

(1987) 07 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 2632 of 1986

Chandralok Sahakari Gruha Nirman Sanstha Ltd., Shegaon	APPELLANT
Vs	
Assistant Registrar, Co-Operative Societies, Shegaon	RESPONDENT

Date of Decision : 09-07-1987

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 5, 73(H)(2), 73G(2B), 73H, 73H(2)

Citation : (1992) MhLj 1118

Hon'ble Judges : H.W. Dhabe, J;H.D. Patel, J

Bench : Division Bench

Advocate : A.V. Mohta and S.C. Mehadia, D.K. Deshmukh, for the Appellant; A.M. Tayade, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—The petitioner society through its Chairman Shri D. R. Gadodiya has in this petition challenged the order of the respondent dated 17-12-1986 appointing an Administrator in the said society u/s 77A of the Maharashtra Co-operative Societies Act, 1960 (for short the Act). Briefly the facts are that the term of the managing committee of the society Chandralok Gruha Nirman Sahakari Sanstha Limited, Shegaon (for short the society) had expired on 24-5-1986. The elections for electing a new managing committee which was to enter the office after 24-5-1986 were not held for the various reasons referred to by the respondent in his order dated 17-12-1986. The respondent, therefore, decided to act u/s 77-A(1) of the Act and by his impugned order dated 17-12-1986 he appointed the Administrator until further orders to manage the affairs of the society.

2. According to the petitioner, the impugned order appointing the administrator was passed without publishing the notice on the notice board at the head office of the society inviting objections and suggestions with respect to the proposed order within a period specified therein. There was thus, according to the

petitioner, breach of the mandatory requirements of section 77-A(1) of the Act. Further, according to the petitioner, the impugned order appointing the administrator by his order u/s 77-A(1)(e) of the Act. was not at all justified. The petitioner, therefore, filed the instant writ petition on or about 29-12-1986, challenging the aforesaid order dated 17-12-1986, appointing the administrator in the petitioner society. It is alleged in the petition that on the date of the filing of the petition, no charge of the managing committee was taken over by the administrator.

3. The respondent has filed a return and has contended that the order dated 17-12-1986 is perfectly legal and valid. Although it is admitted that no notice was put up on the notice board inviting the objections and suggestions as required by the first proviso to section 77-A(1) of the Act, it is averred in the return by the respondent that since immediate action in the matter was necessary, notice on the notice board was not published which course is permissible under the second proviso to section 77-A(1) of the Act. It is also averred in the return that the charge of the society was already taken over by the administrator before the petition was filed.

4. Certain members of the society whose names were not contained in the voter's list have intervened in this petition to oppose the writ petition. One of the additional grounds raised on behalf of the interveners by Shri Mehadia, Adv. appearing for them is that a no confidence motion was passed against the Chairman Shri D. R. Gadodia on 25-11-1986 by the managing committee of the petitioner society and, therefore, he has no locus standi to file the instant writ petition. There is also intervention on the side of the petitioner by such members to whom the notices threatening cancellation of the plots were issued by the administrator and such members are represented by Shri A. V. Mohta, Advocate.

5. After this writ petition was admitted, the petitioner filed an application for direction to the respondent to hand over the charge to the existing managing committee on the ground that the period of six months from the date of assumption of management by the Administrator had expired and, therefore, there cannot be any administrator thereafter in the society u/s 77A of the Act. When this application came up for hearing, since it was noticed that the whole petition could be disposed of, if the above ground raised on behalf of the petitioner could be upheld, this petition itself was set down for final hearing and was heard.

6. On the basis of the contentions raised by the parties, the following questions arise for consideration in the instant writ petition:

I. Whether the Chairman, Shri D. R. Gadodiya, has no locus standi to file the instant writ petition because there is a no confidence motion passed against him on 25-11-1986 as urged on behalf of the interveners by Shri Mehadia, Advocate?

II. Whether in view of the provisions of section 77-A(3) of the Act, an administrator cannot continue after a period of six months from the date of

assumption of management of the society and if so, whether the management can be handed over to the existing managing committee?

