

(2015) 07 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No. 5704 of 2015 (Arising out of SLP (C) No. 36497 of 2012) and Conmt. Pet. (C) No. 96/2015 in SLP (C) No. 36497 of 2012

Bhanushali Housing Cooperative Society Ltd.

APPELLANT

Vs

Mangilal and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 61
Co-operative Societies Act, 1912 — Section 43(1)
Essential Commodities Act, 1955 — Section 7
General Clauses Act, 1897 — Section 13
Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 64(1)
Madhya Pradesh General Clauses Act, 1957 — Section 5
Maharashtra Co-operative Societies Act, 1960 — Section 91, 91(1)

Citation : (2015) 9 AD (SC) 1 : AIR 2015 SC 3016 : (2015) 5 ALLMR 898 :
(2015) 112 ALR 451 : (2015) GLH 2795 : (2015) 3 JLJ 76 : (2015) 3 MPJR 66 :
(2015) 4 RCR(Civil) 787 : (2015) 8 SCALE 209 : (2015) 10 SCC 277 : (2015) 8
SCJ 1 : (2015) 3 WLN 170

Hon'ble Judges : T.S. Thakur, J;R.K. Agrawal, J;R. Banumathi, J

Bench : Full Bench

Advocate : Jayant Bhushan, Senior Advocate, Pragati Neekhara and Vivek Dalai,
for the Appellant; M.K. Modi, Sr. Adv., A. Venayagam Balan, Akash Sharma and
V.S. Lakshmi, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.

Leave granted.

1. The short question that arises for consideration in this appeal, by special leave, is whether a dispute arising out of a contract for sale and purchase of immovable property owned by the Respondents was amenable to adjudication Under Section 64 of the M.P. Cooperative Societies Act, 1960. By his order dated 1st March, 2004, the Deputy Registrar, Co-operative Societies, Ujjain, before

whom the proceedings were initiated, answered that question in the affirmative and decreed specific performance of the contract entered into between the parties. A first appeal preferred by the sellers (Respondents-herein) before the Joint Registrar Ujjain failed and was dismissed by his order dated 7th August, 2009. Aggrieved by the said two orders, the Respondents preferred a second appeal before the M.P. State Co-operative Tribunal, Bhopal who allowed the same and set aside the orders passed by the Deputy Registrar and that passed by the Joint Registrar holding that the dispute raised by the purchaser-society could not be made the subject matter of proceeding Under Section 64 of the M.P. Cooperative Societies Act, 1960. The purchaser-society then filed writ petition No. 15195 of 2011 which was heard and dismissed by a Division Bench of the High Court of Madhya Pradesh. The High Court concurred with the view taken by the Tribunal that a dispute arising out of a contract of sale and purchase of immovable property was beyond the purview of Section 64 of the Act. The present appeal calls in the question the correctness of the said judgments and orders.

2. Section 64 of the M.P. Cooperative Societies Act, 1960, may, at this stage, be extracted in extenso:

64. Disputes: (1) Notwithstanding anything contained in any other law for the time being in force, [any dispute touching the constitution, management or business, or the liquidation of a society shall be referred to the Registrar] by any of the parties to the dispute if the parties thereto are among the following:

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person.

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society.

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purpose of Sub-section (1), a dispute shall include-

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member,

whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or of composite society;

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programmed till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

3. A careful reading of the above would show that for a dispute to be brought within the purview of Section 64 two essential requirements must be satisfied viz. (i) that the dispute must "touch the constitution, management or business of the society or must relate to the liquidation of the co-operative society;" and (ii) that the dispute must be between parties referred to in clauses "a to f" of Section 64(1) (supra). It is only when the twin requirements are in the facts and circumstances of a given case satisfied that a dispute can be said to be amenable to adjudication Under Section 64. Failure of any one of the two requirements would take the dispute beyond the said provision.

4. In the case at hand the dispute raised by the Appellant-society before the Deputy Registrar related to the alleged refusal of the Respondent to complete the sale transaction in terms of the agreement to sell executed between the Respondents and/or their predecessors-in-interest, on the one hand, and the Appellant-society on the other. The nature of the dispute, therefore, did not obviously touch the constitution and management of the society nor did the dispute have anything to do with the liquidation of the society. Whether or not the dispute sought to be raised was a dispute "touching the business of the society" is in that view one of the questions that needs to be examined.

