indicated that the power, which a nominee derived for deciding the dispute, was not a power derived by him from the State, it would be difficult to hold that in deciding the dispute an award given by the

nominee was in exercise of any judicial power derived by him from the State. The Court also went on to point that having regard to the definition of "arbitrator" given in section 2 (2), of "Registrar" given in section 2 (24) and the language employed in section 96 of the Act it was clear that a nominee or board of nominees so appointed by the Registrar to hear and decide the disputes would be an arbitrator or board of arbitrators undertaking statutory arbitration.

10. In the other decision in *Ramrao v. Narayan* the Supreme Court was concerned with the question as to whether the nominee of the Registrar appointed u/s 93 of the Maharashtra Co-operative Societies Act, 1960 was a Court within the meaning of section 195 of the Criminal Procedure Code and the Court on examination of the relevant scheme and the provisions of the Act came to the conclusion that having regard to the test that had been accepted by the Supreme Court in the earlier decision such nominee could not be regarded as Court within the meaning of section 195 of the Criminal Procedure Code. The ratio of that decision appears in the observations which are to be found on p. 704 of the Report, which run as follows:

After carefully considering the powers conferred and the source of authority of the nominee, we have no doubt that the nominee exercising power to make an award u/s 96 of the Maharashtra Co-operative Societies Act, 1960, derives his authority not from the statute but from investment by the Registrar in his individual discretion. The power so invested is liable to be suspended and may be withdrawn. He is, therefore, not entrusted with the judicial power of the State: he is merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him.

11. Having regard to the aforesaid authorities and the relevant observations from each of the authorities which we have quoted above, it appears to us very clear that mainly two criteria have been laid down by the decided cases in order to constitute the tribunal a Court. In the first place, the tribunal or an authority would be a Court if it is given power to give a definitive judgment or a decision which has finality and authoritativeness that would bind the parties appearing before it so far as the rights litigated before it are concerned and secondly the appointment of the tribunal or an authority as well as the source of its power must be judicial power of the State coming to it by the statute itself and then such tribunal or the authority would be a Court. In fact it may be stated that taking cue from the Supreme Court's observations contained in the last paragraph of the judgment in *Jugal Kishore's* case as well as from the last two mentioned decisions, one of this Court and the other of the Supreme Court dealing with the position of a nominee under the Maharashtra Co-operative Societies Act, 1960, Mr. Rane contended before us that the position of the Registrar as well as that of the Officers on Special Duty appointed u/s 3 of the Act will have to be considered in the light of the scheme of the Act and the relevant provisions thereof and according to him, since the same type of judicial function is performed by all the three authorities while deciding the disputes

covered u/s 91 and since the ambit and scope of the power conferred upon these authorities are the same, there would be no distinction between the position of the Registrar or the Officers on Special Duty appointed by the State Government u/s 3 of the Act and that of the nominee or board of nominees appointed by the Registrar under the Act and if a nominee or board of nominees appointed by the Registrar under the Act on examination of the scheme and the relevant provisions of the Act has been held not to constitute a Court, there was no reason why the Registrar and the Officers on Special Duty appointed by the state Government u/s 3 of the Act should be held to be Courts for the purpose of the Contempt of Courts Act. We may mention at this stage that Mr. Rane even wanted to raise a larger question before us. He desired to urge that "Courts subordinate to the High Court" contempt of which could be dealt with by the High Court u/s 3 (1) of the Act must always mean Courts in the hierarchy of Courts appointed for administration of justice throughout the territory of the Union and from that point of view no officer like the Registrar or Assistant Registrar or Deputy Registrar or the Officer on Special Duty or nominee or board of nominees who were called upon to perform judicial functions and for that purpose had been given power to give definitive decisions should be held to be a Court for the purpose of the Contempt of Courts Act. Unfortunately such a larger contention is clearly not arguable before us, for the decision of the Supreme Court in *Jugal Kishore's* case clearly runs counter to such contention, inasmuch as, in that case the Registrar and the Assistant Registrar under the Bihar and Orissa Co-operative Societies Act have been expressly held to be Courts for the purpose of the Contempt of Courts Act, 1952. Mr. Rane urged that that decision of the Supreme Court may require reconsideration. However, it is obvious that such a contention would not be open to him before this Court and he would be perfectly justified to urge such a contention elsewhere as and when the occasion may arise. We shall, therefore, confine ourselves to the other contentions which have been urged by Mr. Rane before us, namely, that the position of the Registrar, the Officers on Special Duty and the nominee or board of nominees appointed under the said Act is different from the position occupied by the Registrar or Assistant Registrar under the Bihar and Orissa Co-operative Societies Act and as such these authorities should not be held to be Courts for the purpose of the Contempt of Courts Act and the further contention of his, namely that in any event the Officers on Special Duty appointed by the State Government u/s 3 of the Act should not be held to be Courts for the purpose of the Contempt of Courts Act.