III. Whether the order of appointment of the administrator dated 17-12-1986 is illegal for non-compliance with the condition of publication of the notice on the notice board inviting objections and suggestions, as required by the first proviso to section 77-A(1) of the Act?

IV. Whether the respondent has power to appoint an administrator after expiry of the term of office of the existing Managing Committee u/s 77-A(1)(e) of the Act?

7. As regards the first question about the locus standi of the petitioner to file the instant petition, although it is alleged on behalf of the interveners represented by Shri Mehadia. Advocate, that a no confidence motion was passed against the Chairman. Shri D. R. Gadodiya, as per the resolution dated 25 11-1986. no material is placed on record to show that such a resolution was passed by the managing committee. The petitioner, i.e. the Chairman, Shri D R. Gadodiya has denied that any such no confidence resolution was passed against him. The learned counsel for the petitioner has further urged that u/s 73ID of the Act. the procedure as laid down therein has to be followed before passing the no confidence motion against the office bearers of the society. He has urged that no such procedure was followed and. therefore, according to him, no such resolution of no confidenc³ was passed against the petitioner. In order to establish that there was a no confidence motion brought and a resolution passed against the petitioner, it was necessary for the interveners to place on record the relevant material to substantiate their contention. It is. therefore, not possible for us to accept the above contention raised on behalf of the interveners and the said contention thus deserves to be rejected.

8. The next and most important question to be considered is about the interpretation of section 77-A(3) of the Act. The learned counsel for the petitioner has urged before us that the administrator appointed u/s 77 A(1) of the Act cannot continue beyond the period of six months from the date of assumption of the management of the society as provided in section 77-A(3) of the Act, and, therefore, the existing managing committee was entitled to get back the charge of the office of the managing committee of the petitioner society from the respondent. According to the learned counsel for the petitioner, the language of section 77-A(3), if properly construed, shows that the said provision is mandatory in nature and, therefore, the administrator cannot continue after the period of six months. In considering the above contention urged on behalf of the petitioner, it is necessary to notice the scheme of section 77A of the Act, including its object and purpose. It is well settled that mere use of the word "shall" would not necessarily mean, although it is ordinarily so, that the provision is mandatory. It is further well settled that where a statute casts a public duty and lays down the manner in which and the time within which the said duty is to be performed, injustice or inconvenience resulting from a rigid adherence to the statutory prescription may be a relevant factor in holding such prescription only

directory. (See *The Remington Rand of India Ltd. Vs. The Workmen, , Montreal Street Railway vs. Normandin*, (1917) AC 170 = AIR 1917 PC 142).

9. Bearing these principles in mind, the provisions in section 77-A(3) of the Act will have to be construed. As regards the object of section 77A of the Act, it may be seen that section 77A of the Act was inserted in the parent Act by the Maharashtra Act No. 36 of 1975. It is clear from the provisions of section 77A and its object and purpose that it was enacted with a view to stop malpractices of the managing committees of the societies continuing for longer time without holding elections even after their tenure had expired. It was noticed that the existing managing committee did not take prompt steps to hold elections for electing a new managing committee in good time before the expiry of its tenure. Sometimes the new managing committee could not be formed for one reason or the other or even though elected and formed could not enter upon the office. In such contingencies it was thought that the managing committee should not be allowed to function after its tenure was over and that an administrator should be appointed who should take prompt steps for electing a new managing committee and further ensuring that it entered upon the office promptly.

10. In this regard it is material to notice that by the Maharashtra Act No. 20 of 1986, a specific provision by way of section 73H is incorporated in the Act under which as per its sub-section (1), a duty is cast upon the existing managing committee to arrange for holding elections of its members before the expiry of its term. Sub-section (2) of the said section 73H has then stipulated that where there is a wilful failure on the part of the Committee to hold elections, the Registrar may..... appoint an Administrator for the managing committee and for holding elections within a period of six months, It is clearly stated in section 73-H(2) that on such an order being passed, the existing managing committee shall cease to function on the expiration of its term. The predominant object of this section 73H is that after the expiration of the term of office of the existing managing committee, the affairs of the managing committee should be carried on by the administrator who should take steps to see that a new managing committee is elected and that it enters upon office.