5. As regards the second requirement viz. that the dispute must be between the persons referred in clauses "a" to "f" of Section 64 of the Act, it is common ground that the Respondents-sellers were not members of the society nor do

they fall under anyone of the clauses "a", "b", "d" or "f" enumerated Under Section 64 (1). This would mean that the Respondents must answer the description of persons mentioned in Clause (c) to Section 64(1) of the Act. The Tribunal as also the High Court have taken the view that the Respondents do not answer the description of parties falling Under Section 64 (1)(c). That is because the Appellant-society had neither granted any loan to the Respondents or any one of them nor did the Respondents have any "business transactions" with the society. The Tribunal and the High Court have interpreted the words "business transactions" to mean a series of transactions in connection with the business of the society. The expression did not, according to them, postulate a single contract for sale or purchase of the property between the society and a third party.

6. Two distinct questions that need to be answered by this Court, therefore, are:

(i) whether the dispute in the case at hand touches the business of the Appellant-society? and

(ii) whether the dispute sought to be raised arising as it is out of the execution of a contract for sale of property by the Respondent in favour of the Appellant-society constitutes "business transactions" within the meaning of Section 64 (1) (c)?

Re: Question No. 1:

7. The expression "business of the society" has not been defined in the Act or elsewhere. The expression has fallen for interpretation of the courts in the country with commendable frequency. Pronouncements from different High Courts have even led to a cleavage in judicial opinion as to the true meaning and scope of that expression appearing as it was in Section 43(1) of the co-operative Societies Act, 1912 and later in analogous provisions made in different State enactments. One line of decision takes a liberal view of the expression "business of the Society" while the other prefers a narrower interpretation. Both these were noticed by this Court in *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, AIR 1969 SC 1320 : (1969) 1 SCR 887 . An elaborate discussion on the subject led this Court to declare that the legislature had used the expression "business of the society" in a narrower sense and approved the view taken by the High Courts of Madras, Bombay and Kerala in preferences to that taken by the High Courts of Madhya Pradesh and Nagpur. While saying so, this Court enumerated five kinds of disputes mentioned in Section 91 (1) of the Maharashtra Co-operative Societies Act and observed:

The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-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. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present 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 bank, and the appeal should fail on this short ground.

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While we agree that the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word "touching" is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word "affects" should also be used in defining the scope of the word "touching".

8. Dealing in particular with the question whether a dispute touching the assets of the society would be a dispute touching the business of the society, this Court observed:

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...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....

9. The question was once again considered by this Court in *O.N. Bhatnagar Vs. Smt. Rukibai Narsindas and Others*, AIR 1982 SC 1043 : (1982) 1 SCALE 377 : (1982) 2 SCC 244 : (1982) 3 SCR 681 : (1982) 14 UJ 434 where this Court referred to the decision in *Deccan Merchant's* case (*supra*) and observed:

Thus, the Court adopted the narrower meaning given to the word "business" as expressed by the Madras, Bombay and Kerala High Courts in preference to the wide meaning given by the Madhya Pradesh and Nagpur High Courts. According to the view taken in *Deccan Merchants Cooperative Bank* case the word "business" in the context means "any trading or commercial or other similar business activity of the Society". It was held that the word "business" in Section 91(1) of the Act has been used in a narrower sense and that it means the actual trading, commercial or other similar business activity of the Society which the Society is authorised to enter into under the Act and the Rules and its bye-laws.

10. On the facts of the case before it, this Court in *Bhatnagar's* case (*supra*) held that the act of initiating proceedings for removing an act of trespass by a

stranger from a flat allotted to one of its members could not but be a part of its business. This Court held that it was as much the concern of the society formed with the object of providing residential accommodation to its members, which was normally its business, as it was of the members to ensure that the flats are in occupation of its members in accordance with the bye laws framed by it, rather than the occupation of a person who had no subsisting reason to be in such occupation. The decision in Deccan Merchant's case (supra) was on facts held to be distinguishable and resort to proceedings Under Section 64 of the Act, held legally permissible.

