

(1974) 12 GUJ CK 0015
In the Gujarat High Court

Joshi Indulal Vallabram

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-12-1974

Acts Referred:

Bombay Co-operative Societies Act, 1925 — Section 110(h), 110(h)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 226
Gujarat Co-operative Societies Act, 1961 — Section 110(h), 114, 161

Citation : (1975) 16 GLR 1096

Hon'ble Judges : J.B. Mehta, J;B.K. Mehta, J

Bench : Division Bench

Judgement

B.K. Mehta, J.—The petitioner herein on behalf of himself and 287 other share-holders similarly situated like him has filed this petition in representative capacity under Order 1 Rule 8 of the CPC challenging the coercive recovery proceedings initiated by respondent No. 4 herein, who is Additional Special Recovery Officer, Co-operative Societies of Mehsana district, at the instance of respondent No. 3, who happens to be Liquidator of the society known as "Kheralu Taluka Utpan Kharid Vechan Sangh Limited" for recovery of contributions remaining unpaid by the petitioner and other share-holders represented by him since they happen to be share-holders of the Aforesaid society.

2. In order to appreciate the contentions which have been urged by Miss V.P. Shah, the learned Advocate, appearing on behalf of the petitioner, a few facts need be stated.

3. The aforesaid society was registered under the Sahakari Mandali Nibandh (a law pertaining to Co-operative Societies) as was in force in the erstwhile State of Baroda, on October 6, 1947. The said society was registered as a society limited by guarantee and according to Clause 6 of the Bye-laws of the said society, the liability of the members was limited and each member was liable to pay five times the nominal value of the shares of the society. The authorised share-capital

of the said society was Rs. 50,000/- divided into 2000 shares of Rs. 25/- each. On merger of the erstwhile State of Baroda in pre-reorganised State of Bombay on 1-8-1949, the Bombay Co-operative Societies Act came to be applied to the area of the old State of Baroda by adaption of Bombay Merged State (Laws) Act, 1950 on 30th March, 1950, and consequently the Act pertaining to Co-operative Societies, as was in force in the erstwhile State of Baroda came to be repealed. The societies registered under the said Act, as was in force in the old Baroda State, were deemed to be societies registered under the Bombay Co-operative Societies Act, 1925. It appears that on October 21, 1956, a resolution was passed by the Special General Meeting of the aforesaid society for voluntary liquidation. The Registrar of Co-operative Societies, therefore, passed an order of voluntary liquidation on 19th March, 1957 u/s 47 of the Bombay Co-operative Societies Act, 1925. Respondent No. 3 who happened to be the Managar of the Mehsana District Central Co-operative Bank Limited, Mehsana was appointed as a Liquidator of this society since the said Bank was the only creditor of the society. Respondent No. 3 took over charge as Liquidator on 23rd March, 1957. He submitted a proposal to the Deputy Registrar, Co-operative Societies, to recover contributions from the members, on March 6, 1959. The Deputy Registrar by his order of 18th April 1961 sanctioned the said proposal. Meanwhile the old State of Bombay was bifurcated and the new State of Gujarat came into existence in its wake on May 1, 1960. The Gujarat Co-operative Societies Act came in force on 1st May, 1962 repealing the Bombay Cooperative Societies Act. It appears that respondent No. 3 had issued notices to the share-holders u/s 110(h) of the Bombay Cooperative Societies Act, 1925 of different dates, calling upon them that since they were liable to pay five times the value of the shares held by them, it has been decided that an amount 2 1/2 times the value of the shares be recovered from them and, therefore, they should make arrangement to make payments of the respective amounts within thirty days from the receipt of the notices. These notices were issued on different dates between 1st June, 1961 and 15th June, 1961 to the different share-holders. So far as the petitioner is concerned, he was served with a notice on 14th June, 1961 intimating that since he was holding four shares of the value of Rs. 100/- he was liable to pay Rs. 500/- by way of contribution, but it has been decided to recover at the rate of 2 1/2 times the total value of the shares, he should, therefore, arrange to pay a sum of Rs. 250/- and Rs. 6/- by way of interest and should therefore show cause within thirty days of the receipt of the notice as to why the said amount should not be recovered from him, failing which necessary legal action for recovery of the said amount would be taken.

