

(2001) 07 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 967 of 2001

Madhukar Baburao Deshmukh

APPELLANT

Vs

Jalgaon Jilla Maratha Vidya Prasarak Co-op. Samaj Ltd.,
Jalgaon and Others

RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2002) 1 ALLMR 805 : (2002) 3 MhLj 201

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : P.M. Shah and L.V. Sangit, for the Appellant; V.D. Hon, holding for K.S. Bhorre, and N.B. Khandare, A.G.P. for respondents Nos. 3 to 6, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. Rule. Rule made returnable forthwith by consent.

3. The petitioner challenges the order dated 4-9-2000 passed by the Minister for State (Co-operation) in exercise of powers stated to have been exercised u/s 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter called as "the said Act") on the ground that the same is without jurisdiction inasmuch as, the revisional powers u/s 154 of the said Act are sought to be exercised against the order of the revisional authority itself; Secondly, that the respondent having withdrawn the writ petition No. 5477 of 1999 without any leave or liberty to pursue any other remedy, had abandoned his claim and, therefore, was not entitled to agitate the same in revisional jurisdiction.

4. The/acts in brief, relevant for the decision are that, the petitioner herein filed revision application No. 57/1998 before the Divisional Joint Registrar,

Cooperative Societies, Nashik u/s 154 of the said Act against the notice dated 27th March, 1998 issued by the respondent No. 4 u/s 73(3) of the said Act. By the said notice, the respondent No. 4 had declared 24 persons to have been elected as the managing committee of the Jalgaon Jilla Maratha Vidya Prasarak Co-op. Samaj Ltd., Jalgaon, Dist. Jalgaon. According to the petitioner, the election was not proper and correct as the election process was not conducted in accordance with the provisions of law and proper procedure was not followed. The Divisional Joint Registrar, Co-operative Societies, Nashik allowed the said revision application by its order dated 31st December, 1998 and set aside the said notice and the declaration dated 27-3-1998. Being aggrieved, the respondent No. 2 and some others filed Writ Petition No. 5477 of 1999 but, the same was subsequently, withdrawn on 22nd November, 1999. Thereafter, in August, 2000 the respondent No. 2 preferred revision application against the order of the Divisional Joint Registrar dated 31-12-1999 before the State Government along with an application for condonation of delay. The same was heard by the Minister for the State (Co-operation) and by an ex parte order, dated 5-1-2000, condoned the delay and stayed the order dated 31-12-1998 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik. Subsequently, the said order of stay was vacated by the Minister on 11-4-2000. Thereupon, the respondent No. 2 and others filed an application for restoration of the order of stay dated 5-1-2000. The said application was rejected on 10-5-2000. Meanwhile, the writ petition bearing No. 2169/2000 was filed by the petitioner herein against the ex-parte stay order dated 5-1-2000. Yet, another writ petition No. 2139/2000 was filed by the respondent No. 1 and 2 against the order vacating the interim stay dated 11-4-2000 as well as rejecting the restoration of stay dated 10-5-2000. By common order dated 19-6-2000, in both the above petitions, this Court directed the Minister to decide the application for condonation of delay prior to considering the main petition within a period of specified days and in case of condonation of delay, thereafter to dispose of the revision petition on merits after hearing the parties within the specified time. Thereafter, delay in filing revision application before the Minister was condoned by the Minister by its order dated 5-7-2000 and after hearing the parties, the impugned order was passed on 4-9-2000.

5. Relying upon three decisions namely, in the matter of Bhupendra Villa Premises Co-operative Society Ltd. and another Vs. Chandrakant G. Shah and others, Shri Ramesh T. Gopalani Vs. The Janata Sahakari Bank Ltd. and Another, and Syed Afzal Hussain Hussaini Vs. Hon'ble Minister, Revenue and Forest Department and Others, and referring to Section 154 of the said Act, it was submitted by the learned Senior Counsel for the petitioner that the State Government cannot interfere in revisional jurisdiction u/s 154 of the said Act against an order passed by the Registrar in revisional jurisdiction under the same section of the said Act itself. The supervisory powers which can be exercised under the said section cannot be exercised twice in relation to the same matter. As against this, it was sought to be contended on behalf of the respondent that