11. Section 77A of the Act shows that a substantive power to appoint an administrator is contained in sub-section (1) thereof. Perusal of sub-section (1) shows that if the Registrar is satisfied about the conditions contained in sub-clauses (a) to (f) of the said sub-section, he can appoint a committee consisting of not more than three members of the society or one or more administrators, to manage the affairs of the society till a new Committee enters upon office. It is, therefore, clear from sub-section (1) that the Registrar can appoint an administrator in the society till a new committee enters upon office. Such a committee then has power under sub-section (2) to discharge all or any of the functions of the Managing Committee as all or any of the functions of the committee or of any officer of the society and take all such action as may be required to be taken in the interests of the society.

12. The earlier sub-section (3) of section 77A of the Act was substituted by the Maharashtra Act No. 20 of 1986. Prior to the amendment, sub-section (3) of section 77A read as follows:

"The committee or administrator shall make necessary arrangements to constitute a new committee or for enabling the new committee to enter upon office, as the case may be, within such period or extended period as the Registrar may specify."

It is clear from the said sub-section (3) as it stood prior to its amendment that it cast a duty upon the administrator to make necessary arrangements to constitute a new committee or for enabling the new committee to enter upon office within such period or extended period as the Registrar might specify.

Thus, the order of the Registrar appointing the Administrator would contain a period or a tenure within which he had to discharge his aforesaid duties. The Registrar had also power to extend the period or tenure of the Administrator.

13. However, it appears that the above provision was found inadequate to serve the purpose of the Act, viz. to elect a new committee as early as possible or if elected to see that it enters upon office expeditiously. Even after the appointment of the administrator, it appears that the steps were not taken or could not be taken by him to constitute the new committee or to help the new committee to enter upon office expeditiously. Sub-section (3) was, therefore, amended by the Maharashtra Act No. 20 of 1986. After its amendment sub-section (3) of section 77A of the Act provides that the committee or the administrator appointed by the Registrar shall hold office for a period of six months from the date of assumption of the management of the society and shall make necessary arrangements within that period for constituting a new committee or for enabling the new committee to enter upon office as the case may be. It may also be noticed that sub-section (4) of section 77A empowers the Registrar to change the committee or any member of the committee or any of the administrators appointed by him under sub-section (1).

14. It is pertinent to see that although sub-section (3) of section 77A of the Act was amended by the Maharashtra Act No. 20 of 1986, no amendment was made by the Legislature to sub-section (1) of section 77A of the Act for limiting the power of the Registrar to appoint a committee or an administrator for a tenure prescribed under sub-section (3). It is, therefore, clear that even after amendment of sub-section (3), the power of the Registrar to appoint a committee or an administrator till a new committee enters upon office is kept intact. If the power of the Registrar is to appoint new committee till the new committee enters upon office, it can only be held that the tenure of office as contemplated by sub-section (3) of section 77A of the Act shows that implicit therein is the recognition of the power of the Registrar to appoint a new committee or the administrator after the tenure of the earner committee or the administrator is over.

15. Sub-section (3) of section 77A of the Act which casts a public duty upon the Registrar cannot be held to be mandatory because if the said construction is placed upon the said sub-section, it will cause great inconvenience. It may be seen that except in cases of specified societies where under the proviso to section 73-G(2B) of the Act the members of the managing committee can continue till a new managing committee enters upon office at its first meeting and also in cases of the other societies where the bye-laws make a similar provision, the continuance of the managing committee in the absence of any such provision after its tenure is over may be illegal as a consequence of which their actions may also be unauthorised. In such cases if the new managing committee is not elected within the period of six months, the same situation may again exist and, therefore, it has to be held that the administrator can continue even beyond the period of six months.

16. Apart from the above consideration, it may also be seen that reading of some of the clauses (a) to (f) of sub section (1) of section 77A of the Act would themselves show that it may not be possible for the administrator either to complete the elections within the period of six months or to see that the new managing committee enters upon office during his aforesaid period. To illustrate, there may be failure to elect all or any of the members because of stay of their elections by the competent Courts. Even though a committee may be elected, it may not be possible for such committee to enter upon office particularly by reason of the stay granted by the Courts. In such cases, it is not in the hands of the administrator to complete the process of election or to see that a new committee enters upon office within a period of six months because the litigation may take a long time even though care is taken by him to see that the process of election is expeditiously completed. There may be such similar reasons which cannot be predicated because of which it may not be possible for the administrator to discharge his duty as contemplated by sub-section (3) within a period of six months. There is thus intrinsic evidence in sub-section (3) to show that the provision of subsection (3) is not intended to be mandatory. Although the word used is "shall", it will have to be, therefore, read as "may". For the reasons given above, section 73(H)(2) also cannot be construed as mandatory.