12. It would, therefore, be necessary to examine the scheme of the Maharashtra Act and the relevant provisions thereof in order to decide whether the Officers on Special Duty appointed by the State Government u/s 3 of the Act could be regarded as Courts for the purpose of Contempt of Courts Act or not. Since an omnibus contention was raised by Mr. Rane before us that all the authorities constituted under the Act who are called upon to decide disputes covered by section 91 of the Act should be regarded as arbitrators undertaking statutory arbitration we would consider the scheme and the relevant provisions of the Act

qua all the three authorities, namely the Registrar, the Officer on Special Duty and the nominee appointed by the Registrar. So far as the appointments of these three authorities are concerned, the position has been made sufficiently clear under the Act. The expression "Registrar" has been defined u/s 2 (24) of the Maharashtra Co-operative Societies Act and that definition runs as Follows:

2. (24) "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act.

Then comes section 3 which deals with the power of the State Government to make appointments of the Registrar and one or more persons to assist such Registrar and the relevant portion of section 3 runs as follows :

S. 3. The State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint one or more persons to assist such Registrar (with such designations, and in such local areas or throughout the State, as it may specify in that behalf) and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act...

The section then goes on to provide that the person or persons appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar and they shall be subordinate to the Registrar and subordination of such persons amongst themselves shall be such as may be determined by the State Government. The Officers on Special Duty are such persons so appointed by the State Government in exercise of the power conferred on it by section 3 of the Act. By a Notification dated March 11, 1969 the Government of Maharashtra in exercise of the powers conferred by section 3 of the Act (a) appointed the persons specified in column 2 of the Schedule to assist the Registrar in the areas specified in column 3 thereof and has further (b) conferred on them the powers of the Registrar specified against them in column 4 of the Schedule. Column 2 contains the names and addresses of persons who are so appointed while column 3 specifies the area within which such persons are to operate or to function and column 4 contains the nature of powers conferred upon such persons so appointed u/s 3 of the Act. Column 4 is relevant, inasmuch as, it specifies the powers conferred upon such persons so appointed. The powers so conferred upon them are these :

All powers of the Registrar under sections 91 (2), 92 (3), 93 in so far as it relates to the power of the Registrar to decide the dispute himself, 94, 95 and 96 of the Maharashtra Cooperative Societies Act, 1960, and rules 77 (2) to (5), 78, 79 and 80 of the Maharashtra Cooperative Societies Rules, 1961.

Respondent No. 2 happens to be mentioned at Sr. No. 36 in the Schedule to this Notification on whom the aforesaid powers specified in column 4 of the Schedule have been conferred. It may be stated that these persons who have been so appointed by the State Government in exercise of the powers u/s 3 of the Act are

in common parlance called "Officers on Special Duty."

13. It is true that the Registrar has been conferred various powers and has been assigned several functions under the provisions of the Act, but in the instant case we are only concerned with such powers and such functions which are performed by him qua the disputes covered by section 91 of the Act, which section occurs in Chapter IX of the Act under the heading "Disputes and Arbitration". Since the powers conferred upon the Officers on Special Duty are also those powers comprised in several sections which form part of Chapter IX of the Act and the relevant rules being Rules 77 (2) to (5), 78, 79 and 80 of the Maharashtra Co-operative Societies Rules, 1961 which deal with the disputes and arbitration, we need consider these relevant provisions of the Act and the rules. If the relevant provisions of the sections contained in Chapter IX of the Act are carefully scrutinized, it will appear clear that one of the main objects of enacting these provisions appears to be that the disputes between the co-operative societies on the one hand and its members or between the different claimants arising under the Act should be expeditiously disposed of by the particular forum provided for under the Act and these disputes should not go before ordinary civil Courts and it is to achieve this objective that very wide powers have been conferred upon the Registrar, the Officers on Special Duty and the nominee or board of nominees to effectively hear and dispose of such disputes covered by section 91 of the Act. Section 91 (1) provides that notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute to the Registrar, if both the parties thereto are one or other of the categories specified thereto in clauses (a) to (e) of sub-section (1). Sub-section (2) of section 91, which has since been deleted, had made a provision to the effect that when any question arises whether for the purpose of sub-section (1), a matter referred to for decision was a dispute or not, the question shall be considered by the Registrar, whose decision shall be final. Since the deletion of this provision, this power to decide this preliminary question is to be exercised by the Registrar" u/s 93 (1) of the Act. Sub-section (3) of section 91 is very important and it runs as follows :

(3) Save as otherwise provided under sub-section (3) of section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

In other words, the civil Court's jurisdiction to entertain any suit or other proceedings in respect of any dispute covered by section 91 (1) has been excluded, subject however to the provisions contained in sub-section (3) of section 93 of the Act, to which we will come presently. It may incidentally be mentioned that it is not as if that this is the only solitary provision which excludes the civil Court's jurisdiction over disputes covered by section 91 (1) of the Act but in Chapter XIV, which deals with miscellaneous matters, u/s 163 the jurisdiction of other Courts, such as civil or revenue, has been expressly barred.

The relevant portion of section 163 (1) runs as follows:

163. (1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect Of

(a) ?

(b) any dispute required to be referred to the Registrar, or his nominee, or board of nominees, for decision;

(c) ...