no such restrictions are contemplated u/s 154 of the said Act and there is no bar even for second revision particularly, when the first exercise of revisional jurisdiction was not at the instance of a party who prefers second revision. According to the learned Advocate for the respondent, the Government is empowered to intervene to do justice whenever occasion demands. Reliance is sought to be placed in the decision of Apex Court in the matter of Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others, and the Division Bench of the Andhra Pradesh High Court in the matter of Central Co-operative Stores, Vizianagaram v. The State of Madras, by Secretary, Development Department, Government of Madras (now Andhra Pradesh) and another reported in 1959 Andhra Weekly Reporter, 332 as well as of the Apex Court in the matter of Bakulabai and Anr. v. Gangaram and Anr. reported in 1988 Mh.LJ. 330.

6. Section 154 of the said Act provides that the State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in Sub-section (9) of Section 149 where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality, or propriety of any such decision or order, and as to the regularity of such proceedings. It further provides that if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for, should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just. Sub-section (2) thereof provides that the revision under the said section shall lie to the State Government, if, the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer. Sub-section (3) thereof provides that no application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period. Sub-section (4) provides that the State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government. Undisputedly, this section as it stands is an amended section pursuant to the Maharashtra Act III of 1974. Prior to the said amendment, the expression "suo motu or on an application" was not included in the said section. The said expression was inserted in the said section by the said amendment in the year 1974.

7. While considering the scope of powers of Government u/s 154 of the said Act, as it stood prior to amendment, the Apex Court in Everest Apartments case had held that the power is reposed under the said section in Government to intervene to do justice when occasion demands it and of the occasion for its exercise

Government is made sole judge. As regards whether such power can be exercised at the instance of a party on his application or not, the Apex Court had observed thus :--

"It is, of course, true that the words "on an application of a party" which occur in Section 150 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which, Government may be interested to intervene."

8. It is to be noted that the ruling of the Apex Court on the scope of power of the Government u/s 154 of the said Act, as it stood prior to its amendment, was in a case where attention was drawn to a matter by an application by the party, even though the section, as it stood then, did not specifically provide for exercise of powers on an application by a party. The observations in the said decision were made while dealing with the contention of the party that the power under the said section not being coupled with any duty, need not be exercised by the Government even if moved to take action unless the Government itself feels inclined to do so. The issues before the Apex Court for consideration and in respect of which the above observations have been made by the Apex Court, were in relation to the points raised to the effect that there was no duty cast upon the Government to exercise powers u/s 154 of the said Act in each and every case and it was purely in the discretion of the Government to exercise such powers. Therefore, merely because a party had filed an application drawing attention of the Government to invoke its power in a particular case, Government was not obliged to exercise such powers. The said contention and the issue which was raised, were in relation to the decision of the District Deputy Registrar in an appeal u/s 23(2) of the said Act. The main point for consideration before the Apex Court was whether the revisional jurisdiction can be exercised by the Government u/s 154 in relation to the orders passed by the Registrar or the Deputy Registrar in exercise of their appellate jurisdiction u/s 23(2) of the said Act. The point for consideration was not as to whether there can be a second revision application or whether the State Government can exercise powers u/s 154 of the said Act in relation to the orders passed by the Registrar or the Additional Registrar in exercise of revisional jurisdiction. Therefore, the decision in Everest Apartments" case can be of no help in the matter in hand. In order to understand and appreciate the binding force of a decision, it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. The enunciation of the reason or principle on which a question before a Court has been decided alone is binding as a precedent. [Vide : Union of India (UOI) and Others Vs. Dhanwanti Devi and Others,].

9. The learned Single Judge of this Court in Bhupendra Villa Premises case, after considering the decision of the Apex Court in Everest Apartments" case has clearly observed that in Everest Apartments" case, the State Government had declined to exercise its powers u/s 154, as then it stood, against an order u/s 23 of the said Act passed by the Registrar by relying upon Section 2(3) of that Act and in that case an appeal had been filed to the District Deputy registrar against the rejection of membership by the Society and the question was as to whether a revision was available u/s 154. The learned Single Judge has transcribed a very important observation of the Apex Court in the said judgment, which reads thus:--

"This power can be exercised in all cases except in a case in which similar powers have already been exercised."

