

(2014) 03 GUJ CK 0021
In the Gujarat High Court

Case No : Letters Patent Appeal No. 497 of 1997

Laxmi Nivas Co-op. Housing Society Ltd.

APPELLANT

Vs

District Registrar

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(1)(c), 226
Gujarat Co-operative Societies Act, 1961 — Section 115, 154, 155, 16, 2(13)

Citation : AIR 2014 Guj 159 : (2014) 3 GLH 713 : (2014) 3 GLR 2201

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;V.M. Sahai, J;R.R. Tripathi, J

Bench : Full Bench

Advocate : B.R. Gupta, Advocate for the Appellant; P.K. Jani, Govt. Pleader, Vacha Desai, AGP, Shirish Joshi and A.J. Patel, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This Letters Patent Appeal has been referred to the Larger Bench by a Division Bench (C.K. Thakkar and S.D. Pandit, JJ.) by order dated 2nd July, 1997 in view of the conflicting decisions of two Division Benches of this Court, one, in the case of Amreli District Co-operative Sales and Purchase Union Ltd. and others v. State of Gujarat, reported in 1984 (2) GLR 1244 and the other, in the case of Jain Merchant Co-operative Housing Society Ltd. and others v. HUF of Manubhai Kalyanbhai Shah, reported in 1995 (1) GLR 19: (1995 AIHC 2412 (Guj.)). The question that falls for determination in this Larger Bench is as under:

"Whether in view of the subsequent decision of the Supreme Court in the case of Daman Singh and Others Vs. State of Punjab and Others, , the decision in the case of Amreli District Co-operative Sales and Purchase Union Ltd. (supra) is good law."

2. The facts giving rise to the filing of the Special Civil Application, out of which the present reference arises, may be summed up thus:--

2.1 The appellant before us, a Co-operative Society registered under the Gujarat Co-operative Societies Act ("the Act" for short), filed a suit being Arbitration Suit No. 2134 of 1995 against the allottees of plot No. 10 in the appellant-society before the Board of Nominee at Ahmedabad and at the same time, prayed for an interim injunction, restraining the respondent Nos. 2, 3 and 4 from transferring or alienating the property and also for a direction upon respondents No. 2, 3 and 4 to transfer their interest in favour of the Society itself. While such Arbitration Suit No. 2134 of 1995 was pending, the respondents Nos. 2, 3 and 4, on the other hand, filed an application under Section 24 of the Act before the Respondent No. 1 thereby praying for the relief in terms of that Section. The appellant entered appearance in the said proceedings and contested the same and at the same time, filed a separate application for stay of further proceedings of the said application under Section 24 of the Act on the ground that in view of pendency of the Arbitration Suit, the parallel proceedings should not continue.

2.2 The respondent No. 1 rejected the prayer for stay.

2.3 Being dissatisfied, the appellant-society came up with the Special Civil Application challenging the order of the Respondent No. 1 refusing the prayer for stay.

2.4 The learned single Judge, as it appears from the order which is the subject-matter of challenge of the Letters Patent Appeal, rejected such application.

2.5 Being dissatisfied, the appellant preferred this Letters Patent Appeal, thereby contending that the learned single Judge erred in law in not following the decision of the Division Bench of this Court in the case of Amreli District Co-operative Sales and Purchase Union Ltd. (supra), inasmuch as, in the said decision of the Division Bench, the provision contained in Section 24 of the Act has been held to be ultra vires and such being the position, there was no necessity of continuing the proceedings under Section 24 of the Act.

2.6 As indicated earlier, when the Letters Patent Appeal came up before the Division Bench, the Division Bench, in view of the conflicting decisions indicated earlier, referred this matter to a larger Bench.