It will thus appear clear from the aforesaid provisions, which are contained in sections 91 (3) and 163 (1) (b) of the Act, that all disputes covered by section 91 (1) should be exclusively heard and decided by the Registrar or the Officers on Special Duty or the nominee or board of nominees appointed by the Registrar under the Act and the jurisdiction of civil or revenue Courts to entertain or try such disputes has been expressly barred. In other words, the disputes--many of which are of civil nature covered by section 91 of the Act--which were otherwise entertainable or triable by the civil Courts have been taken out of the purview of the power of the civil Courts and the mantle of entertaining and deciding these disputes has fallen on these three authorities, namely the Registrar, the Officers on Special Duty, the nominee or board of nominees under the Act. u/s 92 special limitation has been provided for referring the disputes to the Registrar u/s 91 of the Act and in respect of certain disputes covered by clauses (a), (b), (e) and (d) of section 92 special periods of limitation have been provided indicating the date or dates from which such periods are to be reckoned. Under sub-section (2) of section 92 it has been provided that the period of limitation in the case of any other dispute except those mentioned in clauses (a), (b), (c) and (d) of sub-section (1) of section 92 shall be regulated by the provisions of the Indian Limitation Act, 1908, as if the dispute were a suit and the Registrar a civil Court. u/s 93 (1) it is provided that if the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 91 the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a nominee or a board of nominees appointed by him (Registrar). Sub-section (2) of section 93 is important and it gives power to the Registrar to withdraw any dispute which has already been referred to the nominee or board of nominees from such nominee or board of nominees for reasons to be recorded in writing and upon such withdrawal of such disputes the Registrar has been empowered to decide the dispute himself or refer it again to any other nominee or board of nominees appointed by him. Under sub-section (3) of section 93 the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society and that if any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is

provided in sub-section (1) meaning thereby that he can himself decide the dispute or refer it to a nominee or board of nominees appointed by him. In other words, if a particular dispute appears to be one involving complicated questions of law and fact the Registrar has been empowered to suspend proceedings in respect of such dispute and drive one or the other party thereto to get the said dispute decided by a civil Court and if in spite of such order being made by the Registrar no such suit in a civil Court is filed, the Registrar has been empowered to decide the dispute himself or get it disposed of by a nominee or a board of nominees appointed by him. But as has been stated earlier by us, subject to this provision which is contained in section 93 (3) no civil or revenue Court can entertain or dispose of any dispute covered by section 91. Section 94 prescribes the procedure for adjudication or settlement of disputes and the powers of the Registrar or his nominee or board of nominees in that behalf. Section 94 (1) empowers the Registrar or his nominee or board of nominees hearing a dispute to summon and enforce attendance of witnesses including the parties interested and to compel them to give evidence on oath or affidavit and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a civil Court by the Code of Civil Procedure, 1908. Sub-section (2) of section 94 provides that except with the permission of the Registrar or his nominee or board of nominees, as the case may be, no party shall be represented at the hearing of a dispute by a legal practitioner. In other words, the legal practitioners could appear for any of the parties to a dispute before the Registrar or his nominee or board of nominees if permitted by such authority. u/s 94 (3) (a) power has been given to the Registrar or his nominee or board of nominees if he is satisfied that any person has acquired any interest in the property which is the subject-matter of a dispute or has acquired any interest in the subject-matter of the dispute to order such person to join as a party to the dispute and any decision that may be passed shall be binding on the party so joined in the same manner as if he were an original party to the dispute. Similarly, under clause (b) of section 94 (3) the Registrar or his nominee or board of nominees has been empowered to order any other person to be substituted or added as a plaintiff or a defendant upon such terms as he thinks fit if he is satisfied that the dispute has been instituted in the name of the wrong person or all the defendants have not been included in the dispute. Similarly, under sub-clause (c) of section 94 (3) the Registrar or his nominee or board of nominees has been empowered to strike out the name of a party or parties who may have been improperly joined as also to join or implead any other party whose presence is considered necessary for effectual and complete adjudication of the disputes involved in the case. Sub-clause (d) of section 94(3) is similar in nature to the provisions contained in Order II, rule 2 of the CPC and it provides that any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any of such reliefs, but if he omits to claim all such reliefs he shall not prefer a claim for any relief so omitted, except with the leave of the Registrar his nominee or board of nominees. Section 95 deals with the powers of the Registrar or his nominee or

