

(2016) 02 SC CK 0081

In the Supreme Court Of India

Case No : Civil Appeal No. 1653 of 2016 (Arising out of S.L.P. (C) No. 31265 of 2010) and Civil Appeal No. 1654 of 2016 (Arising out of S.L.P. (C) No. 32678 of 2010)

Hemant Vimalnath Narichania and Others

APPELLANT

Vs

Anand Darshan C.H.S. Ltd. and Others

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 17(1), Section 17(2), Section 17(3), Section 17(4), Section 18, Section 18(1), Section 18(2), Section 18(I), Section 21, Section 9(1)

Maharashtra Co-operative Societies Rules, 1961 — Rule 16(7), Rule 17, Rule 17(1), Rule 17(2)

Citation : (2016) AIR(SCW) 1103 : (2016) 2 AIRBomR 712 : (2016) AIRSC 1103 : (2016) 2 ALLMR 981 : (2016) 2 BCR 534 : (2016) 2 JT 408 : (2016) 6 MhLJ 40 : (2016) 2 RecentApexJudgments(RAJ) 382 : (2016) 2 Scale 618 : (2016) 6 SCC 142

Hon'ble Judges : V. Gopala Gowda and U.U. Lalit, JJ.

Bench : Division Bench

Advocate : Shyam Diwan, Sr. Adv., Nikilesh Krishnan, Udit Chauhan and Rameshwar Prasad Goyal, Advocates, for the Appellant; Shekhar Naphade, Sr. Adv., Venkata Krishna Kunduru, Nishant Ramakantrao Katneshwarkar, Appasaheb S. Desai, Satyajit A. Desai and Anagha S. Desai, Advocates, for the Respondent

Final Decision : Allowed

Judgement

U.U. Lalit, J.—1. Leave granted.

2. These appeals challenge the common judgment and Order dated 02.08.2010 passed by the High Court of Judicature at Bombay in Writ Petition Nos. 8194 of 2009 and 2980 of 2010.

3. The subject of division of an existing Co-operative society in the State of Maharashtra is dealt with by Section 18 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") which Section is to the

following effect:

18. POWER TO DIRECT AMALGAMATION, DIVISION AND REORGANISATION IN PUBLIC INTEREST, ETC:

(1) Where the Registrar is satisfied that it is essential in the public interest, or in the interest of the cooperative movement, or for the purpose of securing the proper management of any society, that two or more societies should amalgamate or any society should be divided to form two or more societies or should be reorganised then notwithstanding anything contained in the last proceeding section but public subject to the provisions of this section, the Registrar may, after consulting such federal society as may be notified by the State Government by order notified in the Official Gazette, provide for the amalgamation, division or reorganisation of those societies into a single society, or into societies with such constitution, property, rights, interests and authorities, and such liabilities, duties and obligations, as may be specified in the order.

(2) No order shall be made under this section, unless-

(a) a copy of the proposed order has been sent in draft to the society or each of the societies concerned;

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, either from the society or from any member or class of members thereof, or from any creditor or class of creditors.

(3) The order referred to in Sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to the amalgamation, division or reorganisation.

(4) Every member or creditor of or other person interested in, each of the societies to be amalgamated, divided or reorganised, who has objected to the scheme of amalgamation, division or reorganisation, within the period specified, shall be entitled to receive, on the issue of the order of amalgamation, division or reorganisation his share or interest, if he be a member, and the amount in satisfaction of his dues if he be a creditor.

(5) On the issue of an order Under Sub-section (1). the provisions in Sub-sections (2), (3) and (4) of Section 17 shall apply to the societies so amalgamated, divided or reorganised as if they were amalgamated, divided or reorganised under that section, and to the society amalgamated, divided or reorganised.

(6) Nothing contained in this section shall apply for the amalgamation of two or

more co-operative banks or two or more primary agricultural credit societies.