11. Reference may also be made to the decision of this Court in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, AIR 1970 SC 245 : (1970) 40 CompCas 206 : (1969) 19 FLR 56 : (1970) LabIC 285 : (1969) 2 LLJ 698 : (1969) 2 SCC 43 : (1970) 1 SCR 205 , wherein the question was whether the expression business of the society appearing in Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964 covered a dispute in respect of alteration of the conditions of service of an employee of the society. The tribunal and the High Court had in that case taken the view that such a dispute fell outside the purview of Section 61 of the Act. Affirming that view this Court observed:

In that case [Deccan Merchants case], this Court had to interpret Section 91 of the Maharashtra Co-operative Societies Act, 1960. [Maharashtra Act 32 of 1961], the dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute.

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...Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of Service of the workmen employed by the society cannot be held to be a dispute touching the business of the society.

(Emphasis supplied)

12. In the case at hand the objects of the Appellant-society as set out in the Articles of Association are as under:

Objective of this society would be to make arrangement for the construction of building, to purchase, sale, take on rent or rent out, prepare land for construction of building and to make arrangement related to social, educational and entertainment to its members and it would be complete right to this society to carry out such work which will be necessary and proper in its opinion. These

rights shall mean and include to purchase land, take land on lease, sale, exchange, mortgage, let out on lease, sub-lease, to give resignation, or to accept resignation and to do all other relative work and to sell the building on instalment on proper and necessary restrictions, to give loan or guarantee of loan for facilitating construction of building, to make repairing, and will include other rights to carry out work related to it.

13. Purchase of land for being used in the manner set out in the objects extracted above is, therefore, one of the facets of the business that the society undertakes. Such purchase is directly linked to the object of developing the acquired land for allotment of house sites to the members of the society. There is, therefore, a clear and discernible nexus between acquisition/purchase of land and the object of providing house sites to the members which under the circumstances happens to be the main business of the society. It is not a case where the facts giving rise to the dispute are not relatable to the objects of the society or where the connect between the facts constituting the dispute and the objects of the society is remote or their interplay remarkably tenuous or peripheral, as was the position in Co-operative Central Bank Ltd.'s case (supra) involving alteration of the conditions of service of the employees of the society. We have in that view no hesitation in holding that the dispute arising out of the purchase of the land owned by the Respondents was, in the instant case, a dispute touching the business of the Appellant-society. Question No. 1 is answered accordingly.

Re: Question No. 2:

14. The second essential requirement for a dispute to fall within the purview of Section 64 is that the parties to the dispute must be those enumerated in sub-clauses "a to f" Under Section 64 of the Act. Clause (a) of Section 64(1) envisages disputes between a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society. This clause has obviously no application to the facts of the present case. That is true even about clause "b" whereunder the dispute between a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society is brought within the purview of Section 64. We shall presently deal with clause "c" to Section 64 (1) upon which counsel for the Appellant-society placed reliance but before we may do so we may deal with the application of Clauses (d), (e) and (f). Clause (d) of Section 64 (1) envisages disputes involving a surety of a member, past member of the society, member or a person other than a member who was appointed by the society; whether or not such a society is a member of the society. So also Clauses (e) and (f) do not have any application to the case at hand as the same deal with disputes between any other society, the liquidator of such a society or creditor of a society.

15. That leaves us with Clause (c) of Section 64 (1), which postulates disputes between non-members to whom loans are granted by the society and the society or disputes between the society or a non-member with whom the society has or had "business transactions" or any person claiming under such a society.

16. It was argued on behalf of the Appellant-society that the dispute between society, on the one hand, and the Respondent, on the other, arising out of the contract for sale and purchase of immovable property fell under this clause inasmuch as the society was a party to the dispute arising out of a transaction that constitutes a business transaction between the society and the Respondent non-members. The fact that the dispute related to a single transaction did not, according to the learned Counsel for the Appellant, make any material difference having regard to the provisions of Section 5 of the M.P. General Clauses Act, 1957. That provision, it was argued, made it clear that words in singular shall include the plural, and vice-a-versa. This implied that a single business transaction could also bring the dispute arising out of any such transaction within the purview of Section 64.