board of nominees to order attachment before final awards are made and to pass other interlocutory orders granting interlocutory reliefs. The provisions contained in section 95 enable the grant of interlocutory reliefs which the civil Court can grant under Orders XXXVIII, XXXIX, and XL of the Code of Civil Procedure. u/s 96 the decision of the Registrar, his nominee or board of nominees has been made final and binding on the parties, subject to appeal, review or revision as has been provided under the Act. In other words, in respect of disputes which are covered by section 91 (1) of the Act the Registrar or his nominee or board of nominees has been empowered to give or pronounce a definitive judgment or decision which has finality or authoritativeness and which is binding on the parties appearing before them. Section 97 provides for an appeal to the tribunal against the decision of the Registrar, his nominee or board of nominees u/s 96 of the Act. Section 98 provides for execution of awards as well as execution of interlocutory orders that are passed by the Registrar, his nominee or board of nominees under sections 96 and 95 respectively. In terms it has been provided that every order passed by the Registrar or his nominee or board of nominees u/s 95 or section 96 shall, if not carried out, on a certificate signed by the Registrar be deemed to be a decree of a civil Court and shall be executed in the same manner as a decree of such Court or be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. Section 99 bars private transfer of property made after the issue of the certificate of the Registrar u/s 93 and it is provided that such private transfer of property effected subsequent to the issue of the certificate of the Registrar shall be null and void as against the Society on whose application such certificate was issued. Section 100 provides for special method to execute certain types of awards particularly relating to possession. These are the relevant material provisions occurring in Chapter IX of the Act. There is yet one more provision which occurs in Chapter XII dealing with offences and penalties. Under sub-clause (m) of section 146 it has been provided that it shall be an offence under the Act if any officer or a member of a society wilfully fails to comply with any decision, award or order passed u/s 96. In other words, apart from the normal method of executing the award which has been provided for u/s 98 wilful non-compliance of any decision or order passed u/s 96 has been made a penal offence. Rule 77 of the Maharashtra Co-operative Societies Rules, 1961 prescribes the procedure for hearing and decision of disputes to be followed by the Registrar or the Officer on Special Duty or the Registrar's nominee; Rule 78 provides for service of summonses, notices and fixing of dates and place of hearing in connection with the disputes ; Rule 79 provides for investigation of claims and objections that may be made against any attachment before award while Rule 80 provides for the custody of property attached u/s 95.

14. On an analysis of the aforesaid relevant provisions which are contained in the Act and the relevant Rules, two or three things appear very clear. In the first place, the disputes covered by section 91 of the Act have been rendered exclusively triable by the Registrar, the Officers on Special Duty or nominee or

board of nominees appointed by the Registrar under the Act, and the jurisdiction of civil or revenue Courts has been in that respect expressly barred. Secondly, the Registrar, Officers on Special Duty or nominee or board of nominees appointed by the Registrar under the Act have been conferred powers to perform judicial functions and they have been empowered to give definitive decisions or judgments which have finality and authoritativeness that bind the parties appearing before them qua their rights, of course subject to appeal or review or revision as provided under the Act. Thirdly, all these authorities have not merely some of the trappings of the civil Courts but also have been given powers to summon and enforce attendance of witnesses, to compel the witnesses to give evidence on oath and to compel the production of documents by the same means and as far as possible in the same manner as has been provided in the case of a civil Court by the Code of Civil Procedure, the power to add to or delete a party as the occasion may arise as also the power to order attachment before award and grant interlocutory reliefs pending the final decision. A provision has also been made for executing the final as well as interlocutory orders passed by these authorities acting u/s 96 or 95 of the Act. It will thus appear clear that the first criterion laid down by the Supreme Court in their decisions both in Jugal Kishore as well as in Ramrao v. Narayan seems to be clearly satisfied and it cannot be disputed that one of the essential attributes of a Court, namely that it has power to render definitive judgment or decision which is final or authoritative so as to bind the parties appearing before it qua their rights inter se is possessed by these authorities acting under the relevant provisions of the Act. It may also be incidentally mentioned that so far as the nature and ambit of the powers conferred upon these three authorities as well as the nature of the decision which may be rendered by these three authorities they are almost the same and all the three authorities have been empowered to perform such judicial functions in the aforesaid manner to the exclusion of civil or revenue Courts.

15. Mr. Rane for the contemners has, however, pointed out that as regards the powers that were conferred upon the Registrar and Assistant Registrar acting under the Bihar and Orissa Co-operative Societies Act, there was some difference between their powers on the one hand and the powers that have been conferred upon the Registrar, Officers on Special Duty and the nominee or board of nominees under our Act viz. the Maharashtra Co-operative Societies Act, 1960. In particular he invited our attention to the fact that whereas u/s 48 (7) of the Bihar and Orissa Co-operative Societies Act, 1935 the Registrar as well as the Assistant Registrar had been conferred power of review vested in the civil Court u/s 114 and Order XLVII, rule 1 of the Code of Civil Procedure, 1908 and have also been conferred inherent jurisdiction, specified in section 151 of the said Code, no such power of review or inherent power u/s 151 of the CPC has been conferred upon the Registrar or the Officers on Special Duty or the nominee or board of nominees appointed by the Registrar under the Act and in that behalf at any rate these three authorities under our Act stand on a different footing. It is true that these two powers, namely power of review under the CPC and inherent