4. The petitioner submitted his reply by his letter of 14th July, 1961 objecting to his liability. It appears that 249 share-holders, including the petitioner, who were served with such notices, carried the matter in appeal to the Registrar, Co-operative Societies, who by his order of 26th April, 1964 set aside the notices and remanded the matter for determination of liability after issuing fresh notices to the share-holders concerned. After the remand, respondent No. 3 issued fresh

notices to all the share-holders concerned on 23rd June, 1964 and 24th June, 1964. The petitioner was served with a notice on 24th June, 1964, intimating him that the amount recovered from the assets of the said society have been paid up towards debts. The outstanding liabilities were to the tune of Rs. 1,00,000/-, and that it has been, therefore, decided in the first instance to fix the liability at the rate of 2 1/2 times the amount of shares held by each member, and in order to fulfil the liabilities of the society, a sum of Rs. 250/- became payable by the petitioner and he should, therefore, submit his written explanation within thirty days from the date of the receipt of the notices as to why the said amount should not be recovered from him, failing which necessary legal action for recovery of the said amount would be taken by the office of the Liquidator. It appears that there was some discrepancy in the description of the name of the society in the notices served upon the petitioner and other share-holders, and therefore, fresh notices were issued on 30th September, 1964 in the same terms. The petitioner along with other share-holders sent reply on 5th November, 1964 raising various objections and mainly contending that they were not liable to pay the amount of contributions. Respondent No. 3 by his order of 31st July, 1965, rejected all the objections of the petitioner and other shareholders and held them liable to pay the amount of contributions. This order is annexed at Ex-F to the petition. On 10th November, 1965, respondent No. 3 requested the Registrar of Co-operative Societies for issuance of certificate for non-satisfaction of the liability. On 14th March, 1966, the period of liquidation proceedings was extended by the Registrar of Cooperative Societies u/s 114 of the Gujarat Co-operative Societies Act, 1961. Some 47 share-holders went in appeal against the aforesaid order of the Liquidator before the Registrar of Cooperative Societies. The petitioner did not go in appeal before the Registrar against the said order of respondent No. 3. The Registrar of Cooperative Societies by his order of 21st July 1968 dismissed the appeals and confirmed the order of respondent No. 3. The aggrieved parties, which did not include the petitioner, went in revision to the State Government, which, by its order of 30th September, 1968 dismissed the same. Two share holders filed a suit in the competent Court of Civil Judge (Junior Division) on behalf of themselves and in representative capacity on behalf of other share-holders affected, challenging the order of the Liquidator-respondent No. 3 herein, dated 31st July 1965 as confirmed by the Registrar and the State Government in July 1968 and September 1968, respectively. Meanwhile the State Government in exercise of its power u/s 161 of the Gujarat Co-operative Societies Act passed a special order exempting some 34 societies, including the Kheralu Taluka Sahakari Kharid Vechan Sangh Limited (with which we are concerned in this petition) from the provision contained in Section 114, providing for the determination of liquidation proceedings on completion of seven years from the date of the application of the Gujarat Co-operative Societies Act in cases of those societies the liquidations of which were pending on that date. The relevant Notification is annexed at Ex-O to the petition. The Civil Judge dismissed the suit filed by the share-holders challenging the order of the Liquidator holding them liable for making

contributions by his judgment and decree of July 7, 1971. The Additional Recovery Officer-respondent No. 4 herein, therefore, by his notices of 8th September, 1971 called upon the petitioner and other share-holders to pay up the amount of contributions failing which, the same would be recovered as arrear of land revenue. Since the petitioner and the other share-holders failed to pay the said amount, an order of attachment was made attaching the properties of the liable persons by notice of 21st September, 1971. These two last notices have been annexed at Ex-G collectively to the petition. The petitioner, therefore, in representative capacity has moved this Court under Article 226 of the Constitution of India, challenging the said recovery, by his petition on 16th November, 1971 and prayed for appropriate writs, orders and directions for quashing and setting aside the first order of the Registrar of Co-operative Societies in appeal dated 26th April, 1964 which is annexed at Ex-H to the petition and also for quashing and setting aside the order of the Liquidator dated 31st July, 1965, which is annexed at Ex-F to the petition and the two notices of respondent No. 4 for recovery of the amount of contributions by way of arrear of land revenue which are collectively marked at Ex-G to the petition.