10. Indeed, while dealing with the revisional powers of State Government u/s 154 as it stood then, the Apex Court had observed that the said powers can be exercised in all cases except in cases in which similar powers have already been exercised by the Tribunal u/s 149(9) of the said Act. Section 149(9) of the said Act provides that, the Co-operative Appellate Court may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case, it appears to the Co-operative Appellate Court that any such decision or order should be modified, annulled or reversed, the Co-operative Appellate Court may pass such order thereon, as it may deem just. The observations of the Apex Court in Everest Apartments" case to the effect that the powers u/s 154 can be exercised in all cases except in cases in which similar powers have already been exercised by the Tribunal u/s 149(9) is an elaboration of the intention of the legislature regarding the exercise of revisional jurisdiction u/s 154 by the revisional authority. Apparently, therefore, the judicial pronouncement by the Apex Court in that regard discloses that Section 154 of the said Act contemplates exercise of revisional jurisdiction against an order or decision passed in any proceedings other than in revisional jurisdiction. In Bhupendra Villa Premises case, the learned Single Judge of this Court, placing reliance upon the two earlier decisions of the Apex Court in the matter of Vishesh Kumar Vs. Shanti Prasad, and Aundal Ammal Vs. Sadasivan Pillai, has held that prima facie, an order contemplated u/s 154(2) whereunder a revision is available to the State Government would be an order other than an order in revision passed by the Registrar and this is because any interpretation providing for two revisions, is against the public policy. In Ramesh T. Gopalani's case, after referring to Bhupendra Villa Premises" case and considering the decision in Nathuram son of Shyamlal Mahajan v. District Co-operative Bank Ltd. Shivpuri and Ors. reported in 1970 MPLJ 398 it has been held that Section 154 does not contemplate two revision applications in the same matter.

11. It is also sought to be contended that Sub-section (2) of Section 154 of the said Act specifically provides that revision shall lie to the State Government if the

decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer. Once an authority empowered to exercise the revisional jurisdiction, exercises such jurisdiction, no second exercise of the revisional jurisdiction is permissible u/s 154(1) itself. Reading Sub-section (1) and (2) together and along with the provisions contained in Section 149(9), therefore, it gives clear indication that the revisional powers of the State Government against the order of the Registrar, which are contemplated under Sub-section (1) and (2) of Section 154 of the said Act, are in respect of the order or decision passed by the Registrar, the Additional Registrar or a Joint Registrar exercise of their original or appellate jurisdiction.

12. The learned Advocate for the respondents has also submitted that there is no bar to exercise revisional powers u/s 154 at the instance of the party who was not a party to the revisional proceedings before the first revisional authority and in that connection, reliance is placed on Bakulabai's case. It is well established, to understand the scope of the powers under a section in a statute, reference cannot be made to a provision of totally different statute which is in no way *pari materia* with the former. Therefore, the decision on the scope of revisional powers u/s 397 of Criminal Procedure Code can be of no assistance while considering the scope of revisional powers u/s 154 of the said Act. Besides, in Bakulabai's case, the challenge by the wife before the Sessions Judge in regard to jurisdiction was confined to that part of the Magistrate's order awarding the amount of maintenance and not to the main claim of maintenance which was in her favour. The decision on merits of the claim went against her for the first time before the Sessions Judge and that was the subject matter of her revision before the High Court. Besides, u/s 397(3) of the Criminal Procedure Code operates as a bar to a second revision in the High Court if the same person has already preferred a revision application before the Sessions Judge- The prohibition does not preclude a second revision by another person. The provisions of law contained in Section 397(3) of the Code are very clear in that regard. However, it is also to be noted that the Apex Court in later decision in *Rajathi Vs. C. Ganesan*, has held that the bar of second revision after dismissal of first one by the Sessions Court cannot be side-tracked by resorting to inherent powers of the High Court as a substitute for second revision. The decision in Bakulabai's case was in peculiar set of facts and considering the provisions of law as are found in Section 397(3) of the Code. It is not to be forgotten that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follows from it. (*Vide Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*,).

