

(2001) 12 GUJ CK 0019
In the Gujarat High Court

Case No : Appeal from Order No's. 385, 386, 9475 and 9478 of 2000

Habron Co-operative Housing Society Limited	APPELLANT
Vs	
Meenakshiben Anantkumar Macwan and Another	RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Gujarat Co-operative Societies Act, 1961 — Section 96, 96(1)(b)

Citation : AIR 2002 Guj 163 : (2002) 22 GLH 272 : (2001) 4 GLR 3330

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : M.B. Gandhi, for the Appellant; P.J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Sharad D. Dave, J.—With the consent of the parties, both the appeals are heard together and hereby decided by this common judgment and order.

2. The only point involved in these two appeals is as under :

(a) Whether looking to the facts and circumstances of the case, the dispute of the parties falls u/s 96(1)(b) of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the said Act) or the Civil Court has jurisdiction to try the same?

3. The short facts in nutshell are as under :

The appellant/original plaintiff is a society whereas the respondent No. 1 is / was a member of the appellant society and the respondent No. 2 is the purchaser of plot No. 16 from respondent No. 1 vide registration No. 1982 with the Sub-registrar office -at Anand for a consideration of Rs.2,18,100/-.

4. It is the case of the appellant-society that merely by registered document executed between the respondents, the respondent No. 2 does not get any right or interest in the said plot. As per the rules of the society, necessary permission

must be obtained by the member of the society i.e. respondent No. 1 to sell the plot to any other third party and that third party should also apply to the society for becoming the member of the society and only on passing of resolution, the said third party can become a member of the society. Moreover, as per the appellant, the third party has to pay transfer-fee, entrance- fee etc. and thereafter only the third party can become member of the society. In view of the fact that no permission is sought by either of the respondents, the alleged Sale-deed between the respondents Nos. 1 & 2 is null and void and not binding to the appellant-society. Under the circumstances, the appellant-society filed Regular Civil Suit No. 94/00 before the Court of Civil Judge (S.D.), Anand and also notice of motion Exh. 5 to restrain the respondent No. 2 from constructing anything on the plot till the final hearing of the suit.

5. The learned trial Judge vide his order dated 1-7-2000 initially ordered the respondent No.2 to maintain status-quo in respect of the plot in question. Later on, after hearing the parties, the learned trial judge vide his order dated 30-9-2000 dismissed the notice of motion and also vacated ex-parte injunction granted Initially on 1-7-2000. Hence, the appellant/society has filed appeal from order No. 386/00 u/s 104 read with Order 34, Rule 1(r) of the Code of Civil Procedure.

6. The appeal from order No. 385/00 is filed on the ground that after the order of status-quo was passed against the respondent No. 2, the appellant gave application Exh. 30 stating that though the present respondent No. 2 was knowing the order of the Court of status-quo, the respondent No. 2 disregarding the order of the Court, put bricks and other articles in the foundation and also prepared a small tank. Therefore, the appellants prayed that respondent No. 2 has violated the order of the Court and he should be sent to civil jail or his property should be attached.

7. On his application, the learned trial judge Issued show-cause notice to respondent No.2 by passing order on 26-7-2000. Ultimately, by order dated 30-3-2000, the learned trial judge held respondent No. 2 responsible for disobedience of the order of the Court and directed to pay Rs.3000/- as compensation to the appellant for the disobedience on or before 16-10-2000. Aggrieved by the said order below Exh. 30 dated 30-9-2000 in Special Civil Suit No. 94/00, the appellant-society has filed this appeal from order u/s 104 read with Order 34, Rule 1 (r) of the CPC stating that the compensation of Rs.3000/- is not adequate in the facts and circumstances of the case. The learned trial judge erred in accepting the apology from the respondent No. 2 and that contemnor is required to be punished by sending him to civil jail and that the learned trial judge also erred in not ordering for removing the construction and maintaining status-quo. The learned trial judge has also erred in not ordering for filling up the excavation, removing the illegal water connection, pulling down the two water tanks and removing the construction of kachcha room with ceiling of iron roof.

8. Heard the learned advocates and gone through the authorities cited by them. It is pertinent to note that both the orders below Exh. 30 & Exh. 5 are passed by one and the same trial Court Judge. But both the orders appear to be contrary to each other in view of the fact that while passing final order below Exh. 5 the trial Court came to a conclusion that the dispute between the parties squarely falls u/s 96(1)(b) of the Act and therefore the Civil Court has no jurisdiction to try and pass any order whereas while passing order below Exh. 30 the trial Court has assumed the jurisdiction and ordered for fine of Rs.3,000/- towards compensation to the appellant. If the trial Court has no jurisdiction to pass order under Exh. 5 -- notice of motion, then how the order can be passed by the same trial Court under Exh. 30?

