

(2014) 01 GUJ CK 0006
In the Gujarat High Court

Case No : Special Civil Application No. 2783 of 2013

Elite Co-operative Housing Society Ltd.	APPELLANT
Vs	
Joginderpal Singh Mahendra Singh and Others	RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Citation : (2014) 01 GUJ CK 0006

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : S. Tripathy, for the Appellant;

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J.—Challenge in this petition is made to the order passed by the Gujarat Co-operative Tribunal in Revision Application No. 193 of 2011 dated 27.02.2013, whereby the order passed by the Board of Nominees, Ahmedabad below Application Exh. 6, dated 16.11.2011 in Lavad Suit No. 481 of 2009 is confirmed. The present respondent No. 1 has instituted a Lavad Suit No. 481 of 2009 before the Board of Nominees, Ahmedabad on 03.07.2009 for permanent injunction, wherein initially ex-parte injunction was granted on 03.07.2009, which, after bipartite hearing, was confirmed on 16.11.2011, which was the subject matter of Revision Application No. 193 of 2011 filed by the original defendant-present petitioner Society before the Gujarat Co-operative Tribunal, as stated above.

The facts, which have weighed with the Board of Nominees for protecting the plaintiff-present respondent No. 1 during pendency of the suit, as emerging from record, are as under.

1.1 The petitioner-Elite Co-operative Housing Society Limited ("petitioner Society" for short) is a Co-operative Housing Society, registered in the year 1966, which has 96 flats. The present respondent No. 1 ("the plaintiff" as per original status of Lavad Suit) had purchased Flat No. B-7-5 from one Ishwarbhai

Waghjibhai Desai by a registered sale deed dated 10.04.2006. It was after no objection certificate from the Society. Thereafter, the plaintiff was duly inducted as a member of the Society and even Resolution in that regard was passed by the Society on 30.06.2006 and 18.07.2006. The share certificate is also given to the plaintiff, duly signed by the Chairman of the Society, that is how, on and from 10.04.2006, the plaintiff continues to be the owner and occupier of the said flat, and on and from 30.06.2006, he continues to be the member of the petitioner Society.

1.2 It was the case of the plaintiff before the Board of Nominees that, not only he is a member of the Society, but he was a member of the Executive Committee of the Society as well. It was the case of the plaintiff that, the Chairman of the Society Mr. Shankarsan Tripathy, was nurturing bias and grudge against the plaintiff, because the plaintiff had, as a member of the Executive Committee, objected to the payment of Rupees Six Lacs to one Contractor for the incomplete and improper re-surfacing work of the internal roads of the Society. According to the plaintiff, this was the cause for annoyance for Mr. Tripathy and therefore Mr. Tripathy had threatened the plaintiff to face the consequences, and under these circumstances Mr. Tripathy started creating difficulties for the plaintiff. According to the plaintiff, the theory floated by Mr. Tripathy is that, the plaintiff was wrongly admitted as a member of the Society, which would consequently result in his cessation as the member of the Executive Committee as well, and thereby cleared the obstruction. The averments made in the plaint, in no uncertain terms, point finger towards Mr. Tripathy, Chairman of the Society and his mala fide action, that too for which he is not vested with the powers. The cause of action for the plaintiff to approach the Board of Nominees was the decision taken by Mr. Tripathy not to permit the plaintiff to enjoy any right as a member of the Society, though he may continue to be the owner and occupier of the Flat No. B-7-5 of the Society.

1.3 Under above circumstances, the plaintiff approached the Board of Nominees with the prayer that the Chairman of the Society be restrained from taking any decision against the interest of the plaintiff. On these averments, initially ex-parte stay order came to be granted in favour of the plaintiff. Thereafter, both the parties placed on record additional material and considering the totality, the Board of Nominees passed an order on 16.11.2011, confirming the ex-parte restrain order dated 03.07.2009.

1.4 In the order dated 16.11.2011, reference is made to one more Lavad Suit No. 572 of 2008, reference to which is made hereafter, in Para 8.