13. The learned Advocate for the respondents has also referred to a decision of the Division Bench of Andhra Pradesh High Court in *Central Co-operative Stores* case. Therein, the Division Bench of Andhra Pradesh High Court has held that the mere fact that concurrent jurisdiction is vested in two Tribunals does not debar the superior authority exercising its revisional powers against the order of the

inferior body and it is only in a case where two Tribunals, which are co-ordinate in rank, are clothed with concurrent powers, then one Tribunal cannot exercise its revisional jurisdiction over the other. There can be no quarrel about the said proposition of law. However, the point which is required to be noted is the provisions relating to the revisional powers u/s 57 of the Madras Co-operative Societies Act are not in pari materia with the provisions contained in Section 154 of the said Act. Section 57 of the Madras Co-operative Societies Act reads thus:--

"The State Government or the Registrar may call for and examine the record of any enquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such order.

In any case it shall appear to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon as to it or him, may seem fit."

Apparently, the powers given to the revisional authorities both, the State and the Registrar u/s 57 of the Madras Co-operative Societies Act are amply wide and there is no restriction from exercising such powers even against the proceedings and orders before the revisional authorities by the higher revisional authorities. It is in that context the Andhra Pradesh has observed that the scope of the section is not limited to original orders passed by officers subordinate either to the Registrar or to the Government and that being the situation, there is no reason why a restriction should be imported into that section and there is nothing to indicate in the section which invests the order passed by the Registrar with any finality so as to operate as a bar on the Government exercising its revisional jurisdiction. That is not the case in relation to the exercise of revisional jurisdiction u/s 154 of the said Act. The provision of law contained in the said Section 154 read with other provisions of law and the scheme of the said Act, it is abundantly clear that the same speak of certain restrictions in the nature of repetition of exercise of revisional jurisdiction by the authority once the same powers are exercised by another authority under the same section. Being so, there is no substance in the contention that the State Government through the Minister could have exercised revisional jurisdiction u/s 154 of the said Act irrespective of the fact that such jurisdiction was already exercised by the Divisional Joint Registrar of Co-operative Societies, Nashik in respect of the above matter.

14. The second ground of challenge is that the respondent No. 2 having withdrawn the writ petition No. 5477 of 1999, could not have re-agitated the issue before the authority in revisional jurisdiction and in case, the claim having been abandoned by unconditional withdrawal of petition, it was not permissible for the respondent No. 2 to re-agitate the issue. In that connection, reliance is placed in a decision of the Apex Court in the matter of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, . It was held

therein by the Apex Court that where a petitioner withdraws a petition filed by him in the High Court under Article 226/227 without permission to institute a fresh petition, remedy under Article 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same article, though other remedies like suit or writ petition before Supreme Court under Article 32 would remain open to him. The principle underlying Rule 1 of Order XXIII of the CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also. It has been further observed that the principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. *Invito beneficial non datur*. The law confers upon a man no rights or benefits which he does not desire. Whoever, waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason, the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Rule 1(3) of Order XXIII. The principle underlying the above rule is founded on public policy. All these observations of the Apex Court are in relation to filing of fresh writ petition on the same cause of action once the earlier writ petition is withdrawn without permission to file fresh petition. Paras 8 and 9 of the decision of the Apex Court clearly refer to the point for consideration in that matter and in relation to which the ruling was given. It reads thus:--

"The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also."

Again, in para 9 of the decision, it is stated that:--

"The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article."

This however, will not preclude the party withdrawing the writ petition from pursuing the legal remedy, if available to him under any statute otherwise than seeking redress from the High Court under Articles 226 and 227, once a writ petition filed earlier is withdrawn without any liberty to file fresh petition. In fact, the Apex Court in *Sarguja Transport's* case has clearly held that while the withdrawal of a writ petition filed in a High Court without permission to file fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India; since such withdrawal does not amount to res

judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. Undisputedly, the revisional jurisdiction is available u/s 154 of the said Act to the aggrieved party in relation to the orders and decisions passed by the lower authorities. Being so, merely because writ petition was withdrawn without liberty to file fresh petition, party from seeking necessary remedy, if available, in the facts and circumstances of the case, to the party u/s 154 of the said Act. However, as already observed above, in the case in hand, the revisional jurisdiction having been once exercised by one authority under the said provision, merely because the petitioner was not a party to the said proceedings, it cannot be said that the State Government could exercise revisional jurisdiction u/s 154 in relation to the orders passed by the Divisional Joint Registrar of Co-operative Societies in its revisional jurisdiction.