5. The petition has been opposed by the State Government as well as the Liquidator of the society.

6. The following contentions have been raised by Miss V. P. Shah on behalf of the petitioner:

1. The order of the Registrar dated 26th April 1964, Ex-H to the petition, made in appeal remanding the matter was without jurisdiction and void.

2. The order of respondent No. 3 dated 31st July, 1965, Ex-F to the petition, is void ab-initio since he has not given any opportunity to the petitioner before determining the liability as required u/s 110(h) of the Gujarat Co-operative Societies Act.

3. The said order, Ex-F to the petition, is void ab-initio, inasmuch as it was passed after closure of the liquidation proceedings u/s 114 of the Gujarat Co-operative Societies Act.

4. The recovery notices of 8th September, 1971 and 21st September, 1971, marked collectively at Ex-G which were issued in pursuance of the order Ex-F were also void ab-initio, since they were issued after the closure of the liquidation proceedings according to Section 114 of the Gujarat Co-operative Societies Act.

5. In any case, the order of the State Government published in the Government Gazette of May 1, 1969, Ex-O to the petition, was ultra vires and without jurisdiction since no opportunity was given to the petitioner or any of the share-holders before making the same and since Section 161 is violative of Article 14 of the Constitution of India, inasmuch as it gives unabridged and uncontrolled power to the State Government.

7. None of the above contentions, in our opinion, have any substance in it. We have not been able to appreciate how Miss Shah contends that the order of the Registrar dated 26th April, 1964, Ex-H to the petition, can be said to be void. It should be noted that the liquidator-respondent No. 3 herein by his various notices between 1st June, 1961 and 15th June, 1961, called upon the concerned share-holders, including the petitioner, to pay the amount of contributions at 2 1/2 times the total value of shares held by each of the share-holders as guaranteed under Clause 6 of the Bye-laws of the society within thirty days of the receipt of the notices. The share-holders concerned, including the petitioner, carried the matter in appeal before the Registrar having been aggrieved by the said notices. The Registrar of Co-operative Societies was of the opinion that since the share-holders concerned were not given any opportunity before determination of the liability, he allowed the appeals and remanded the matter to the liquidator to determine liability after giving fresh notices to the share-holders concerned. According to the said order of remand, respondent No. 3-Liquidator served fresh notices. It is really beyond our comprehension how the petitioner has made a grievance about the order of the Registrar dated 26th April 1964 by which appeals were allowed and the matter was remanded. As a matter of fact it was an order passed in favour of the petitioner and other affected share-holders. We have not been able to appreciate how this order at Ex-H has come to be challenged in this petition. The first contention of Miss Shah is without any merit whatsoever and should, therefore be rejected.

8. The 2nd contention of Miss Shah was that the order of respondent No. 3-Liquidator dated 31st July 1965, Ex-F to the petition, is also void ab-initio since no opportunity has been given by the Liquidator before determining the liability as required u/s 110(h) of the Gujarat Co-operative Societies Act. The said provision so far as relevant for purposes of this petition reads as under:

110. The Liquidator appointed u/s 108 shall have power subject to the rules and the general supervision, control and direction of the Registrar,-

(a) to (g) (h) to determine, from time to time, after giving an opportunity to answer the claim the contribution to be made or remaining to be made by the member or past members or by the estate, nominees, heirs or legal representatives of deceased members, or by any officer, past officer or the estate or nominees, heirs, or legal representatives of a deceased officer to the assets of the society, such contribution being inclusive of debts due from such members or officers;