1.5 There is specific reference with regard to allegations of malafide against the Chairman of the Society Mr. Tripathy and one of the reasons recorded by the Board of Nominees is that, even if the aspect of lack of bona fide on the part of the Chairman of the Society is kept aside, a member could not have been removed from the membership of the Society by an Authority other than Registrar of Co-operative Societies, and there was no material on record to show

that any procedure, as contemplated under the law was followed in this regard. Keeping this aspect in view, the stay order was confirmed.

1.6 Being aggrieved, the Society filed Revision Application No. 193 of 2011 before the Gujarat Co-operative Tribunal and raised various contentions. The Tribunal, by a reasoned order, held that the Board of Nominees has not committed any error in granting protection in favour of the plaintiff. It is categorically recorded by the Tribunal in its order, which is impugned in this petition, that it is only the Registrar (or an officer nominated by him) who is competent to take action of removal of any member of a Co-operative Society and no such procedure is followed in the present case and therefore, independent of the impugned action being tainted with malice on the part of the Chairman of the Society, in any case it is without authority of law, and therefore, it could not have been allowed to stand in eyes of law and therefore, it is rightly interfered with at interim stage itself by the Board of Nominees. It is this order of the Gujarat Co-operative Tribunal, which is under challenge in this petition.

2. Since both the Courts below have found that the impugned action of the Chairman of the petitioner Society is illegal and without authority of law, and before this Court also, the petitioner Society has not been able to point out as to how it is within the authority of the Chairman, without any further deliberation, this petition needs to be disposed of, by confirming the orders of both the Courts below. However, number of contentions are raised on behalf of the petitioner Society, one of which being that all the contentions taken before a Court of law has to be answered by it, and if the same is not done, it amounts to judicial indiscipline. Under these circumstances, at the instance and insistence of the petitioner Society, other aspects are also recorded and are gone into, to the extent necessary.

3. One peculiar aspect needs to be reflected on record and it is that, generally, this Court may not have the benefit of observing demeanor of the contesting parties which would be of great assistance in arriving at the judgment, more particularly when there is allegation of lack of bona fide, however, in the present case, this Court had that benefit. It is recorded that the original plaintiff Mr. Joginderpal Singh, who is respondent No. 1 in this petition, has appeared in person. It is his case right from the beginning that, it is only because Mr. Shankarsan Tripathy, who is Chairman of the Society, is after him, the plaintiff has been put to various difficulties, including the one which is the subject matter of this litigation. Said Mr. Tripathy, who is Chairman of the Society, and against whom these allegations are made, is an advocate and has appeared on behalf of the petitioner Society before this Court, and he has argued this matter with all the vehemence at his command. Under these circumstances, it is recorded that, this Court had the benefit of observing demeanor of both the parties during the course of hearing of this petition, and while arriving at the judgment, this aspect is also kept in view.

4. Both the sides, while making factual as well as legal submissions, have made

a reference to a fact that, the property of the petitioner Co-operative Society is situated in a posh locality of Ahmedabad City, near Circuit House, on way to and in the very close vicinity of the International Airport. The total area of the land of the Society is approximately 14000 square yards, over which only 96 flats are standing, and going by the FSI rules now, this property is very tempting for the commercial developers. It is recorded that, so far the legality of the impugned order is concerned, the above fact may not change the complexion of the matter, however, the manner and method in which the proceedings are taken out by the Chairman on the issue of membership of an individual member, which is also found to be without authority of law, needs closer scrutiny from this angle as well.

5. Having heard Mr. Tripathy - for the petitioner Society and to the substantial extent as the petitioner in person, and Mr. Singh respondent No. 1 in person, a picture which has emerged, appears as under.

5.1 The plaintiff - present respondent No. 1, Shri Joginderpal Singh was a Professor with the Indian Institute of Management, Ahmedabad. He retired in October, 2005. He had to vacate his official quarter and being a Professor, he had to find a space including for his personal library. He was in search of accommodation. On 10.04.2006, he bought this flat i.e. B-7-5, from one Mr. Ishwarbhai Desai, who was the Secretary of the Society at the relevant time. Before entering into a registered sale deed, like any prudent man, more particularly a retired Professor, he also insisted for a no objection certificate from the Society, no encumbrance certificate on the said property etc., which Mr. Singh got. Only thereafter, he entered into a registered sale deed on 10.04.2006. This is how he got title over the property.