15. While defending the exercise of revisional powers by the State Government u/s 154, it was sought to be contended on behalf of the respondents that even assuming that the authority had no jurisdiction to exercise such powers, considering the fact that the order dated 31-12-1998 was passed by the Divisional Joint Registrar, Co-operative Societies, Nashik without affording any opportunity to the respondent No. 2 and the same being to the prejudice of the respondent No. 2 and by the impugned order, the authority having merely remanded the matter for consideration and pronouncement of a decision on merits, this Court should not exercise its jurisdiction under Article 227 of the Constitution of India as it would virtually amount to render injustice rather than imparting fair justice to the parties. As already observed above, the facts of the case disclose that after issuance of notice dated 27-3-1998 by the respondent No. 4, the matter was carried in revision by the petitioner before the Divisional Joint Registrar, Co-operative Societies, Nashik. It is also a matter of record that the name of the respondent No. 2 figured in the list of 24 persons who were stated to have been elected as Managing Committee by notice and declaration dated 27-3-1998. Undisputedly, the respondent No. 2 was not party to revision application No. 57/1998 filed by the petitioner against the notice dated 27-3-1998, the fact that in the earlier round of litigation before this Court in Writ Petition No. 2168/2000 and 2139/2000, though the petitions were in relation to the orders pertaining to the condonation of delay or refusal to grant stay, and the petitioner had enough opportunity to raise the point relating to the absence of second revisional jurisdiction to the Government u/s 154 in view of the fact that already such revisional powers had been exercised by the Divisional Joint Registrar, Co-operative Societies, Nashik, and though failure to raise the same would not debar the petitioner from raising such point being a point of jurisdiction going to the root of the case before the authority, all these factors are certainly to be considered while exercising the powers under Article 227 and more particularly, in the facts and circumstances of the case which are elaborately discussed hereinabove. Apparently, the exercise of revisional powers

by the Divisional Joint Registrar, Co-operative Societies, Nashik in revision application No. 57/1998 was without hearing the respondent No. 2 whose name undisputedly, figures in the list disclosed as the Managing Committee of the Cooperative Society. By the impugned order, considering the said fact, has remanded the matter to the same authority i.e. Divisional Joint Registrar, Cooperative Societies, Nashik to reconsider the matter after hearing the parties afresh including the respondent No. 2. Since, the Divisional Joint Registrar, Cooperative Societies, Nashik had set aside the declaration dated 27-3-1998 which was resulting in quashing of the declaration in favour of the respondent No. 2 and that too, without hearing him, the same was apparently without following the basic principles of natural justice. In this set of facts, it was sought to be contended by the learned Advocate for the respondents referring to the decision of the learned Single Judge in Ramesh T. Gopalani's case that this Court should refrain from interfering in the impugned order in exercise of powers under Article 227. Ex facie, order dated 31-12-1999 was without hearing the respondent No. 2 and it was to the effect of quashing the declaration of election of the respondent No. 2 as the member of the Managing Committee of the society. Section 154 itself provides that the decision or order of the lower authority can be modified, annulled or reversed only after giving the person affected thereby an opportunity of being heard. The provisions of law contained in Section 154, therefore, apparently requires compliance of basic principles of natural justice before any order of lower authority is being interfered with. Here is a case where the order in favour of the respondent No. 2 was set aside without hearing him. The Apex Court in Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, , has held that where setting aside an order on the ground of lack of jurisdiction would result in the revival of an illegal order, then refusal to interfere even with the order lacking jurisdiction would be justified. Interference in the impugned order in the case in hand, even if the impugned order is without jurisdiction, would virtually amount to revival of illegal order dated 31-12-1999. In the facts and circumstances of the case, therefore, it is preferable to refrain from interfering in the impugned order.

16. In the result, therefore, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

17. It is made clear that this Court has not expressed any opinion on the merits of the case or the rights of the parties and the authority below has to decide the matter in accordance with the provisions of law without being, in any way, influenced by any of the observations made therein.