It is really a matter of surprise to us how Miss Shah has advanced this contention even though respondent No. 3 the liquidator had issued fresh notices on 24th June, 1964 and 25th June, 1964 to the share-holders concerned. The notice of 24th June, 1964 is one of the sample notices which has been placed on record at Ex-D. The notice Ex-D. is clearly a notice intimating the petitioner and other share-holders concerned that as the outstanding liability of the society was to the tune of Rs. 1,00,000/-, it was decided to recover, in the first instance, the

contributions at the rate of 2 1/2 times the total value of the shares held by each of the shareholders. They were, therefore, called upon by the said notice to show cause why the amount of contributions should not be recovered from them at the said rate within thirty days from the date of the receipt of the, failing which necessary action for recovery would be taken. Since these notices were defective in some form, in as much as the name of the society was not properly described, fresh notices were issued on 30th September, 1964 to which the petitioner and other share-holders filed a common reply by their letter of 5th November, 1964. If the petitioner and other share-holders were given an opportunity and in fact when they filed their detailed written explanation in reply to the notices we do not understand how Miss Shah made herself bold to advance this contention that the order of the Liquidator, Ex-F, is void ab-initio, inasmuch as no notice has been given to the petitioner and other share-holders to make their submissions. Miss Shah, therefore, contended that no opportunity had been given before the Liquidator made a proposal to the Registrar to recover contributions at the rate of 2 1/2 times the total value of the shares held by the share-holders concerned. We cannot agree with Miss Shah because the Liquidator before initiating any action in the matter and issuing show-cause-notice must obtain sanction of the Registrar which he has obtained by making a proposal by his letter of 6th March, 1969 and obtaining sanction of the Deputy Registrar on 18th April, 1969. After obtaining this sanction, he initiated action and served notices. It therefore, cannot be said that the petitioner and other share-holders had no opportunity to make their submissions before the liability was determined. As a matter of fact, respondent No. 3-Liquidator determined the liability of the petitioner and other share-holders by his order of 31st July, 1965 which is Ex-F to the petition. The second contention of Miss Shah should, therefore, clearly be rejected.

9. The third contention of Miss Shah that the order at Ex-F and the recovery notices, collectively marked Ex-G, were void ab-initio, inasmuch as they were issued after closure of the liquidation proceedings as prescribed u/s 114 of the Gujarat Co-operative Societies Act. We do not think that there is any substance in this contention. It is no doubt then that according to Section 114, winding up proceedings of a society will me to a closure within three years from the date of the order of wind unless the period is extended by the Registrar. It should be recalled that in the present case the Registrar made the order of liquidation u/s 47 of the Bombay Co-operative Societies Act, 1925 on 19th March, 1927. It should also be recalled that the Gujarat Co-operative Societies Act was made effective from 1st May, 1962. Miss Shah has relied on the provision of Section 114 in support of her third retention. According to the proviso to Section 114, the Registrar, would not rant any extension for a period exceeding one year at a time and four years in the aggregate, and would immediately after the expiry of seven years from the date of the order for winding up of the society, treat that the liquidation proceedings have been terminated, and pass an order terminating the liquidation proceedings. The Explanation to the said proviso clarifies that in the case of a society which is under liquidation at the date of commencement of the