5.2 On buying this flat, and the previous owner Mr. Desai giving resignation from his membership from the Society, Mr. Singh was inducted as a member by the Society. A Resolution in that regard was also passed by the Society on 30.06.2006. Since there was some clerical/procedural discrepancy, with which we are not concerned at this stage, again on 18.07.2006, a Resolution to that effect was passed. Share certificate is given to him duly signed by the then Chairman. Not only that, his services were requested to be utilised as a member of the Executive Committee of the Society also, which was agreed also.

5.3 The elected body of the Society then changed. Mr. Tripathy, who even otherwise was Chairman for years on earlier occasion, and was out of power for very short period, again came back as the Chairman of the Society.

5.4 It is the say of the plaintiff that he objected one payment of about six lacs of rupees to a Contractor, who had undertaken the resurfacing work of the internal roads of the Society, which according to Mr. Singh, was not up to the standard. As per his say, the Chairman of the Society Mr. Tripathy was annoyed by this. It is noted that the quality of the road resurfacing work is not the point for determination in this petition. Independent of other things, this allegation may not have any substance worth mention also, however, it is the case of Mr.

Tripathy himself that, somewhere in the year 2008, i.e. after the above objection of Mr. Singh, it came to his notice that, Mr. Singh was not legally inducted as a member of the Society and therefore, he is deemed to have ceased from the membership of the Society, resulting in his cessation as the member of Executive Committee. Thus, the timing of this objection necessitates referring to incident of objection of Mr. Singh regarding the said payment, which is earlier in point of time. On the face of sale deed in favour of Mr. J.P. Singh, it is difficult for the Chairman of the Society to dispossess him from the property, but all sorts of hurdles are being created, and a situation has come that Mr. Singh may have flat in the Society, but he is not a member of the Society and therefore, he will not be entitled to utilize any common facility of the Society.

5.5 One more interesting aspect of the matter is that Mr. Ishwarbhai Desai, from whom Mr. Singh had purchased the flat i.e. B-7-5, was the Secretary of the Society at the relevant time, who, subsequently, bought another flat in the same Society, became Secretary of the Society and even now, he is the Member and the Secretary of the Society. One of the many fronts opened against Mr. Singh is that, the sale by which Mr. Singh bought the flat, was not legal, since said Mr. Desai had stood as surety for some accused in a criminal case at the relevant time, and until he is freed from that surety, he could not have sold the said flat to Mr. Singh. Nothing has come on record that any charge is recorded by the Society over the said flat. Not only that, no objection certificate was also given by the Chairman of the Society, additionally, no encumbrance certificate was also given by the competent Authority on behalf of Mr. Desai and in any case, same Mr. Desai has another flat in the very same Society. Further, in which case, he had stood as surety is not coming on record. These are apparently very irrelevant issues, but in substance, the issue is regarding harassment to the present respondent No. 1 - Mr. Singh and further, these are the issues, which Mr. Tripathy has insisted that this Court should go into, and therefore, these are referred to, considered and answered appropriately.

5.6 The design of the present office bearers of the petitioner Society, to do away with the difficult presence of Mr. Singh is many fold. Said Mr. Ishwarbhai Desai, who is Secretary of the Society at present, started obstructing peaceful possession of Mr. Singh, over the flat, which Mr. Desai himself had sold to Mr. Singh. This being a private dispute between earlier owner and the new purchaser, a civil suit was filed by Mr. Singh being Regular Civil Suit No. 2113 of 2008 before the competent Civil Court, in which Mr. Desai had no answer, and did not appear, and the Court passed an order on 10.02.2012 that the possession of Mr. Singh be not interfered with by Mr. Desai. While referring to this aspect, Mr. Tripathy has contended that, the said suit could not have been entertained by the Civil Court and it is a dispute between two members of the Society, which would fall within the purview of the Board of Nominees. This Court is conscious that the point of jurisdiction of the said Civil Suit is not to be adjudicated in this matter, but since the entire matter is based on the malafides on the part of Mr. Tripathy, and this point is referred to and pressed into service by Mr. Tripathy, it needs to

be recorded that, the same is not a dispute touching the constitution, management or business of the Society and therefore, it cannot be said that the Civil Court did not have jurisdiction to grant protection to Mr. Singh.