jurisdiction u/s 151 of the said Code have not been conferred upon the Registrar, the Officers on Special Duty or the nominee or board of nominees appointed by the Registrar under the Act. But, in our view, these are minor aspects of the powers enjoyed by these three authorities. After all it is well settled that power of review is a power which is required to be expressly conferred upon a tribunal or a Court by statute without which no tribunal or Court can enjoy such power of review and it has happened that whereas under the Bihar and Orissa Co-operative Societies Act such power has been conferred upon the Registrar and Assistant Registrar, no such power has been conferred upon the Registrar or the Officers on Special Duty or nominee or board of nominees appointed by the Registrar under our Act. It is also true that inherent powers exercised by the civil Court u/s 151 of the CPC have been conferred upon the Registrar and the Assistant Registrar under the Bihar and Orissa Co-operative Societies Act while no such powers have been conferred upon these three authorities under our Act, namely upon the Registrar, the Officers on Special Duty and nominee or board of nominees appointed by the Registrar under our Act. In our view, these two powers enjoyed by a civil Court cannot be regarded as sine qua non for holding any tribunal to be a Court, for, it is well settled that a criminal Court, which is indisputably a Court for the purposes of the Contempt of Courts Act, 1952 never exercises any power of review nor has the criminal Court any inherent power similar to the one enjoyed by a civil Court u/s 151 of the Code of Civil Procedure. Section 369 of the Criminal Procedure Code clearly disentitles the Court for altering its judgment and it provides that save as otherwise provided by the Code or by any other law for the time being in force or in the case of a High Court by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its judgment, shall alter or review the same except to correct a clerical error. So far as inherent powers of the High Court are concerned, these have been expressly saved u/s 561A of the Criminal Procedure Code, which runs as follows :

Section 561A: Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The very fact that such a provision was expressly required to be made qua the High Court by section 561A clearly implies that but for that provision even the High Court would not have possessed inherent power while exercising criminal jurisdiction. In other words, no criminal Court possesses inherent powers as are ordinarily enjoyed by a civil Court u/s 151 of the Code of Civil Procedure. It is thus clear to us that the absence of these two powers on which reliance was placed by Mr. Rane before us is hardly of any avail to him to support his contention that the position of the Registrar and the Officers on Special Duty and the nominee or board of nominees appointed by the Registrar under our Act is materially different from the position occupied by the Registrar and the Assistant Registrar under the Bihar and Orissa Co-operative Societies Act. As stated earlier

by us, these two powers cannot be regarded as sine qua non before a tribunal could be regarded as a Court. The material aspect of the matter is whether the tribunal has been empowered to perform judicial functions in a judicial manner and render judgments which are definitive pronouncement, the decisions which have finality and authoritativeness so as to bind the parties appearing before them qua the rights litigated before it and as has been pointed out by the Supreme Court in *Brajnandan* case it is clear that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. In our view, therefore, this small difference pointed out by Mr. Rane is of no assistance to him in support of the contention raised by him before us. Having regard to the aforesaid discussion, it seems to us clear that the scheme under the Act as well as relevant provisions thereof mainly contained in Chapter IX and the relevant Rules clearly bring out the fact that the authorities functioning while deciding the disputes covered by section 91 do possess one of the essential attributes which may make the authorities Court.

16. However, as has been pointed out by this Court in the case of *Malbar Hill Co-op. Society Ltd. v. Gauba*, it is not enough that a tribunal should be enjoined with a duty to act in a judicial manner or hear parties or that its decision is made binding on the parties so as to constitute a tribunal a Court but it must further be established that in doing so, the tribunal has been exercising an inherent judicial power of the State as a result of it being appointed by the State to exercise that power. In other words, the question is whether qua the three authorities who dispose of the disputes covered by section 91 of the Act, the other attribute has been satisfied or not and it is in this connection that Mr. Rane has urged before us that if regard be had to the heading of Chapter IX, to the language employed in section 96 and to the several provisions contained in sections 92, 93, 94, 95 and 98 of the Act, it should appear clear that all the three authorities, namely the Registrar, the Officers on Special Duty and the nominee or board of nominees appointed by the Registrar under the Act would be arbitrators undertaking statutory arbitration and in that behalf he principally relied upon the decision of this Court in *Malbar Hill Co-op. Society Ltd. v. Gauba*, as well as the decision of the Supreme Court in *Ramrao v Narayan*. He pointed out that the heading of Chapter IX was "Disputes and Arbitration". Secondly he pointed out that in section 96 the reference of a "dispute to the Registrar" has been regarded as reference to arbitration and what is more the decision of these authorities has been styled as "an award". He has further pointed out that if the decisions rendered by these authorities were decisions rendered by the Courts, then, ordinarily there would have been no necessity to make a provision making limitation applicable to such disputes and the very fact that the provisions of the Limitation Act are required to be made applicable to such proceedings before these authorities goes to show that the decisions rendered by these authorities

will have to be regarded as decisions rendered by arbitrators viz. statutory arbitrators undertaking statutory arbitration. He further pointed out that the provisions contained in sections 94, 95 and 98 themselves make a distinction between these authorities acting under the powers conferred on them and civil Courts. For instance, he pointed out that when an order effecting attachment before award is passed by the Registrar or his nominee or board of nominees u/s 95 (1), it has been provided that "such attachment shall have the same effect as if made by a competent civil Court". Similarly while making a provision for execution of awards and interlocutory orders u/s 98 of the Act, the said provision expressly states that, "every order passed by the Registrar or his nominee or board of nominees u/s 95 or 96,... shall,... be deemed to be a decree of a civil Court, and shall be executed in the same manner as a decree of such Court". Relying upon this provision Mr. Rane has argued that if the authorities disposing of the disputes by their decisions under the powers conferred under the Act were really Courts, there would have been no necessity to make provision in these several sections, which indicated that their decisions are required to be deemed to be decisions or orders of a civil Court. He, therefore, urged that having regard to the heading of Chapter IX, the language employed in section 96, the fact that the Limitation Act is required to be made applicable to the proceedings before these authorities acting under the Act and the provisions contained in sections 94, 95 and 98 clearly show that all these authorities should be regarded as "arbitrators" undertaking statutory arbitration. It is not possible to accept this submission of Mr. Rane for reasons which we shall presently indicate.