17. On behalf of the Respondents, it was contended that Section 64 (1)(c) had no application to the case at hand not only because a single transaction did not constitute business but also because the legislature had deliberately used the expression "business transactions" to make it clear that it is only a series of transactions that would bring the dispute arising out of such transactions within the purview of Section 64. The scheme underlying Chapter VII of the Act that provides for settlement of disputes clearly suggests that it is only when there are multiple transactions which can be described as "business transactions" that any dispute arising out of such transactions would come within the purview of Section 64. In the light of such legislative intent, the provisions of General Clauses Act, could not be called in aid by the Appellant-society.

18. What is the true scope and meaning of the expression "business transactions" appearing in Clause (c) of Section 64 (1) of the Act is what falls for our consideration. That expression has not been defined in the Act or elsewhere. Advanced Law Lexicon (3rd Edition, 2005) by P. Ramanatha Aiyar describes the expression "Business transaction" as under:

Business transaction is a generic expression used in the sense that it is a transaction which a businessman, in a commercial business, would enter into.

19. The above meaning ascribed to the expression is fairly accurate hence acceptable. All that may be added is that in order that a transaction may be treated as "business transaction", it must be a transaction that answers the above description from the stand point of both the parties to the transaction. It cannot be a business transaction from the standpoint of one party to the transaction and something else from the other. It must be business bilaterally. So viewed a single transaction where an owner of immovable property agrees to sell his land to a society may or may not constitute a business transaction,

depending upon whether the seller is in the business of selling property for profit. If the seller is not in any such business, the transaction from his stand point will not be a business transaction no matter, from the point of view of the society the transaction may be a business transaction because the society is in the business of buying land and developing it for the benefit of its members. A transaction of sale of property would in such a case fall outside the expression "business transaction". A somewhat similar view was taken by this Court in *Manipur Administration Vs. M. Nila Chandra Singh*, AIR 1964 SC 1533 : (1964) CriLJ 465 : (1964) 5 SCR 574 . This Court was in that case dealing with the provisions of Manipur Foodgrains Dealers Licensing Orders 1958. The question was whether a single transaction of sale, purchase or storage of food grains was enough to make the person concerned a dealer and whether any such act would constitute business. Repelling the contention that a single transaction would also constitute "business", this Court observed:

In dealing with the question as to whether the Respondent is guilty Under Section 7 of the Essential Commodities Act, it is necessary to decide whether he can be said to be a dealer within the meaning of Clause 3 of the Order. A dealer has been defined by Clause 2(a) and that definition we have already noticed. The said definition shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 mds. or more at any one time. It would be noticed that the requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale, or storage; and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single, casual or solitary transaction of sale, purchase or storage that would make a person a dealer. It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied. If this element of the definition is ignored, it would be rendering the use of the word "business" redundant and meaningless. It has been fairly conceded before us by Mr. Khanna that the requirement that the transaction must be of 100 mds. or more at any one time governs all classes of dealings with the commodities specified in the definition. Whether it is a purchase or sale or storage at any one time it must be of 100 mds. or more. In other words, there is no dispute before us that retail transactions of less than 100 mds. of the prescribed commodities are outside the purview of the definition of a dealer.

20. Reference may also be made to the decision of this Court in *Barendra Prasad Ray and Others Vs. Income Tax Officer, "A" Ward, Foreign Section and Others*, AIR 1981 SC 1047 : (1981) 22 CTR 157 : (1981) 129 ITR 295 : (1981) 1 SCALE 949 : (1981) 2 SCC 693 : (1981) 3 SCR 387 : (1981) 6 TAXMAN 19 : (1981) 13 UJ 873 where this Court interpreted the word "business" and held that the same was an expression of wide import and means an activity carried on continuously