3. Therefore, the question which principally arises for determination before us is whether the observations of the Division Bench of this Court in the case of Amreli District Co-operative Sale & Purchase Union Ltd. & Ors. (supra) in paragraph 55 of the judgment that Section 24(1) & (2) of the Act is violative of Article 19(1)(c) of the Constitution of India are correct or not and consequently, whether the subsequent provisions of sub-sections (3), (4), (5) & (6) of Section 24 of the Act would fail if the main provision is held to be suffering from infirmity.

4. In order to appreciate the aforesaid contention, it will be appropriate to refer to the provisions contained in Sections 2(13), 2(19), 22, 24, 30 of the Act and Rules 5, 12 and 18 of the Gujarat Co-operative Societies Rules, which are quoted below:

2(13) "member" means a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person, duly admitted to membership of a society after registration, and includes a nominal, associate or sympathizer member.

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2(19) "society" means a co-operative society registered, or deemed to be registered, under this Act.

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22. Person who may become member.--

(1) Subject to the provisions of Section 25, no person shall be admitted as a member of a society except the following, that is to say--

(a) an individual, who is competent to contract under the Indian Contract Act, 1872 (IX of 1872);

(b) a firm, company, or any other body corporate constituted under any law for the time being in force or a society registered under the Societies Registration Act, 1860 (XXI of 1860);

(c) a society registered, or deemed to be registered, under this Act;

(d) the State Government;

(e) a local authority;

(f) a public trust registered or deemed to have been registered under Bombay Public Trusts Act, 1850; (Bom. XXIX of 1950);

(g) a group of individuals eligible under clause (a), whether incorporated or not and whether established or not by or under any law:

Provided that, the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of students of a school or college:

Provided further that subject to such terms and conditions as may be laid down by general or special order a firm or a company or other body corporate constituted under any law for the time being in force may be admitted as a member only of such society as may be prescribed.

(2) Every person seeking admission as a member of a society, if duly qualified for membership of such society under the provisions of this Act, the rules and the bye-laws of the society, may make an application to the society for membership. The society shall take decision on the application and shall communicate the decision within a period of three months from the date of the receipt of the application.

(3) Notwithstanding anything contained in sub-section (1), the State Government, may, having regard to the fact that the interest of any person or class of persons engaged in or carrying on any profession, business or employment conflicts or is likely to conflict with the objects of any society or class of societies by general or special order published in the Official Gazette, declare that such person or such class of persons shall be disqualified from being admitted, or for continuing, as member or members or shall be eligible for membership only to a limited extent, of any society or class of societies so long as such person or persons are engaged in or carry on that profession, business, or employment as the case may be.

(4) All the depositors having deposits of rupees ten thousand or above for a minimum period of one year and the borrowers shall be compulsorily made members in the Primary Agricultural Credit Co-operative Societies:

Provided that the depositors having deposits less than rupees ten thousand shall be made nominal members.

(5) The State Government may, by notification in the Official Gazette, alter the limit of rupees ten thousand specified by sub-section (4) and also specify such amount of deposit as it deems necessary for a class of society and different amount may be specified for different classes or societies. In the case of borrowing members, the society shall prescribe in its bye-laws, linking shares subject to minimum of two and half per cent, of the loan taken by the borrowers.

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24. Open membership.--(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act, the rules and bye-laws of such society.

(2) Where the society does not communicate any decision to a person within a period of three months from the date of receipt by the society of his application for admission, such person shall be deemed to have become the member of such society on the expiry of the aforesaid period of three months.

(3) Where a person is refused admission as a member of a society, the decision together with the reasons therefor shall be communicated in writing to such person by the society within three months from the date of receipt by the society of the application for admission made by such person.

(4) Any society aggrieved by the admission of a member under sub-section (2) or any person aggrieved by the decision of the society refusing him its membership under sub-section (3) may appeal to the Registrar.

(5) An appeal under sub-section (4) shall be made within a period of two months from the date of communication to him of the decision of the society or, as the case may be, from the date of the expiry of the period of three months specified in sub-section (2).