Gujarat Co-operative Societies Act an order for winding up of the society would be deemed for the purpose of Section 114 to have been passed on the said date. The effect of the combined reading of the proviso and the Explanation would be that the order of liquidation in this case would be deemed to have been made on the date on which the Gujarat Co-operative Societies Act came into force, that is, 1st May, 1962, and according to the proviso, the Registrar was under obligation to treat the liquidation proceedings as terminated on completion of seven years from the date of the order. In other words, the proceedings would have been deemed to have been terminated on 1st May 1969. It is in that context that the State Government by a special order of 28th April, 1969 passed an order exempting about 34 societies including the one with which we are concerned in this petition from the provision of Section 114. This special order of the State Government was published in the Gujarat Government Gazette, Part IV-P of 1st May 1969. The third and 4th contentions of Miss Shah that the order of the liquidator dated 31st July 1965, Ex-F to the petition, and the recovery notices of 8th September 1971 and 21st September 1971, collectively marked at Ex-G to the petition, were void ab initio since they were made after seven years from the date of the order of liquidation, are clearly misconceived, because the State Government in exercise of the power conferred u/s 161 of the Gujarat Cooperative Societies Act, had exempted the present society along with 33 other societies from the provision of Section 114. Miss Shah, therefore, contended that since the order of the State Government has been published in the Government Gazette on 1st May 1969, that order was clearly made beyond the period of seven years, because the State Government could have extended the time of liquidation proceedings by exempting the society from the operation of the provision contained in Section 114 by issuing proper notification before the period of seven years, as provided in the proviso to Section 114, was over. In our opinion, the entire submission of Miss Shah is ill founded. The State Government had exempted the society, with which we are concerned, along with 33 other societies from the provision of Section 114 by its special order of 28th April, 1969. It is no doubt true that it has been published in the State Government Gazette on 1st May 1969. But, therefore, it cannot be said that the order, which was made exempting the society in question, was made beyond the period of seven years. Miss Shah invited our attention to the decision of the Supreme Court in this connection in *Harla Vs. The State of Rajasthan*, where the Court was concerned with the question of penal liability of persons under the Opium Act of Rajasthan Government, which was enacted by a Resolution of the Council of Ministers, which admittedly was not a sovereign body nor functioning in its own right. The observations made in the context of that case in head-note (a) have been sought to be relied upon by Miss Shah. We do not think that these observations can be of any assistance to Miss Shah when we are examining the validity of the special order passed by the State Government in exercise of the power granted to the State Government u/s 161 of the Gujarat Co-operative Societies Act. It was not urged by Miss Shah that the State Government has not issued this order in exercise of the power granted to it u/s 161. It is an admitted

position that the Notification, Ex-O to the petition, has been issued by the State Government in exercise of the power conferred on it u/s 161 of the Gujarat Co-operative Societies Act. Miss Shah having realised this difficulty, therefore, ultimately urged that Section 161 of the Gujarat Co-operative Societies Act is ultra vires inasmuch as it was violative of Article 14 of the Constitution because uncontrolled power has been given to the State Government without any guideline. She also contended that this was a delegation of the legislative functions and, therefore, it was ultra vires the power of the State Government. We must frankly admit that we are not impressed by this contention of Miss Shah at all. It is clear to us on reading Section 161 that no uncontrolled power has been invested in the State Government. It is clear to us that for purposes of carrying out the objectives of the Gujarat Co-operative Societies Act the State Government has been invested with this power. Having regard to the various activities undertaken by Co-operative societies under the said Act which embraced different economic activities it is difficult to legislate for all objects, and in order to put the Co-operative activities on the sound footing so as to effectuate the objects and purpose of the Act this power is granted to the State Government u/s 161. A guideline can be read in Section 161 and, therefore, it cannot be said that the State Government, for purposes which may be alien to those of the Act, can act and exempt societies. It is only, in our opinion, for purposes of effectuating the objectives of the Act that this power can be exercised. The fact that in the proviso to Section 161 the Legislature has entailed an obligation on the State Government that without giving an opportunity to the society concerned no order to its prejudice can be made clearly indicates that no unabridged or uncontrolled or wide power has been given to the State Government. In that view of the matter, the first limb of Miss Shah's contention that Section 161 violates Article 14 of the Constitution should be rejected.