and systematically by a person by the application of his labour or skill with a view to earning profit. In *B.R. Enterprises Vs. State of U.P. and Others*, (1999) 3 SCALE 171 : (1999) 9 SCC 700 : (2000) 120 STC 302 this Court held that business is a term wider than trade. It includes almost anything which is an occupation as distinguished from pleasure. The term must, however, be construed according to its context. To the same effect are the decisions of this Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, AIR 1993 SC 935 : AIR 1992 SC 935 : (1993) 78 CompCas 1 : (1992) 2 CompLJ 89 : (1992) 2 JT 326 : (1992) 1 SCALE 388 : (1993) 2 SCC 279 : (1992) 1 SCR 616 , and *S. Mohan Lal Vs. R. Kondiah*, AIR 1979 SC 1132 : (1979) 2 SCC 616 : (1979) 3 SCR 12 : (1979) 11 UJ 338 .

21. Suffice it to say that while the expression "business" is of a very wide import and means any activity that is continuous and systematic, perceptions about what would constitute business may vary from public to private sector or from industrial financing to commercial banking sectors. What is certain is that any activity in order to constitute business must be systematic and continuous. A single transaction in the circumstances like the one in the case at hand would not constitute business for both the parties to the transaction. At any rate, the legislature having used the expression "business transactions" has left no manner of doubt that it is not just a solitary transaction between a society, on the one hand, and a third party, on the other, which would bring any dispute arising out of any such transaction within the purview of Section 64 (1)(c). The dispute must be between parties who have had a series of transactions, each one constituting a business transaction in order that the provisions of Section 64 are attracted and a dispute arising out of any such transaction brought within its purview.

22. The argument that the plural used in the expression "business transactions" must include the singular in view of the provisions of Section 5(b) of the M.P. General Clauses Act has not impressed us. We say so because Section 5 of the M.P. General Clauses Act, 1957 like Section 13 of the Central General Clauses Act postulates singular to include the plural and vice-versa only if no different intention appears from the context. That intention, in the case at hand, appears to be evident not only from the scheme of the Act but also from the context in which the expression "business transactions" has been used. The purpose and the intent underlying the provision appears to be to bring only such disputes under the purview of Section 64 as are disputes arising out of what is business for both the sides and comprise multiple transactions. Decisions of this Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, AIR 1957 SC 532 : (1957) 2 LLJ 1 : (1957) 1 SCR 754 and *Dhandhaniah Kedia and Co. Vs. The Commissioner of Income Tax*, AIR 1959 SC 219 : (1959) 35 ITR 400 : (1959) 1 SCR 204 Supp have settled the legal position and declared that the principle underlying Section 13 of the General Clauses Act regarding singular including the plural and vice versa does not have universal application and that the principle can apply only when no contrary intention is deducible from the scheme or the

language used in the statute.

23. In the case at hand, that there was a single transaction whereunder the Respondents-sellers had agreed to sell to the Appellant-society a parcel of land to the society, for use by the society in terms of the objects for which it is established. It may, in that sense, be a transaction that touches the business of the Appellant-society but it is common ground that the Respondents were not in the business of selling land as a commercial or business activity for it is nobody's case that the Respondents were property dealers or had a land bank and were, as a systematic activity, selling land to make money. If the Respondents were agriculturists who had agreed to sell agricultural land to the Appellant-company, the transaction was, from their point of view, not a "business transaction". For ought we know that transaction may have been prompted by family necessity, poverty or some such other compulsion. Such a transaction without any business element in the same could not constitute a "business transaction" leave alone "business transactions" within the meaning of Section 64 (1)(c).

24. For the reasons stated above Question No. 2 is to be answered in the negative.

25. In the result this appeal fails and is hereby dismissed, but in the circumstances leaving the parties to bear their own costs.

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26. Hon''ble Mr. Justice T.S. Thakur pronounced the judgment of the Bench comprising His Lordship, Hon''ble Mr. Justice R.K. Agarwal and Hon''ble Mrs. Justice R. Banumathi.

27. Leave granted.

28. The appeal is dismissed in terms of the Signed Reportable Judgment.

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29. In view of our judgment delivered in the appeal today, we see no reason to keep these proceedings on our board. The contempt petition is accordingly dismissed.