9. The learned advocate Mr. M. B. Gandhi for the appellant submitted that there are certain rules and regulations of the appellant-society whereby the member of the society has to give application to the office-bearers of the society before selling plot and also to disclose to whom he wants to sell the plot in question. The intending member has also to apply to the society for becoming member of the society and state his willingness to abide by the rules and regulations and to pay necessary transfer-fee, entrance-fee etc. In this case, no such procedure has taken place and therefore the appellant is not bound by the alleged Sale-deed, Mr. Gandhi also produced the copy of the said rules and regulations. The learned advocate produced the copy of the plaint and copy of the documents produced with the plaint. Under the circumstances, runs the submission of Mr. Gandhi L.A. for the appellant that as the present respondent No.2 has not filled in the necessary forms as per the requirement of the society, the alleged Sale-Deed between the respondent Nos. 1 & 2 is null & void and the injunction as prayed for be granted by holding that only civil Court, has jurisdiction to try and hear the said suit. Mr. Gandhi further submitted that without accepting the apology of the respondent No. 2, she should be sent to civil jail and mere compensation of Rs.3,000/- is not enough. Mr. Gandhi submitted that the Board of Nominees has no Jurisdiction to set aside the alleged Sale-deed that has taken place between the respondents and for that Civil Court has jurisdiction.

10. Mr. Gandhi, L. A. for the appellant relied on the authority in case of Zoroastrian Co-operative Housing Society Ltd. and Another Vs. District Registrar, Co-operative Societies (Urban) and Others, and submitted that a society has no unfettered right to decide a question whether a person should be admitted as a member or not. Mr. Gandhi relied on another case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and submitted that when there is a dispute between a tenant on one hand and society on the other side, the said dispute cannot fall under the purview of Section 96 of the Act and the civil Court has jurisdiction to resolve such dispute. The case of Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, is relied upon by Mr. Gandhi and submitted that the expression "any dispute" in Section 96 of the said Act does not cover dispute by employee of society challenging his removal, on ground that it was act of victimization and that labour Court alone is

competent to adjudicate upon it. Therefore, when there is specific forum situated under the law, then dispute falling under any category can be put to the specific forum and not any other forum. In substance, it is submitted by Mr. Gandhi that the dispute between the present appellant-society and the respondents is such that the civil Court has jurisdiction and board of nominee has no jurisdiction to try and pass order. Therefore, the order passed by the learned trial Judge in notice of motion Exh. 5 is bad in law and requires interference of this Court.

11. Against the aforesaid submission, Mr. Patel L. A. for the respondents submitted that there is no illegality, perverseness or otherwise which requires interference of this Court. The trial Court has rightly come to the conclusion that looking to the dispute between the parties, only board of nominee has power to resolve the same and civil Court has no Jurisdiction to try and decide the same. Mr. Patel also relied on the authority of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and submitted that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then he must be covered, if at all, by the provisions of Section 91(1)(a) (c). But once it is held that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Section 91(1)(b) of the Maharashtra Co-operative Societies Act.

12. I have perused the authorities. There cannot be any two opinions regarding the principle laid down in case of the Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, but in case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , the Apex Court has in clear terms stated that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Section 91(1)(b) of the Maharashtra Co-operative Societies Act which is equivalent in language of Section 96(1)(b) of the Gujarat Co-operative Societies Act. In para 16 of the aforesaid judgment, the Apex Court raised 2 principal questions for the Interpretation of Section 91 of the Maharashtra Co-operative Societies Act. They are :

- "(1) what is the meaning of the expression "touching the business of the society?"
- (2) what is the meaning of the expression "a person claiming through a member" which occurs in Section 91(1)(b) ?"

13. A reference deserves to be made to a decision of this Court in case of Navjivan Paper Mart Vs. Raikot Vibhagiva Nagrik Sahakari Bank Ltd., . In this case, the Division Bench of this Court, relied on the case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and came to a conclusion looking to the facts and circumstances and observed in para 5 as

under :

"If the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Section 96(1)(b) of the Gujarat Co-operative Societies Act. In order to find out whether a dispute attracts the provisions of Section 96(1), one has to see what in essence is the dispute. Before a person can be said to claim through a member, the claim (made against him) should arise, through a transaction or dealing which the member entered into with the society as a member. The claim contemplated in the aforesaid observations would also include the claim made against the non-member. If that claim made against a non-member arises through a transaction which the member entered into with the society as a member, the non-member can be proceeded against u/s 96 provided the non-member is a person who claims his rights or title through that member."

14. From the aforesaid discussion, it is crystal clear that the dispute raised by the present appellant can be resolved by only the Board of Nominees which squarely falls u/s 96(1)(b) of the Act. In the same way, when any dispute is to be decided by the Board of Nominees, the trial Court has also no power to pass any order under application Exh. 30 or any application given thereunder. Therefore, I do not find any Illegality, perverseness or otherwise in the order passed by the learned trial Court judge and both the appeals deserve to be dismissed with cost of Rs. 1,000/- each. Accordingly both the appeals are dismissed. C. A. also stand dismissed. Ad-interim relief granted earlier, if any stands vacated. Cost of Rs. 1,000/- to be paid in each of the appeals, making a total amount of Rs.2.000/-.