The procedure in that behalf is detailed in Rule 17 of the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as "the Rules") which is as under:

17. Direction by Registrar for amalgamation, division and reorganisation of societies:

(1) Before issuing any order Under Sub-section (I) of Section 18 providing for the amalgamation, division or reorganisation of any society or societies, the Registrar shall prepare a draft scheme in respect of such amalgamation, division or reorganisation stating in particular the manner in which the new committee or committees, of the society or societies resulting from such amalgamation, conversion or reorganisation shall be constituted and the by-laws which such society or societies shall follow. The Registrar shall then consult such federal society as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him Under Sub-section (1) of Section 18, to the society or each of the societies concerned calling upon it or them to invite objections or suggestions from any member or class of members thereof or from any creditor or class of creditors and to submit such objections and suggestions together with its own or their own suggestions and objections within a period of not less than two months from the date on which the copy of the draft aforesaid was received by it or them.

(2) The Registrar shall consider all such suggestions and objections and make such modifications in the draft order as may seem to him desirable in the light of those suggestions or objections and then issue a final order Under Sub-section (I) of Section 18.

(3) Any member or creditor of each of the societies to be amalgamated, divided or reorganised, who has objected to the scheme of amalgamation, division or reorganisation within the period specified in Sub-rule (i), may apply to the Registrar for payment of his share or interest, if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Such application shall be separate and distinct from the objection or suggestion which he may have submitted to the society or the Registrar under Clause (b) of Sub-section (2) of Section 18. It shall be competent for the Registrar to nominate an officer not below the rank of a Deputy Registrar to investigate such applications and to determine the payments required to be made to the members or creditors, as the case may be.

(4) Subject to the provisions of the Act, the rules and the bylaws, the Registrar may by order require the society concerned to meet in full or satisfy otherwise all due claims of the members and creditors and thereupon the society shall be bound to meet in full or satisfy otherwise all due claims of the members and creditors within such time as may be specified by the Registrar in the order.

4. The facts leading to the filing of the present appeals are as under:

(a) Respondent No. 1 herein i.e. Anand Darshan Co-operative Housing Society Ltd. (registered under the provisions of the Act) consists of two buildings. The first building has one wing namely "A Wing" consisting of 16 apartments, a bank and two garages while the second building has two Wings namely B and C Wings with 41 apartments and nine garages.

(b) On 24.05.2007, 12 members from A Wing of Respondent No. 1-Society moved Application No. 1 of 2007 before Deputy Registrar, "D" Ward, Mumbai for division of Respondent No. 1-Society by division of its assets and liabilities.

(c) A scheme for division as contemplated Under Rule 17 was therefore prepared on 16.07.2007. After setting out the areas of both the buildings, it was stated that "A" Wing Building had 41.68% share and interest in the property/open space of Respondent No. 1-Society while the other Building having "B" and "C" Wings had 58.32% share and that the right/title and interest in the property/land including additional FSI that might be available in future in respect of these buildings would also be in same proportion. A plan was enclosed detailing proposed division while certain areas and facilities were to be enjoyed in common.

(d) On 19.07.2007 the scheme was forwarded under a covering letter from the office of Deputy Registrar, D Ward, Mumbai to Respondent No. 1-Society and also to Maharashtra District Housing Federation Limited, namely, the Federal Society.

(e) A draft order was prepared on 05.09.2007 by the office of the Deputy Registrar detailing out the scheme for division and other consequential matters. This draft order was then sent to Respondent No. 1-Society and the Federal Society. This was followed by second draft order dated 18.03.2008 to similar effect which was marked to Respondent No. 1-Society and the Federal Society.

(f) On 09.05.2008 following resolution was passed by the Federal Society:

Under the said proposal of Division, there are 3 Wings of a single building and the division is to be made wing-wise (But) if wing-wise division is made in one building then it is possible that a dispute may again arise among the Members regarding the use of the building's open space. In view thereof, it is resolved that the said division cannot be recommended by the Federation.