17. Dealing first with the provisions contained in sections 94, 95 and 98 of the Act, which, according to Mr. Rane, make a distinction between the authorities appointed under the Act to decide the disputes covered by section 91 and the civil Courts, it is easy to explain why such provisions are made in those sections. It is with a view to explain as to how and in what manner the production of documents could be compelled by these authorities while disposing of the disputes covered u/s 91 that the provision is made in section 94 that such production could be effected by the same means and as far as possible in the same manner as is provided in the case of a civil Court by the Code of Civil Procedure, 1908. Similarly u/s 95, where it is stated that any order directing conditional attachment before judgment will have the same effect as if it was made by a competent civil Court, the intention obviously was to clarify that all the consequences which flow upon attachment before judgment levied by a civil Court would flow if such attachment was effected by the said authorities acting under the Act. Similarly, in our view, instead of making elaborate provisions for execution of Award either final or interlocutory--it has been enacted that such award should be deemed to be a decree of a civil Court and should be executed in the same manner as a decree of such Court. Similarly since disputes and claims arising u/s 91 were taken out of the purview of civil Courts some provision had to be made to ensure that stale claims were not litigated before these authorities and hence the Limitation Act has been made applicable to some type

of disputes and that in case of certain specified types of disputes special periods of limitation have been prescribed. We do not, therefore, think that these aspects on which Mr. Rane relied show that these authorities could never be regarded as Courts.

18. On the question whether all these three authorities should be regarded as arbitrators or not it will be necessary to go by the definition of the expression "arbitrator" as given in section 2 (2) of the Act and it is obvious that before any authority functioning qua the disputes covered by section 91 could be regarded as "an arbitrator" such authority must satisfy that definition and if such authority does not satisfy that definition then notwithstanding that such authority has been empowered to decide such disputes, it would be difficult to hold that the authority is an arbitrator. The expression "arbitrator" has been defined u/s 2 (2) as follows :

"arbitrator" means a person appointed under this Act to decide disputes referred to him by the Registrar and includes the Registrar's nominee or board or nominees.

Even a cursory glance at this definition will clearly show that in any event the Registrar appointed under the Act is clearly not an arbitrator within this definition, but he is definitely excluded from that definition because he will not be a person appointed under the Act to decide disputes "referred to him by the Registrar". It is u/s 3 read with section 91 and other sections following it that the Registrar has been empowered to decide disputes covered by section 91 of the Act and there is no question of any dispute being "referred to him by the Registrar". Therefore, the Registrar is clearly excluded from the definition of "arbitrator" given in section 2 (2). Similar is the position in regard to the Officers on Special Duty who are undoubtedly persons appointed u/s 3 of the Act, but before these Officers on Special Duty could fall within the definition of "arbitrator" as given in section 2(2), it is again necessary that they must be persons appointed under the Act to decide disputes "referred to them by the Registrar". Now so far as referring of disputes by the Registrar is concerned, there is only one solitary provision contained in section 93 (1) of the Act which provides for such reference by the Registrar and under that provision it has been stated that a dispute within the meaning of section 91 of the Act shall be either decided by the Registrar himself or the Registrar shall "refer it for disposal to a nominee or a board of nominees appointed by the Registrar" and this is the only provision under which a reference of a dispute for disposal to a nominee by the Registrar is contained. So far as the Officers on Special Duty who dispose of disputes covered by section 91 of the Act are concerned, the disputes which are filed before the Registrar are never referred to the Officers on Special Duty by the Registrar but they exercise their powers and undertake the function of disposal of such disputes by virtue of section 3 and the Notification issued by the State Government thereunder by which they are appointed and powers conferred upon them. u/s 3 the State Government has been empowered to appoint "one or