17. Since the provision of sub-section (3) of section 77A of the Act relates only to the tenure of office and is not mandatory and since there is a substantive power in the Registrar to appoint and/or to change an administrator provided in sub-sections (1) and (4) of section 77A till the new committee enters upon office, it cannot be held that the continuance of the administrator would be illegal or that no administrator can be appointed by the Registrar beyond the period of six months. It cannot therefore be held that after the expiry of six months the charge of the affairs of the managing committee of the petitioner society has to be handed over by the administrator to the existing managing committee simply because according to its bye-law No. 38, it can continue in the office till the new managing committee is elected. In the instant case, the appointment order of the administrator clearly specifies that he will continue until further orders, which

in our opinion can be for a period exceeding six months. The above contention on behalf of the petitioner that the administrator cannot continue in office beyond the period of six months after the assumption of office and that he has to hand over the management to the existing managing committee, therefore, deserves to be rejected.

18. Turning now to the contention on merits, the first contention on behalf of the petitioner is based upon non-compliance with the requirements of the first proviso to sub-section (1) of section 77A of the Act. It is not in dispute that no notice on the notice board was published by the respondent before issuing the order appointing the administrator on 17-12-1986. The respondent, however, justifies its action under the second proviso to section 77-A(1) of the Act. It is urged that since immediate action was necessary in the matter, the requirement of publication of notice on the notice board inviting objections and suggestions was dispensed with thereunder. In support of his contention about the non-compliance with the first proviso to sub-section (1) of section 77A of the Act by the respondents, the learned counsel for the petitioner has relied upon the judgment of this Court in the case of Chategeppa Parreppa Mugeru and others vs. M. R. Naik and others. 1983 Mh.L.J. 984.

19. This Court has held in the aforesaid case that the first proviso to section 77A(1) is a salutary provision for ascertaining the point of view of the members of the committee as to why in a given case an order appointing an administrator should or should not be made thereunder. This Court has further held that by publication of the notice on the notice board, the purpose is to ascertain the views of not only the members of the managing committee but of all the members of the society also. As regards the second proviso, which dispenses with the requirements under the first proviso, it is held that such a power conferred is an extraordinary power which cannot be exercised as a matter of course. This Court has also held that when the exercise of such an extraordinary power under the second proviso is challenged, the Assistant Registrar is bound to put on record the circumstances which according to him justify non-compliance or dispensing with the requirements of the first proviso. It is, therefore, necessary to see in the light of the above judgment whether the respondent has made out a case under the second proviso for taking immediate action in the instant case.

20. The respondent has given in para 2 of the return the reasons for dispensing with the publication of the notice on the notice board inviting objections and suggestions while answering the contents of para 2(iii) of the petition. The reasons are also contained in the return in answer to para 2(iv) of the petition. A perusal of the reasons given by the respondent would show that they are mixed up with the reasons as to why the administrator is appointed by the respondent. However, one of the reasons relevant to the second proviso is that there was a hunger strike from 8-12-1986 to 20-12-1986, before the office of the respondent for the reason that the members of the managing committee were disinterested

in the working of the society and the members of the society desired early elections to be held by the appointment of an administrator.

21. Another reason given in the return was that there was protracted litigation in the society due to filing of some cases in which the objections were raised about the non-inclusion of names of certain members in the voter's list and also in relation to the appointment of election officer. It is further stated in the return that ultimately these matters have reached and are pending before this Court and in one of the petitions, the elections are ordered to be stayed by this Court. Still another reason disclosed in the return is that there was an apprehension that the Chairman of the society was acting extravagantly by utilising the funds of the society for incurring unnecessary expenses and that too without consulting even the managing committee. There was also a further apprehension that he would tamper with the records of the society for which the respondent had approached the Executive Magistrate for taking action u/s 80 of the Act. For all these reasons it is urged that the notice was not published on the notice board.