(6) The decision of the Registrar in appeal shall be final and shall not be called in question in any Court.

(7) Nothing in this section shall apply to a society belonging to a class notified under sub-section (2) of Section 22.

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30. Restrictions on transfer of share or interest.--

(1) Subject to the provisions of Section 29 and sub-section (2) a transfer of, or charge on, the share or interest of a member in the capital of a society shall be subject to such conditions as may be prescribed.

(2) A member shall not transfer any share held by him, or his interest in the capital or property of any society, or any part thereof, unless--

(a) he has held such share or interest for not less than one year;

(b) the transfer or change is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the society; and

(c) the committee has approved such transfer.

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Rule 5. Bye-laws.--

(1) Where a society has been registered, the bye-laws submitted under sub-section (1) of section 8 shall, subject to any modifications approved by the Registrar and adopted at a general meeting having a quorum by a majority of not less than one-third of the members present and voting become the bye-laws of the society.

(2) Every society shall make bye-laws on the matters mentioned below:--

(a) the name and address of the society and its branches, if any;

(b) the class or occupation of its members, if membership is proposed to be so restricted;

(c) the area of its operation;

(d) the objects of the society and its liability or unlimited; (sic)

(e) the terms and qualifications for admission to membership, and their rights and liabilities the consequences of a default in payment of any sum due by a member; and in case of credit societies, the conditions on which loans may be granted; the rate of interest; the system of calculation of interest; and in case of non-credit societies, the mode of conducting business, purchase, sale, stock-taking and other like matters;

- (f) the privilege, rights and liabilities of nominal, associate any sympathiser member;
- (g) payments and acquisition of interest in the society before the rights of membership are exercised by the member;
- (h) rights of voting by a nominal, associate or sympathiser member and the voting rights of a federal society;
- (i) restrictions on borrowing from members and non-members;
- (j) the manner in which the loss of the society will be determined and its reimbursement by the member who has not disposed of his produce through the society and who is found guilty of a breach of the bye-laws of any such contract;
- (k) the scale of remuneration to be paid to a member who has rendered any service to the society;
- (l) appropriation of profit for any other purpose which is not prescribed in sub-section (2) of section 66.
- (m) the manner of summoning general meetings under section 73 and the manner of making, altering, abrogating bye-laws;
- (n) the constitution and election of the Managing Committee and its powers and duties;
- (p) the number of members required for the requisition of a special general meeting,
- (q) the utilisation of surplus assets of the society under section 115;
- (r) the manner in which capital may be raised;
- (s) the mode of custody and investments of funds;
- (t) the distribution of profits.

Rule 12. Open membership.--

(1) No Seva Sahakari Mandali or Consumers' Society or Co-operative Milk Producer's Society shall without sufficient cause refuse admission to membership to any person duly qualified therefor under the provisions of the Act and the bye-laws.

(2) No co-operative housing society shall without sufficient cause, refuse admission to its membership to any person, duly qualified therefor under the provisions of the Act, and its bye-laws to whom an existing member of such society wants to sell or transfer his plot of land or house and no such society shall without sufficient cause, refuse to give permission to any existing member thereof to sell or transfer his plot of land or house to another person who is duly

qualified as aforesaid to become a member.

Explanation: A Seva Sahakari Mandali includes a multipurpose society and a primary agricultural credit society.

18. Procedure for transfer of share.--

(1) No transfer of share shall be effective unless:--

(a) it is made in accordance with the provisions of the bye-laws;

(b) a clear fifteen days" notice in writing is given to the society indicating therein the name of the proposed transferee, his consent, his application for membership, where necessary, and the value proposed to be paid by the transferee;

(c) all liabilities of the transferor due to the society are discharged; and

(d) the transfer is registered in the books of the society.

(2) Any charge in favour of the society on the share so transferred will continue unless discharged otherwise.