(g) In response to the aforesaid resolution, a detailed representation was made on 02.06.2008 stating inter alia that as a matter of fact three Wings of Respondent No. 1-Society were not located in one single building but were in two different buildings, A Wing of the Society being in one separate building while the other two Wings-B and C in another building. Draft building plans, photographs and other materials were also annexed. This led to communication dated 19.07.2008 addressed by the Federal Society to the Deputy Registrar acknowledging the receipt of material stating that A, B, C Wings of the Society were not in a single building and that A Wing of the Society was in an

independent building. Further, the letter requested the Deputy Registrar to take a decision about the division accordingly. Around this time the Federal Society wrote to the proposed Society of A Wing that it had by letter dated 19.07.2002 written to the Deputy Registrar recommending proposal of division.

(h) Thereafter the draft order was circulated by the Deputy Registrar on 22.08.2008 seeking comments regarding proposed division and he fixed 15.09.2008 as the date for hearing objections, etc. This draft order was again marked to Respondent No. 1-Society. According to the draft order, Respondent No. 1-Society would be divided in two societies:

(a) The Respondent No. 1-Society would, upon bifurcation, continue with only two existing Wings namely, B and C Wings with 41 apartments, nine garages, one Office Meeting Room and one Pump House while

(b) New Society namely New Anand Darshan Cooperative Housing Society Limited would comprise of 16 apartments from the existing A Wing with a Bank, two Garages, Security Office and a Meter Room.

(c) And certain facilities would continue to be enjoyed in common by both these Societies.

(i) Thereafter on 03.11.2008 final order directing division of the existing Society i.e. Respondent No. 1-Society was passed. The relevant portion of the Order reads as under:

In exercise of the powers conferred on me Under Section 18 (1) of the Maharashtra Co-operative Societies Act, 1960 and Rule 17 (2) thereunder I, Rajkumar Patil, Deputy Registrar, Cooperative Societies D-Ward, Mumbai, divided (the Society viz.) the Anand Darshan Co-operative Housing Society Limited., C.S. No. 744, 13-Dr. G.D. Deshmukh Marg, Mumbai-400 026 into two independent Societies and cancel/revoke the registration of the Anand Darshan Co-op. Housing Society Limited. Regn. No. B-3126/1961 dated 28.4.1961 which has been divided Under Section 21 and Rule 16(7) thereunder.

After the division the building having "A" Wing and "B" and "C" Wings have to be given two (separate) registrations Under Section 9(1) of the Maharashtra Co-op. Societies Act, 1960 and the Rules thereunder for the purpose of the flats in the said Wings for the purpose I register the below-mentioned new societies under the Registration Numbers mentioned against them.

Members in the building having "B" and "C" Wings are hereby ordered to submit to this office, the Registration Case Papers in the relevant prescribed Form to register the new Society of their Building. Further, as mentioned in the attached Proforma "A" Two Independent Managing Committees are created in respect of the Two Independent Societies....

(j) This order of the Deputy Registrar regarding division was challenged by way of Appeal No. 250 of 2008 by Respondent No. 1-Society before Divisional Joint

Registrar, Cooperative Societies, Mumbai Division, Mumbai, who dismissed this appeal by his order dated 16.04.2009. This led to the filing of Revision Application No. 231 of 2009 which also came to be dismissed by the Revisional Authority vide order dated 26.08.2009.

(k) Respondent No. 1-Society challenged these orders by filing Writ Petition No. 8194 of 2009 in the High Court of Judicature at Bombay. 17 Members of B and C Wings of Respondent No. 1-Society also preferred Writ Petition No. 2980 of 2010 in the High Court claiming similar reliefs.