5.7 On one hand, even for the purpose of Civil Suit, which is referred above, it is the say of the Society that, Mr. Singh could not have approached the Civil Court and it is only the Board of Nominees which could have entertained it, and at the same breath, it is contended that, for the present litigation, the Board of Nominees does not have jurisdiction, since the Society does not consider Mr. Singh to be a member of the Society. Not only this point is pressed into service, but attention of this Court is invited to more than one round of litigation in this regard by referring to the orders passed by this Court, being in Special Civil Application No. 334 of 2012 dated 07.03.2012, and Special Civil Application No. 2864 of 2013 with Special Civil Application No. 3445 of 2013 dated 05.07.2013. Thus, even on the basic aspect, the petitioner Society has changed its stand as per its convenience. As noted above, this Court had benefit of observing demeanor of the parties and when this flip-flop was noticed, Mr. Tripathy was specifically asked to make his stand clear as to whether the respondent No. 1 is removed from the membership of the Society. With a view to see that the record on this basic factual aspect remained straight, this Court had on 29.11.2013 recorded the following order.

During the course of final hearing of this matter, on the basic fact, a query was put to Mr. S. Tripathy, learned advocate appearing for the petitioner Society and it is stated by him that the respondent-Mr. Joginderpal Singh Mahendra Singh is not removed from the primary Membership of the petitioner Society, but what is done against him, according to petitioner Society is that, he is restrained from exercising the right of the Member of the petitioner Society.

List for further consideration on 02.12.2013.

5.8 The above stand was necessitated for Mr. Tripathy, because it is the finding of the Board of Nominees as well as the Gujarat Co-operative Tribunal that the impugned action of the Chairman was without authority of law and this could not have been done other than by the Registrar of Co-operative Societies. Thus, a picture is created where Mr. Tripathy, the Chairman of the Society, states, sometimes that, he has not removed Mr. Singh as a member of the Society, he also states that Mr. Singh is not a member, he also states that what he has done is only that Mr. Singh be restrained from enjoying the facilities as a member of the Society and Mr. Singh has no right to vote in the meetings of the Society, which ultimately is the goal. Specific reference is made to one document dated 20.04.2012, wherein not only Mr. Singh is excluded from the voters list of the Society, but against Flat No. B-7-5, even his name altogether is deleted and the name of Mr. Ishwarbhai Desai, the present Secretary, is restored. The malice and arbitrariness on the part of the Chairman Mr. Tripathy could not have been put in more effective manner on record than this.

6. As noted above, the subject matter of this petition is the legality and validity of the order passed by the Gujarat Cooperative Tribunal dated 27.02.2013, confirming the order of the Board of Nominees dated 16.11.2011. The reasons recorded by the Tribunal including that it was without authority of law, itself is sufficient to uphold the said order. However, as noted above, since it is the insistence of the petitioner Society through Mr. Tripathy that, other aspects may also be gone into, and further that even the foundation of the Lavad Suit is malafide exercise of power by Mr. Tripathy against Mr. Singh, and since this Court has heard this matter for days together, and even Mr. Tripathy had occasion to put his case in detail before the Court, these observations are made and findings are recorded. This Court finds that there is ample material on record to come to the conclusion that Mr. Singh is facing difficulties because of Mr. Shankarsan Tripathy, who is also the Chairman of the Society, and he might have started all these things initially only as a retaliatory step against Mr. Singh for derailing the payment to the road contractor, but subsequently, it appears to have been continued as a wider design of keeping Mr. Singh away, when it comes to dealing with the property of the Society, reference to which is made in para 5 above. This action, under no circumstances, could have been upheld by the Courts below, which they have not. This petition, therefore, needs to be dismissed.