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5. It is now settled law that a legislative enactment can be struck down by the writ-court only on two grounds, viz. (1) the legislature which enacted the statutory provision does not have the competence to make the law, and, (2) it takes away or abridges any of the fundamental rights enumerated in Part-III of the Constitution or any other constitutional provisions. In this connection, we may profitably refer to the following observations of the Supreme Court in the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., as under:

"A law made by Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground.....Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom."

6. According to sub-section (1) of Section 24 of the Act, no society shall, without sufficient cause, refuse admission of membership to any person duly qualified

therefor under the provisions of the Act, the rules and bye-laws of such society. Similarly, according to sub-section (2), where the society does not communicate any decision to a person within a period of three months from the date of receipt by the society of his application for admission, such person should be deemed to have become the member of such society on the expiry of the aforesaid period of three months.

6.1 Sub-section (3) of section 24 of the Act mandates that when a person is refused admission as a member of a society, the decision together with the reasons therefor should be communicated in writing to such person by the society within three months from the date of receipt by the society of the application for admission made by such party.

6.2 Sub-section (4) gives a right to the society aggrieved by admission of a member under sub-section (2) or any person aggrieved by the decision of the society refusing him its membership under sub-section (3) to appeal to the Registrar. Sub-section (5) of Section 24 provides for period of limitation within which such appeal should be filed under sub-section (4). Sub-section (6) states that the decision of Registrar in appeal should be final and should not be called in question in any Court. Sub-section (7), however, specifically states that nothing in Section 24 should apply to a society belonging to a class notified under sub-section (2) of Section 22.

7. In case before us, there is no dispute that Gujarat State Legislature has the requisite competence in terms of Entry No. 32 of List II of Schedule 7 of the Constitution of India to enact the Statute in question.

8. Therefore, the next question is whether the provisions contained in Sections 22(2) or 24(1) and 24(2) of the Act are violative of any of the provisions of the Constitution of India or the Act itself.

9. At this stage, we cannot lose sight of the fact that while dealing with the question before us, we are not concerned with the question of formation of a new society, but the question before us is whether the procedure provided in Section 24 of the Act for admission of a member in a lawfully constituted existing society is violative of any of the provisions of law. There is no dispute that by virtue of Article 19(1)(c) of the Constitution of India, all the citizens have the right to form an association or union or co-operative society according to their choice. The choice of such persons forming a co-operative society is reflected in the bye-laws of the society, subject however, to the provisions relating to co-operative society as indicated in Part-IXB of the Constitution of India and the Co-operative Societies Act concerned.

10. We find that in the meantime, the Supreme Court in the case of Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, , had an occasion to consider the decision of the Supreme Court in case of Daman Singh (AIR 1985 SC 973) (supra), and in that context made the following observations:

"The effect of the observations in Daman Singh's case (supra), is only that co-operative societies, from their very inception are governed by the statute, the Co-operative Societies Act, that they are created by statute they are controlled by the statute and so there can be no objection to statutory interference with their composition or functioning and no merit in a challenge to statutory interference based on contravention of the individual right of freedom of association. As we understand the statement of the law by this Court in Daman Singh's case, it only means that the action of the Society in refusing membership to a person has to be tested in the anvil of the provisions of the Act, the Rules and its Bye-laws. Be it noted that the bye-laws had already been approved on the basis that it is consistent with the Act and the Rules. Even then, it may be possible in a given case to point out that a particular bye-law was against the terms of the Act or the Rules. Daman Singh does not indicate that the Act, the Rules and the Bye-laws for that matter, have to be given the go-by, merely because the particular bye-law or action of the Society may not accord with our concept of fairness or propriety in terms of the rights available to an ordinary citizen. Therefore, in the light of the observations in Daman Singh what one has to search for, is a provision in the Act or the Rules which prevails over Bye-law No. 7 of the Society, confining membership in it, to only a person who is a Parsi. Section 24 of the Act, no doubt speaks of open membership, but Section 24(1) makes it clear that, that open membership is the membership of a person duly qualified therefor under the provisions of the Act, the Rules and the Bye-laws of the Society. In other words. Section 24(1) does not contemplate an open membership de hors the bye-laws of the Society. Nor do we find anything in the Act which precludes a society from prescribing a qualification for membership based on a belief, a persuasion or a religion for that matter. Section 30(2) of the Act even places restrictions on the right of a member to transfer his right. In fact, the individual right of the member, respondent No. 2 has got submerged in the collective right of the Society. In State of U.P. and another etc. Vs. C.O.D. Chheoki Employees" Co-op. Society Ltd. and others etc., , this Court after referring to Daman Singh's case (supra) held in paragraph 16 that:

"Thus, it is settled law that no citizen has a fundamental right under Article 19(1) (c) to become a member of a Co-operative Society. His right is governed by the provisions of the statute. So the right to become or to continue being a member of the society is statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act. Rules and Bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act. Rules and the Bye-laws as he has his right under the Act. Rules, and the Bye-laws and is subject to its operation. The stream cannot rise higher than the source."

(Emphasis supplied by us).

11. Therefore, a society validly constituted under the provisions of the Act has the right to admit any new member provided such member is duly qualified therefor under the provisions of the Act, Rules and the Bye-laws of such society. The sub-section (1), however, gives a discretion to the society to refuse admission to a new member who has applied having all requisite qualifications, subject however, that sufficient cause exists for refusing such membership. What is "sufficient cause", although has not been defined under the Act, sub-section (3) of Section 24 makes it mandatory for the society to give reason in writing within a specified period and in terms of the scheme provided in sub-section (4) to sub-section (6), such reason is subject to challenge before the Registrar by way of an appeal. Although sub-section (6) of Section 24 states that decision of the Registrar under sub-section (4) shall be final and shall not be called in question in any court, it is well-settled that such provision does not stand in the way of the High Court in exercising judicial review.

12. We, therefore, find that none of the aforesaid provisions of Section 24 can be said to be ultra vires any of the provisions of the Constitution of India.

13. Although Mr. Gupta, the learned advocate appearing on behalf of the appellant strenuously contended that the conferment of power on any of the society to refuse membership on sufficient ground being vague one, should be declared as ultra vires Article 14 of the Constitution of India being arbitrary, we are not impressed by such submission. We have already pointed out that decision of the society being subject to appeal before a statutory authority and being subject to further judicial review before the concerned High Court under Article 226 of the Constitution of India, cannot be said to be arbitrary. In our opinion, a society can, on valid ground, refuse membership, where the new membership will be prejudicial to the interest of the society. For example, if in spite of having the requisite qualification based on the bye-laws of the society, a person who is guilty of an offence involving moral turpitude applies for admission, the society can be justified in refusing to admit such a person as a member on the ground of protection of the existing members of the society. Similarly, if it appears from the bio-data supplied by the prospective member that the income of such person is so meagre that he will not be able even to pay the monthly maintenance amount payable by the members of the society or future maintenance, the society, to avoid unpleasant situation and impediment in smooth running of the society, may decide to refuse admission. The aforesaid examples are illustrative and not exhaustive. However, the ground of refusal must be a reasonable one justifying the rejection of new membership.

14. In para-55 of the judgment, the Division Bench of this Court in the case of Amreli District Co-operative Sales and Purchase Union Ltd. and others (supra) made the following observations:

55. As regards sub-section (1) of Section 24, we are of the opinion that it also suffers from the same vice of it being violative of Article 19(1)(c). The marginal note of Section 24 indicates that it provides for open membership which only

postulates that the society has to keep its doors open for all those persons who are prepared to subscribe to their objectives and there should be no restrictive clause refusing membership on the ground of caste, creed or religion etc. Admittedly it can never mean that any person can demand as of right admission to any co-operative society. This position is accepted by the State Government in the reply-affidavit as stated above. Whether a person should be admitted even though he may be qualified to the membership of a society is a matter within the internal management of that society. It is for the members of the society to decide whether or not a person seeking admission should be enrolled as a member. Section 24(1) in our opinion is either redundant or violative of Article 19(1)(c). If as to with whom one should associate is inherent content of the right to associate under Article 19(1)(c) any provision, as in the nature of Section 24(1), investing the right of admission in any person duly qualified under the Act, the Rules and the Bye-laws of the society, unless there is sufficient cause for refusing the membership, is clearly violative of Article 19(1)(c) since the condition that admission can be refused only on the ground of the cause which must be objectively sufficient cannot be said to be a restriction necessary on the ground of public order or morality even if it is reasonable in any case, an aggrieved person has always a right to move the Court by seeking appropriate remedies by regular civil action in the civil court or before Registrar by invoking his special jurisdiction where the membership is refused on flimsy and trivial grounds. Sub-section (2) also, in our opinion, providing for the deemed membership to such person who is not communicated the decision of the society to which he is seeking the membership within a period of three months, is equally offensive of Article 19(1)(c) of the Constitution for the self-same reasons. The consequential provisions of appeal and limitation thereof in sub-sections (3), (4), (5) and (6) would also fail since the main provisions have been held to be suffering from the infirmity as stated above. Sub-section (7) also becomes redundant in the view of the matter which we have taken on the impugned provision in sub-section (2) of Section 22. We are, therefore, of the opinion that the provisions contained in Sections 22(2) and 24(1) & (2) are bad in law and void inasmuch as they are violative of Article 19(1)(c) of the Constitution.

15. We, with great respect to the aforesaid Division Bench, are unable to approve the aforesaid observations when by the provision contained in Section 24(1) of the Act, the society is vested with the authority to refuse the membership on sufficient grounds. The Division Bench in the aforesaid paragraph 55 held that the aggrieved person has always a right to move the Court by seeking appropriate remedy by regular civil action in Civil Court or before Registrar by invoking his special jurisdiction where the membership is refused on flimsy and trivial grounds and thus, Section 24 of the Act is redundant and violative of Article 19(1)(c) of the Constitution of India. With great respect to the aforesaid Division Bench, we are unable to accept the observation that the decision under Section 24(2) of the Act can be challenged in the Civil Court. The Civil Court's jurisdiction, as it appears from Section 24(6) of the Act, is clearly barred and the

decision of the appellate authority can be challenged by approaching the State Government by taking recourse to the provision contained in Section 155 of the Act.

16. In this connection, we may profitably refer to the decision of the Supreme Court in the case of Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others, , where the Supreme Court, while dealing with the similar provisions contained in Maharashtra Co-operative Societies Act, 1960 (24 of 1961), held that the order of the appellate authority is subject to special power by the State Government under Section 154 of the said Act which is *pari materia* with Section 155 of the present Act. According to the Supreme Court, such decision of the State Government is subject to the judicial review by High Court.

17. Similarly, a competent legislature has the right to take away the jurisdiction of a civil court in respect of a particular subject-matter and merely because it has taken away the jurisdiction of the civil court, for that reason, the statute cannot be declared *ultra vires*. However, the exclusion of the civil Court's jurisdiction must be either express or must appear by necessary implication. In view of the express provision in Section 24(6) of the Act declaring that the decision of the Registrar in appeal shall be final and shall not be called in question in any Court sufficiently expresses the intention of the exclusion of jurisdiction of the civil Court. Our above conclusion will find support from the following observations of the Constitution Bench decision of the Supreme Court in the case of Lala Ram Swarup and Others Vs. Shikar Chand and Another, .