22. In appreciating the above reasons given by the respondent, it is pertinent to see that the elections to the managing committee of the society were already delayed since they were not held before 24-5-1986. before which date they were due. It is also necessary to bear in mind that the question whether there are reasons for taking immediate action as contemplated by the second proviso to section 77-A(1) of the Act or not, is a matter of subjective satisfaction of the authority concerned. As long as the reasons given by the Registrar are not perverse, it is not open to this Court to interfere with the same. Merely because the respondent did not under the first proviso to section 77-A(1) of the Act. publish the notice, it cannot be inferred that the said reasons are perverse. It is not, therefore, open to us to interfere in the discretion exercised by the Registrar for the reasons given by him in acting under the second proviso to section 77-A(1) of the Act and in appointing the administrator after dispensing with the requirements of publication of notice, on the notice board for inviting objections and suggestions.

23. It is also clear from the facts on record in the instant case that some members of the society were in favour of appointment of the administrator in the society, and in fact, they have appeared in these proceedings as interveners opposing the petition. For all these reasons, the contention on behalf of the petitioner that the impugned order of appointment of the administrator is vitiated because of the non-compliance with the mandatory requirements of the first proviso to section 77-A(1) of the Act cannot be accepted.

24. The next question raised on merits relates to the construction of clause (e) of section 77A of the Act under which the power is exercised by the respondent in appointing the administrator. The submission on behalf of the petitioner is that a decision to appoint an administrator must take place before the expiry of term of the office of the existing managing committee. Clause (e) of section 77-A(1) reads as follows:

77-A(1) Where the Registrar is satisfied that

x x x x x

x x x x x

x x x x x

"(e) a new committee cannot for any reason be constituted before
the expiry of the term of office of the existing committee;.....

x x x x x

the Registrar may, either suo motu or on the application of any officer of the
society, by order appoint-

(i) any member or members of the society to be the member or members of the
committee to fill the vacancies;

(ii) a committee, consisting of not more than three members of the society; or
one or more administrators, who need not be members of the society, to manage
the affairs of the society till a new committee enters upon office."

25. Under clause (e) what the Registrar has to consider is whether a new
committee cannot for any reason be constituted before the expiry of the term of
office of the existing committee. The contention which is advanced on behalf of
the petitioner on the basis of the phraseology of clause (e) of section 77-A(1) of
the Act is that the decision to appoint an administrator in the circumstances
covered by clause (e) of section 77-A(1) of the Act must also be taken before the
expiry of the term of office of the existing committee. Although in the first place
the submission on behalf of the petitioner appears to be attractive, particularly
when emphasis is laid upon the expression "before the expiry of the term of
office of the existing committee" occurring in clause (e) reproduced above and
also the present tense used in the said clause upon a closer scrutiny of the said
clause (e) as well as looking to the purpose of enactment of section 77A of the
Act, such a construction cannot be placed upon the said clause (e).

26. It is well settled by now that after ascertaining the intention of the
Legislature, it is the duty of the Court to give a purposeful and functional
interpretation to the relevant provision under consideration, which view is
recently emphasised by the Supreme Court in the case of Girdhari Lal and Sons
Vs. Balbir Nath Mathur and Others, . It is held in the said case that the primary
and foremost task of a Court in interpreting a statute is to ascertain the intention
of the Legislature, actual or imputed. In a forthright pronouncement Goulding, J.
observed as follows in Comet Radio Vision Service vs. Farnell Trand Berg Ltd.,
(1971) 3 All.E.R. 230:

"The language of Parliament though not to be extended beyond its fair
construction, is not to be interpreted in so slavishly literal a way as to stultify the
manifest purpose of the Legislature."

27. It is clear from the judgment of Lord Denning, J. in *Seaford Court Estates Ltd. vs. Asher*. (1949) 2 All E.R 155, that even in appropriate cases, the Court can supplement the written word. The Supreme Court in para 16 of the judgment has laid down that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that a construction, according to the plain language, should ordinarily be adopted, except where it leads to anomalies, injustices or absurdities.