more persons to assist such Registrar and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar" under the Act and it is by virtue of such Notification issued by the State Government u/s 3 of the Act that the Officers on Special Duty undertake the function of adjudicating such disputes. Since the Officers on Special Duty discharge the functions of the Registrar in exercise of the powers conferred upon them by the State Government under Notification issued u/s 3 of the Act, it is clear that it is the State Government which confers the requisite powers of the Registrar on these Officers and it is in exercise of such powers conferred upon them by the State Government that these Officers dispose of the disputes covered by section 91 and it would be incorrect to say that they adjudicate such disputes on these being referred to them by the Registrar. So far as the nominee or board of nominees is concerned, the position is clear that they would become arbitrators within the inclusive part of the definition appearing in section 2 (2) of the Act and since, in our view, the Officers on Special Duty who decide such disputes do not decide them as a result of such disputes having been referred to them by the Registrar, they do not come within the definition of "arbitrator" as given in section 2 (2) of the Act. Mr. Rane, however, urged before us that the definition of "arbitrator" is in two parts ; under the first part the definition is intended to indicate what person is meant to be an arbitrator whereas under the second part, which is the inclusive part of the definition, it states that within the expression of "arbitrator" is included a "Registrar's nominee or board of nominees" and it is within the first part of the definition that the Officers on Special Duty would fall, for, that part of the definition, according to him, would otherwise become otiose inasmuch as he submitted that there is no other category of persons who are appointed under the Act to decide disputes referred to them by the Registrar which could otherwise come within the four corners of the first part of the definition. It is not possible to accept this part of the submission of Mr. Rane, for, in our view, it is conceivable that by issuing a relevant Notification the State Government may appoint persons to decide Disputes such disputes as are referred to them by the Registrar and in that event such persons so appointed under the Act would become arbitrators within the first part of the definition. Having regard to the above discussion, we are clearly of the view that neither the Registrar nor the Officers on Special Duty appointed under the Notification in question could be regarded as arbitrators within the meaning of that expression as defined in section 2 (2) of the Act for the purposes of this Act in relation to the function of deciding the disputes covered by section 91 of the Act. We may observe that the other aspects such as the heading of Chapter IX and the language employed in section 96, on which Mr. Rane relied, are, in our view, not decisive of the matter and on that basis it is not possible to hold that the Registrar or Officers on Special Duty are arbitrators. It is true that Chapter IX is headed as "Disputes and Arbitration" and that the phrase "dispute is referred to arbitration" is used in section 96 and it is also true that the decision or adjudication has been styled as "award" in section 96 but user of such language in section 96 would not be inappropriate, for, the nominee or board of

nominees is clearly an arbitrator within the definition of the expression as given in section 2 (2). If out of the three authorities who are called upon to decide disputes covered by section 91 the authority, namely nominee or board of nominees appointed by the Registrar under the Act is an arbitrator, the language employed in section 96 would be appropriate. But simply because such language has been used in section 96 it would not necessarily follow that even the other authorities would be arbitrators as contended for by Mr. Rane. A distinction has to be made between the position occupied by the Registrar and the Officers on Special Duty and the position occupied by a nominee or a board of nominees appointed by the Registrar, for, in the first place, such nominee or board of nominees appointed by the Registrar directly come within the inclusive part of the definition of "arbitrator" as given in section 2 (2) of the Act and secondly such a nominee or board of nominees is appointed by the Registrar and not by the State Government as is the case with the Registrar or the Officers on Special Duty. It is for these reasons that we reject Mr. Rane's contention that all the authorities who are called upon to decide disputes covered by section 91 should be regarded as arbitrators undertaking statutory arbitration. Having regard to the aforesaid discussion, we are clearly of the view that the nominee or board of nominees appointed by the Registrar has been properly held to be an arbitrator by this Court in *Malbar Hill Co-op. Society Ltd. v. Gauba* as well as by the Supreme Court in *Ramrao v. Narayan*, but the position with regard to the Registrar and the Officers on Special Duty being different, we cannot accept Mr. Rane's contention that these authorities should also be held to be arbitrators.

19. Besides, the more important aspect is as to the source of authority derived by these three authorities functioning under Chapter IX of the Act and in fact it is on this basis that the position of the nominee or board of nominees appointed by the Registrar under the Act is distinguishable from the Registrar or the Officers on Special Duty. In the two decisions one of this Court reported in *Gauba's* case and the other of the Supreme Court reported in *Ramrao v. Narayan*, it is this aspect of the matter that has been emphasised. In *Malbar Hill Co-op. Society Ltd. v. Gauba* the Court clearly took the view that merely because a tribunal was enjoined with a duty to act in a judicial manner or hear parties and record evidence, and that its decision was made binding on the parties was not sufficient to hold that that tribunal was a Court, unless it was further established that in doing so, the tribunal was exercising an inherent judicial power of the State as a result of it being appointed by the State to exercise that power. Similarly, the Supreme Court in the other decision has taken the view that the nominee of the Registrar appointed u/s 93 of the Act was not a Court within the meaning of section 195 of the Criminal Procedure Code, 1898 and the main reasons which prompted the Court to take that view were that such nominee exercising power to make an award u/s 96 of the Act derived authority not from the statute but from investment by the Registrar in his individual discretion, that the power so invested was liable to be suspended and withdrawn, that such nominee was therefore not entrusted with the judicial power of the State and

that he was merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him. In other words, the fact that a nominee or board of nominees was the appointee of the Registrar and the fact that such nominee or board of nominees was conferred powers to adjudicate disputes within the limits of the power conferred upon him or it by the Registrar assumed considerable importance in deciding the question as to whether such a nominee or board of nominees should be regarded as a Court or not. It would also be interesting to note here that the question that was considered by the Supreme Court in *Ramrao v. Narayan* was whether a nominee appointed by the Registrar u/s 93 of the Act was a Court within the meaning of section 195 of the Criminal Procedure Code or not and not whether it was a Court for the purpose of Contempt of Courts Act, 1952. In this context we would like to mention that while dealing with its earlier decision in *Jugal Kishore's* case which was concerned with the Assistant Registrar functioning under the Bihar and Orissa Co-operative Societies Act, the Court thought it fit to observe as follows (p 704) :

...But the question in that case was not whether the Registrar is a "Court" within the meaning of section 195 (2) of the Code of Criminal Procedure.