(l) Said writ petitions came to be allowed by the High Court by judgment and Order under appeal setting aside the concurrent view taken by three authorities in the matter. It was observed by the High court that Section 18(2) of the Act obliges the Registrar to prepare a draft order and send the same to the Society inviting suggestions and objections, that after receipt of such suggestions and objections the Registrar was further duty bound to consult the Federal Society and only thereafter an order Under Section 18 dividing the Society could be passed. Since the final draft order was never sent to the Federal Society for obtaining its recommendations, according to the High Court, there was infraction on the part of the Deputy Registrar. The High Court therefore allowed the said writ petitions and remanded the matter back to the Deputy Registrar to take fresh decision after following the procedure Under Section 18 of the Act and Under Rule 17 of the Rules.

5. In these appeals arising out of the common judgment and order passed by the High Court, we have heard Mr. Shyam Diwan, learned Senior Advocate for the Appellants and Mr. Shekhar Naphade, learned Sr. Advocate for Respondent No. 1-Society and Mr. Venkata Krishna Kunduru, learned Advocate for the State.

6. Section 18(1) of the Act and Rule 17 of the Rules deal with, inter alia, division of an existing Society. The power Under Section 18(1) of the Act can be exercised if the Registrar is satisfied with the essential requirements mentioned in the said Sub-section (1). The Section, however, obliges the Registrar to exercise such power after consulting such Federal Society as may be notified in the Official Gazette. Sub-section (2) of Section 18 imposes two more conditions and states that (a) no order for division be made unless a copy of the proposed order has been sent in draft to the concerned Society and (b) the Registrar shall consider the suggestions and objections, if any, either from the Society or from any of its members and may make such modifications in the draft order as may seem desirable to him. Rule 17(1) of the Rules while detailing out the procedure to be followed, lays down that before issuing any order Under Section 18(1) providing for division of an existing Society, the Registrar shall prepare a draft scheme. The Rule further lays down that the Registrar shall then consult the Federal Society and after considering the suggestions, if any, made by such Federal Society, shall send a copy of the draft order proposed to be issued by him to the Society. The Society would also be called upon to invite the objections or suggestions from any member or class of members of the Society. Said Sub-rule

(2) then states that the Registrar shall consider all such suggestions and objections and make such modifications in the draft order as may seem desirable to him and shall then issue a final order Under Sub-section (1) of Section 18.

7. Thus as regards division of an existing Society, following steps emerge from the reading of these provisions.

a. The Registrar shall first prepare a draft scheme.

b. He shall then consult the Federal Society. As part of process of consultation, the Registrar would naturally be obliged to send the draft scheme to the Federal Society.

c. The suggestions, if any, made by the Federal Society would then be considered and the Registrar shall thereafter prepare a draft order, proposed to be issued by him. This draft order shall then be sent to the concerned Society calling upon the said Society to invite objections or suggestions from any of its members.

d. If any suggestions or objections are made to the draft order, the Registrar shall consider if any modifications seem desirable and in the light of such suggestions or objections he shall then issue a final order.

8. These provisions make it very clear that the stage for consultation with the Federal Society is when the draft scheme is contemplated. After the stage of consultation with the Federal Society is over, the next stage arises for preparing draft order which is then circulated for inviting the objections or suggestions. The provisions nowhere contemplate the draft order to be again sent to the Federal Society as part of process of consultation. The assessment made by the High Court in that behalf is completely incorrect. In the present case, at the stage of draft scheme the Federal Society was consulted in the matter and thereafter draft order was prepared in respect of which objections or suggestions were invited. The High Court was not, therefore, justified in holding that there was infraction on part of the Deputy Registrar in the present matter. In our view, the exercise of power by the Deputy Registrar and the procedure adopted by him were perfectly in tune with Section 18 of the Act and Rule 17 of the Rules.

9. We, therefore, allow these appeals and set aside the judgment and order under appeal. The order dated 03.11.2008 passed by the Deputy Registrar accepting the proposal for division of Respondent No. 1-Society as confirmed by the Appellate and Revisional Authorities is restored. The matter shall now be taken up by the Deputy Registrar for passing consequential directions, if any.

10. The appeals are allowed in aforementioned terms. No order as to costs.