28. Bearing these principles in mind, before construing clause (e), it would be proper to refer to the objects and reasons for enactment of section 77A of the Act. The objects and reasons of section 5 of the Bill which inserted a new section 77A in the principal Act is as follows:

"Section 5. - This section inserts a new section 77A in the principal Act with a view to authorising the Registrar in suitable cases to appoint members of the society as members of its committee to fill the vacancies or to appoint a committee or administrator to manage the affairs of the society, where he is satisfied that there are difficulties at the first constitution of a committee or at expiry of its term of office or any committee is prevented from entering upon office or a new committee has failed to enter upon office on the date on which the term of office of the existing committee has expired or a new committee cannot for any reason be constituted before the expiry of the term of office of the existing committee."

29. It is clear from the above objects and reasons that the purpose of inserting section 77A in the Act is not to allow the existing committee to function beyond its tenure. Although there is a duty upon the managing committee to arrange for holding the election of its members before the expiry of its term, the tendency in the members of the Managing Committee is not to hold the elections and thus to continue in office for a long time even after their tenure is over. Apart from the wilful failure of the existing managing committee to hold the elections, there may be other reasons for which the elections of the managing committee cannot be held or if held, the new managing committee can still not enter upon office. As already stated hereinbefore, there may be a challenge to the election process in an appropriate court and the elections may be stayed. Even after the elections take place they can be challenged and the new committee or any of its members can be restrained from entering upon office.

30. If the purpose of inserting section 77A of the Act is that the existing managing committee should not continue beyond its tenure or the extended tenure and the election for constituting the new managing committee should be held expeditiously by appointing the administrator for the said purpose, the said purpose would be frustrated if it is not possible for the Registrar to take decision about appointment of the administrator before the expiry of the term of office of the existing managing committee.

30A. It may be seen that for a variety of reasons, it may not be possible for the Registrar to take a decision about the appointment of the administrator before the expiry of the term of the existing managing committee. For instance, it is possible that any member may obtain stay of the election process even on the last day of the tenure of the office of the existing managing committee. or just prior to it, in which case it would not be possible to constitute a new managing committee before the expiry of the term of the existing managing committee and in the above circumstances, it would not also be possible for the Registrar to take a decision about the appointment of the administrator before the expiry of the term of office of the existing managing committee. It is thus clear that in every case, it may not be possible for the Registrar to take a decision under clause (e) before the expiry of the term of office of the existing committee.

31. The question, therefore, would be whether the existing committee can and should be allowed to continue beyond its tenure because it is not possible for the Registrar to take a decision before the expiry of the term of its office. In this regard it may be seen that in some cases, where there is no provision in the bye-laws of the society for continuation of the existing managing committee beyond its tenure till the new elections are held, their functioning and their actions may become illegal and unauthorised. The construction sought to be put on behalf of the petitioner thus in any view of the matter does not serve the purpose of enactment of section 77A of the Act.

31 A. What is most material to be seen is that there is no express provision in section 77A of the Act requiring the Registrar to take a decision about appointment of the Administrator before the expiry of the term of office of the existing managing committee. On a proper reading of section 77-A(1)(e) of the Act, the relevant portion of which reads "where the Registrar is satisfied that.....(e) a new committee cannot for any reason be constituted before the expiry of the term of office of the existing committee....." It is clear that it refers to the subject matter about which the Registrar has to be satisfied. What he has to be satisfied about under clause (e) of section 77-A(1) of the Act is that a new committee cannot be constituted before the expiry of the term of the office of the existing committee. Although the situation about which the Registrar has to be satisfied is one that exists before the expiry of die office of the existing committee, in the absence of any express provision, such a satisfaction can be arrived at by him before or after the expiry of the tenure of the existing managing committee.

32. In our view, therefore, it was open to the Registrar to take a decision about the appointment" of the administrator in the instant case even after expiry of the term of office of the existing managing committee. We cannot, therefore, give effect to the above contention raised on behalf of the petitioner.

In the result, the instant writ petition fails and is dismissed. However, in the circumstances, there would be no order as to costs.