7. There is one more dimension to the above referred wider ill-design on the part of the office bearers of the Society. To do away with the presence of Mr. Singh, a very innocuous looking decision was taken by the Society that, those who are not legally inducted, be not treated as members and be restrained from enjoying the common amenities of the Society and be further restrained from exercising voting right in any of the meetings of the Society. One Mr. Bahal, who is also a Committee Member, approached the Board of Nominees by filing Lavad Suit No. 572 of 2008, reference to which is made in Para 2.5 above, seeking direction against the Society to restrain Mr. Singh from availing or enjoying any privilege as a member of the Society, to which the Society readily agreed. There can not be any doubt that this was a sponsored litigation by the office bearers of the Society. This was less for adjudication of any dispute, more for creating embarrassment for the Board of Nominees itself, in the event any restrain order is passed in the Suit, which Mr. Singh may file, which was successfully done also. Mr. Tripathy, during the course of his submission, was very pleased to draw the attention of the Court to the clarification which he had sought from the Board of Nominees that, which interim order he should follow, since in the suit filed by Mr. Bahal, it is directed to maintain status-quo in view of the decision of the Society and on the other hand, interim protection is granted in favour of Mr. Singh, as well. The connivance of Mr. Bahal - the Committee Member and Mr. Tripathy - the Chairman, to create more difficulties for Mr. Singh is so apparent, that the Courts below should not have been swayed away with this factor, which they have not.

8. It is recorded that, number of contentions are raised by Mr. Tripathy and number of authorities are cited by him. However, in the facts recorded above, those contentions are not gone into and authorities are not discussed. It would

be open to him to agitate the issues before the Board of Nominees in the pending Suit, and the said Authority shall consider the same in accordance with law, also keeping in view the observations of this Court contained in this order.

9. One of the factors, which is sought to be exploited against Mr. Singh is that, he had bought one flat in a nearby Vasant Vihar Society also. Firstly, as evident from the above discussion, the actions have started and continued against Mr. Singh by Mr. Tripathy under the circumstances which are stated above, and they not only lack bona fide, but are tainted with malice, for extraneous considerations. Under these circumstances, even if the impugned action of the petitioner was perceived to be legal from some angle, the same ought to have been interfered with. Further, the Courts below have found that, it was without authority of law and under these circumstances, this cause, of Mr. Singh having had a flat in an adjoining Society, is not required to be gone into in detail. Even if the same is to be gone into, the said flat was taken by Mr. Singh for his daughter, which is gifted also to her later on. On Municipal Record, the name of Mr. Singh has not been recorded for some difficulties, which is not the subject matter of this petition. Fact remains that, it has been the say of Mr. Singh that, it was for his daughter, and Mr. Singh also needed a flat, which he had purchased in this Society, for which he is admitted also as a member and under these circumstances, because he did not facilitate the payment, and is further not likely to facilitate the potential dealings with regard to the property of the Society in the manner the office bearers of the Society desires, a skeleton is dug out as discussed above. Be it noted that, it is on record that out of 96 members, about 30 members though are holding property, are deprived of voting rights. The stacks, as discussed above, is too high. This Court is conscious that the potential disposal of the property of the Society is not the subject matter of this petition, however, the very foundation of the subject matter is malafides on part of Mr. Tripathy and there is ample material on record to substantiate it, and this Court, after observing the demeanor of the parties, is constrained to record that, the Chairman of the Society Mr. Tripathy, has opened multi-fold attack on Mr. Singh and the present litigation is one of those difficulties created for Mr. Singh.

10. This Court can not turn its eyes blind to the above glaring facts. Confirmation of the impugned order of the Tribunal simpliciter in this factual background, would be too lenient a view, which I am not inclined to take. This petition, therefore, needs to be dismissed with cost. At this juncture, reference can be made to the observations of Hon'ble the Supreme Court of India in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), that judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party, unfortunately it has become a practice to direct parties to bear their own costs, such a practice also encourages the filing of frivolous suits, it also leads to the taking up of frivolous defences. The above observations apply with full force in the present facts. The dismissal of this petition in these facts, without imposing costs, would encourage filing of frivolous

petitions and would also appear as turning the eyes blind by this Court in such glaring facts. Therefore, it needs to be ordered that, petitioner Society shall pay cost of Rs. 10,000/- to the respondent No. 1, which the petitioner Society may recover from its Chairman, if it so desires. For the reasons recorded above, this petition is dismissed with cost of Rs. 10,000/-, which shall be paid by the petitioner Society to the respondent No. 1, within a period of two months from today, reserving liberty to the petitioner Society to recover the same from its Chairman, if it so desires. Rule discharged.