10. She, therefore, contended in the alternative that this is a delegation of the legislative function and, therefore, to that extent the Legislature has abdicated his duties and the provision, therefore, is ultra vires the powers of the State Government. We have not been able to appreciate on reading Section 161 that the power which has been invested in the State Government is of legislative nature at all. It is a power granted to the State Government to exempt any society or a class of societies from any of the provisions of the Act or to give directions that such provisions would not apply to such society or class of societies with such modifications without affecting the substance thereof as may be specified in the order. Having regard to the nature of the power and the order of the State Government in the case before us, we do not think that it could be successfully contended that it was in the nature of a legislative act. It appears to us from the order Ex-O that the State Government has exercised its power u/s 161 of the Gujarat Co-operative Societies Act in cases of those societies whose liquidation proceedings could not be completed within the prescribed period of seven years. In the particular case before us, the society was formed in the time of the erstwhile State of Baroda and it was on account of various objections

raised by the petitioner and other share-holders and because they took the matter in appeal and revision from time to time that the proceedings could not be completed within the prescribed statutory period. The outstanding liability of the society was to the tune of Rs. 1,00,000/- and the Mehsana District Central Co-operative Bank Limited was the only creditor. If in that context the State Government thought fit to exercise the power u/s 161 it cannot be said that it was exercising or discharging the legislative function which it could not have done. In that view of the matter, therefore, the second limb of the last contention of Miss. Shah should be rejected.

11. We have gone into the merits of this case only with a view to satisfy ourselves when grievance was made on behalf of the petitioner that the recovery proceedings have been commenced after the expiry of the period of seven years, on completion of which u/s 114 of the Gujarat Co-operative Societies Act, the liquidation proceedings are deemed to have been terminated. Apart from our findings on merits of the contention, the main hurdle which Miss Shah has not been able to clear was on the ground of delay. The reliefs which the petitioner has asked for are in respect of the order of the Registrar in appeal dated 26th April, 1964, Ex-H to the petition, and the order of the Liquidator dated 31st July, 1965, Ex-F to the petition, and the consequent recovery notices, collectively marked Ex-G to the petition. The main orders which the petitioner is challenging in this petition on behalf of himself and other share-holders in his representative capacity, are two-orders Ex-F. The final order in appeal confirming the order of the Liquidator dated 31st July, 1965 Ex-F to the petition, was made on 21st July, 1968. After this order in appeal two share-holders on behalf of the aggrieved share-holders, including the petitioner, filed a suit in the Court of competent jurisdiction on 24th February, 1969, challenging the order of the Liquidator, Ex-F as confirmed in appeal and revision. That suit was dismissed on 7th July, 1971 on the ground that the Court had no jurisdiction to go into the legality of the order of the Liquidator. The plaintiffs of that suit did not carry that matter in appeal and, therefore, the order of the Civil Judge was final and binding, since the two share-holders had filed that suit in representative capacity. It is no doubt true that the recovery notices, Ex-G, were issued in September, 1971. But the real challenge by the petitioner in this petition is against the orders of 1964 and 1965. As we have observed above the order of 26th April, 1964 passed by the Registrar was in favour of the affected share-holders and, therefore, there is no scope in this petition to challenge it. The real order which has been challenged is the order of the Liquidator dated 31st July, 1965, Ex-F to the petition, which has been confirmed in appeal and revision in 1968. The petition is filed after a period of three years and, therefore, completely barred on the principle of delay. Miss Shah made a strenuous attempt to persuade me that this order was void ab-initio and, therefore, the right of the petitioner and other share-holders to move this Court arose only in September 1971 when recovery proceedings were sought to be initiated. We do not think that this contention of Miss Shah is well-founded. As we have discussed above, the order of the Liquidator dated 31st July, 1965