"One of the points which is often treated as relevant in dealing with the question about the exclusion of civil Courts' jurisdiction, is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is: does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions? Applying these two tests, it does appear that the words used in S. 3(4) and S. 16 are clear. Section 16 in terms provides that the order made under this Act to which the said section applies shall not be called in question in any Court. This is an express provision excluding the civil Courts' jurisdiction. Section 3(4) does not expressly exclude the jurisdiction of the civil Courts, but, in the context, the inference that the civil Courts' jurisdiction is intended to be excluded, appears to be inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the civil Courts is excluded in relation to matters covered by the orders included within the provisions of S. 3(4) and S. 16."

18. Thus, the observation of the Division Bench in the case of Amreli District Co-operative Sales and Purchase Union Ltd. & Ors. (*supra*), that Section 24(1) of the Act is either redundant or violative of Article 19(1)(c) of the Constitution of India is equally devoid of any substance as because of the exclusion of the jurisdiction of the civil Court, the provisions cannot be redundant and at the same time, it is

in no way violative of Article 19(1)(c) of the Constitution in view of the subsequent decisions of the Supreme Court in the case of Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, explaining Daman Singh and Others Vs. State of Punjab and Others, .

19. We also cannot approve the observation that providing for the deemed membership to a person, who is not communicated the decision of the society to which he is seeking the membership within a period of three months as provided in Section 22(2) of the Act, violates Article 19(1)(c) of the Constitution of India. There are several such provisions of deeming provisions in various statutes and it is a consistent view of the courts that such provision is valid provided the applicant has the requisite qualifications.

20. Our above view finds support from the following observation of the Supreme Court in the case of Srinivasa Rao v. Land Tribunal, Sedam, reported in (2001) 9 SCC 383, where the Apex Court in dealing with similar deeming provisions contained in Karnataka Land Revenue Act made the following observations:

"The Land Tribunal, Sedam, as also the High Court went by the date of the order of the Assistant Commissioner, Sedam, and came to the conclusion that since the permission for conversion was granted after 17-3-1974, it would be of no benefit to the appellant. In recording this finding, the Tribunal as also the High Court, both, overlooked the provision of Section 95(5) of the Karnataka Land Revenue Act which provides as under:

"95. (5) Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within a period of four months, from the date of receipt of the application, the permission applied for shall be deemed to have been granted."

4. Under this provision a legal fiction has been created to the effect that if the applicant is not informed of the order on the conversion application within four months from the date on which the application was made conversion shall be deemed to have been passed.

5. Since in the instant case the order granting conversion was passed on 24-7-1974, i.e., well after the period of four months, the provision of Section 95(5) of the Act became immediately applicable and therefore the application shall, fictionally, be deemed to have been granted on the expiry of four months from the date on which it was made. Since the application was made on 17-4-1973, it shall be deemed to have been granted on 17-8-1973 which is a date earlier than the relevant date, namely, 17-3-1974 and, therefore, the said area could not have been treated as part of agricultural holding of the appellant for purposes of determining the ceiling on surplus area under the Act."

(Emphasis supplied by us)

21. Thus, there is no illegality in the above type of deeming provision in a statute

but those type of provisions are always subject to the condition that the applicant must comply with requirement of the statutes for obtaining the deemed benefit. In other words, without having the requisite qualification, if a person applies for the benefit, a person by dint of such deeming clause cannot get the deemed benefit.

22. Considering the entire materials on record, we, therefore, hold that Section 24 or Section 22(2) of the Act do not violate any of the provisions of the Constitution, and, therefore, the view expressed by the Division Bench of this Court in the case of Amreli District Co-operative Sales and Purchase Union Ltd. and others (supra), does not lay down the correct proposition of law. We, consequently, hold that the plea of the appellant that the application under Section 24 of the Act filed by the Respondent Nos. 2 to 4 should not be proceeded being violative of Article 19(1)(c) of the Constitution is not tenable in the eye of law. The learned single Judge rightly refused to interfere with the order of the Registrar refusing to stay the proceedings under Section 24 of the Act. The appeal is thus devoid of any merit and is consequently dismissed. No costs.