

(1999) 09 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 2084 of 1999

Bhupendra Villa Premises Co-operative Society Ltd. and
another

APPELLANT

Vs

Chandrakant G. Shah and others

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2000) 3 BomCR 199 : (2001) 2 MhLj 834

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Advocate : Y.S. Shah, instructed by Bilawala and Co, for the Appellant; C.P. Deogirikar and G.D. Utangale, for the Respondent

Judgement

H.L. Gokhale, J.—Heard Mr. Shah for the petitioners, Mr. Deogirikar for respondent Nos. 1 to 5 and Mr. Utangale for respondent No. 6.

2. A short question reused in this matter is as to whether second revision would lie u/s 154 of the Maharashtra Co-operative Societies Act, 1960 after an earlier decision by the Divisional Joint Registrar in revision under the same section against the order of the Assistant Registrar. The petitioners are aggrieved by such order and Mr. Shah submits that such a second revision is not contemplated u/s 154 of the M.C.S. Act and the order of the State Government is without jurisdiction. Mr. Deogirikar on the other hand draws my attention to quite a few judgments and states that such a revision is maintainable. Having considered those judgments and two other judgments of the Hon'ble Supreme Court in Vishesh Kumar Vs. Shanti Prasad, and Aundal Ammal Vs. Sadasivan Pillai, in my view the position is clear that such a revision cannot lie. Mr. Deogirikar, however, wants me to give reasons even at this stage. Hence this order.

3. Mr. Deogirikar has relied upon (I) a judgment of the Apex Court reported in 1966 68 Bom.L.R. 664 in the case of the Everest Apartments Co-operative Housing Society Ltd., Bombay v. The State of Maharashtra, (ii) a judgment of a

Division Bench of this Court reported in 60 Bom.L.R. 150 in the case of Krishnarao Bakaramji Badge v. The State of Maharashtra, (iii) judgment of a Division Bench reported in 1967 60 Bom.L.R. 621 in the case of Narayan Tanbaji v. Kamgar Co-operative House Society Ltd., (iv) a Division Bench judgment of Gujarat High Court reported in Chimanbhai Dadubhai Desai and Another Vs. Chaturbhai P. Patel and Others, , and (v) lastly a judgment of a Division Bench of this Court, reported in 1972 Cooperative Tribunal Decision 248 in the case of Mazgaon Terrace Co-op. U.S. Ltd. v. G.W. Kshirsagar. All these judgments are prior to the present amendment to section 154, which came into force on 1-3-1974 by virtue of the last above cited judgment in the case of Mazgaon Terrace Co-operative Society.

4. In the first judgment in the case of The Everest Apartments Co-operative Housing Society's case, the State Government had declined to exercise its powers u/s 154, as then it stood, against an order u/s 23 of the Act passed by the Registrar by relying upon section 23(3) of that Act. In that case an appeal had been filed to the District Deputy Registrar against the rejection of membership by the Society and the question was as to whether a revision was available u/s 154. Surely, it was available to the State Government and which is what the Court held. The Court, however, held in that judgment clearly that this power can be exercised in all cases except in a case in which similar powers have already been exercised (underlining supplied) and at that time as per the section by the tribunal u/s 149(9) of the Act. It was not a case of a revision first filed to the Registrar and then to the State Government. In the second case, viz. Krishnarao Bakaramji Hadge v. The State of Maharashtra, the Court made distinction between two types of orders passed by the Assistant Registrar, one passed on his own and the second with the approval of the Registrar. In that case, it was an order passed by the Assistant Registrar on his own without sanction of the Registrar and the question was as to whether a revision would lie to the Registrar and the Court naturally held that it would lie. In the third case of Narayan Tanbaji v. Kamgar Co-operative Housing Society Ltd, the Jt. Registrar had declined to grant stay to an election in revision filed to him against the decision of the Assistant Registrar and against that order, a writ was filed, The learned Division Bench declined to interfere in that order. In that matter, at the end of the first para on page 623, the Division Bench observed that "Even such an order rejecting the stay could be revised in exercise of the powers u/s 154 and it could not, therefore, be said that there was no adequate or effective remedy". Mr. Deogirikar presses this observations into service. Now, what is to be noted is that this is & passing observation and whether such a second revision would He was not an issue contested before the Division Bench. In the matter before Gujarat High Court, the facts were quite different and need not detain me any further and the last judgment of Mazgaon Terrace Co-op. H.S. Ltd. v. G. W. Kshirsagar case led to the amendment in the year 1974.

5. Mr. Deogirikar then referred me to an unreported judgment of Madon, J. (As he then was in this Court) dated 6-8-1982 in Misc. Petition No. 1593 of 1981.

From a copy of the judgment which is shown to me, it is not clear as to what was the date on which the impugned order was passed by the State Government, though it appears from the dates as incorporated in the judgment that all the developments had taken place prior to amendment to section 154 becoming operational on 1-3-1974. Assuming however, that Minister's decision was subsequent to 1-3-1974 in as much as the petition is of 1981, a careful perusal of the judgment shows that this point as to whether a second revision would lie after passing of one revisional order was not canvassed before the learned judge at all, though on facts of the case, second revisional order has been upheld by the learned Judge.

6. Mr. Utangale, learned Counsel appearing for respondent No. 6. State Government points out that u/s 154 sub-section (2), a revision is available to the State Government if the order under challenge is of the Registrar and section 154(1) states that the State Government or the Registrar may exercise powers of revision. The question is whether this power of the State Government u/s 154(1) is available against a revisional order of the Registrar. Prima facie, an order contemplated u/s 154(2) whereunder a revision is available to the State Government would be an order other than an order in revision passed by the Registrar. This is because any interpretation providing for two revisions, is against the public policy. There are two judgments of the Hon''ble Supreme Court in this behalf. Vishesh Kumar Vs. Shanti Prasad, , which is on section 115 of the C.P.C. where the Supreme Court held that a revisional order of the District Court u/s 115 cannot be revised under the same section once again to the High Court. Subsequently in another judgment in Aundal Ammal Vs. Sadasivan Pillai, , the Hon''ble Supreme Court once again has taken the same view and in para 24 the Court has held that granting such a revision u/s 115 of C.P.C. "would be contrary to the scheme of the Act, would be contrary to the public policy and would be contrary to the legislative intent". In the present case also, no such two revisions can be implied, nor are there any judgments providing for that, as canvassed by Mr. Deogirikar.

7. I could have disposed of this petition at this stage but Mr. Deogirikar wants to file further reply and wants the matter to be separately agitated once over at a final hearing. In the circumstances, the petition will have to be admitted and the same is accordingly admitted.

8. There shall be an interim relief in terms of prayer Clause 38 & of the petition. Mr. Deogirikar and Mr. Utangale waive service.

9. Certified copy of this order is expedited.

10. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

11. Petition admitted.