We may also mention that it was argued before the Supreme Court in *Ramrao v. Narayan* that the Bombay decision in *Malbar Hill Co-op. Society Ltd. v. Gauba* had been expressly overruled by the Supreme Court in *Jugal Kishore's* case, but this contention was repelled by Mr. Justice Shah who spoke for the Court in the following terms (p. 704) :

The assumption made by counsel for the appellants that the decision of the Bombay High Court in *Malbar Hill Co-operative Housing Society Ltd.'s* case was overruled is, however, not correct.

It, therefore, appears to us clear that the test which was applied by this Court for deciding whether the Registrar's nominee u/s 93 (1) was a Court for the purpose of Contempt of Courts Act or not was not dissented or disapproved by the Supreme Court either in *Jugal Kishore's* or *Ramrao v. Narayan's* case. In fact, the concept of source from which the authority was derived by the tribunal was regarded by the Supreme Court as very much relevant while considering the question as to whether the Registrar's nominee was a Court or not.

20. It is thus not possible for us to accept even the alternative contention of Mr. Rane that at least the Officers on Special Duty should be regarded as arbitrators just as Registrar's nominee has been regarded as arbitrator. In the first place, as discussed earlier, the Officers on Special Duty appointed by the State Government in exercise of the power u/s 3 of the Act are not arbitrators within the expression as defined in section 2 (2) of the Act and though the functions performed by the Officers on Special Duty and the nature and ambit of their powers happen to be the same as those of the Registrar's nominee, there is a clear distinction between the position occupied by the Officers on Special Duty so appointed and the Registrar's nominee, in that whereas the former are

appointed by the State Government u/s 3 of the Act and they derive their power under the statute directly, the nominee or board of nominees are appointed by the Registrar and they derive their power to decide disputes from the Registrar and in between their respective powers there are some differences. u/s 93 of the Act two aspects become very clear. In the first place, the Registrar has been given the power for reasons to be recorded by him in writing to withdraw dispute he has referred to such nominee or board of nominees and upon such withdrawal the Registrar can either proceed to decide the dispute himself or refer the same to another nominee or board of nominees appointed by him; such power has not been conferred upon the Registrar when a dispute is pending before the Officer on Special Duty. Secondly, the nominee or the board of nominees so appointed by the Registrar can decide the dispute only on merits and cannot decide the preliminary question as to whether the dispute is a dispute falling within section 91 (1) of the Act or not, for, u/s 93 (1) it is only after the Registrar has satisfied himself that any matter referred to him or brought to his notice is a dispute within the meaning of section 91 that he refers it for disposal to a nominee or board of Nominees; but since co-extensive powers have been conferred upon the Officers on Special Duty u/s 93 it would be within the competence of the Officers on Special Duty to whom disputes are allocated or assigned to decide even the preliminary question as to whether the matter referred to them is a dispute properly falling within section 91 (1) of the Act or not. So in these two respects it seems to us clear that the position of the Officers on Special Duty is so to say higher than the position occupied by the nominee or board of nominees appointed by the Registrar.

21. Having regard to the aforesaid discussion, we are clearly of the view that since the Officers on Special Duty perform judicial functions and have been empowered to render definitive Decisions which have finality and authoritativeness so as to bind the parties appearing before them qua their rights, of course subject to appeal or review or revision that has been provided under the Act and since the said Officers on Special Duty are appointed by the State Government under a Notification in exercise of the powers conferred by section 3 of the Act and they derive their authority to dispose of the disputes judicially from the State directly under the statute, such Officers on Special Duty satisfy both the criteria that have been accepted by the Supreme Court on the question referred to us for our decision and in that view of the matter we feel that the question referred to us will have to be answered in the affirmative.

22. In view of this conclusion reached by us, we must observe that the view taken by the Division Bench of this Court in *Nanik Lilaram Hingorani v. Ramchand Jiwanlal Hingorani* (1971) Misc. Civil Appln. No. 11 of 1968, decided by Chitale and Kamat JJ. on July 3/6, 1971. (Unrep.) holding that the Officers on Special Duty are not Courts for the purpose of the Contempt of Courts Act is not correct.

23. Since we have come to the conclusion that the Officers on Special Duty appointed under the Notification dated March 11, 1969 issued by the State

Government are Courts within the meaning of the Contempt of Courts Act while discharging their duties under the Act, the contempt application is referred back to the Division Bench for disposal according to law. The Division Bench will be at liberty to pass appropriate orders with regard to costs.