cannot be said an order void ab-initio. In any case that was the real order which was challenged and the recovery proceedings are merely consequential proceedings. The petitioner and other share-holders were really aggrieved by the order of the Liquidator which determined their liability to pay and it is this order which the petitioner has challenged in this petition. It was this very order, which was challenged in the civil suit. Therefore, the petition is clearly barred on the ground of delay, acquiescence and having regard to the conduct of the shareholders in filing the suit in representative capacity. Miss Shah made a vain attempt to impress upon us that no rights of any other parties are created or prejudicially affected on account of mere delay in coming to this Court. It was only because the civil suit was dismissed and thereafter the recovery proceedings were initiated that the petitioner and other affected share-holders have been constrained to move this Court. Obviously we cannot agree with Miss Shah. It was only because the suit was filed and an injunction was obtained against the recovery proceedings that respondent No. 4 could not proceed ahead with the enforcement of recovery. As a matter of fact, the filing of the suit appears to be one of the reasons for the State to exercise its power u/s 161 of the Gujarat Co-operative Societies Act for exempting this society from the operation of Section 114 because of the injunction obtained in the suit filed on 24th February 1969. We do not, therefore, find any merit in the explanation of Miss Shah that because the recovery proceedings were initiated by notices, Ex-G, in September, 1971 that the petitioner and other share-holders were really aggrieved and, therefore, they were required to move this Court, which they did by way of filing this petition on 16th November 1971 and, therefore, there is no question of delay on the part of the petitioner. We do not agree with Miss Shah that the petitioner was really aggrieved as sought to be contended by mere recovery proceedings. As observed by us earlier, recovery proceedings were consequential to the order of the Liquidator dated 31st July 1965, which determined the liability of the petitioner and other share holders. In our opinion, therefore, the petition is clearly bad on the ground of delay.

12. In *Durga Prashad Vs. Chief Controller of Imports and Exports*, , the Supreme Court observed that it is essential that the person aggrieved by orders of the Government should approach the High Court after exhausting the remedies provided by law, rules or order with utmost expedition. Negativizing the contention urged on behalf of the appellant before the Supreme Court in that case that since the matter involved fundamental rights, the Court should not refuse to give relief on the ground of delay Mr. Justice Sikri, as he then was, speaking for the Court observed in respect of this contention,-

...But we are exercising our jurisdiction not under Article 32 but under Article 226, and as observed by Gajendragadkar, C.J., in the passage extracted above, even in the case of alleged breach of fundamental rights the matter must be left to the discretion of the High Court....

In *Smt. Narayani Debi Khaitan v. State of Bihar* Civil Appeal No. 1116 of 1965,

decided on November 22, 1968, Gajendragadkar C.J., as he then was, observed,-

It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 225 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.

It is clear to us that once two share-holders in representative capacity on behalf of all the share holders affected approached Civil Court and filed a suit for obtaining the relief against the order of the Liquidator dated 31st July, 1965, Ex-F to the petition, us confirmed in appeal and revision or and when that suit was dismissed on 7th July, 1971, we do not think that the petitioner can be again permitted to challenge those very orders in pursuance of which recovery proceedings were initiated by notices Ex-G. We are of the opinion that the petitioner on behalf of himself and on behalf of the other share-holders, is clearly guilty of delay and laches and that after the suit filed in representative capacity on behalf of the shareholders affected having been dismissed, we do not think that it is open to the petitioner to obtain reliefs which he has prayed in this petition. On that ground alone, this petition fails and should be dismissed.

13. But since Miss Shah contended about the order being void, we have gone into the merits of the case. Miss Shah, therefore, ultimately tried to rely upon the proviso to Section 161 where it has been made obligatory to give an opportunity to the society before making any order prejudicial to it. We do not think that Miss Shah is justified in relying upon the proviso to Section 161 since no order prejudicial to the society before us is made by the Government by exempting it from the provision of Section 114 of the Act. As a matter of fact, it was in the interest of the society that the State Government exercised its power by exempting it since the non-exercise of power would have resulted in the Liquidator being deprived of collecting the assets and distributing them amongst the creditors. In that view of the matter, therefore, the last contention of Miss Shah, therefore, should be rejected.

The result is that this petition fails and is dismissed. Rule is discharged with costs.

14. Miss Shah at this stage asked for a certificate under Article 133(1) of the Constitution of India to go to the Supreme Court in appeal. We do not think that in this petition any substantial question of law of general importance is involved, which, in our opinion, requires to be decided by the Supreme Court. The oral application is, therefore, rejected. Miss Shah also made an application to this Court that the interim injunction granted in this matter should be allowed to continue for a further period of four weeks so as to enable the petitioner to go to the Supreme Court. We do not think that we should exercise our discretion and extend the interim relief granted in this petition as requested since Miss Shah on behalf of the petitioner is not willing and prepared to make deposit of the respective amount of contributions.