
(2003) 07 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No 4951 of 1995

Maganbhai Khanabhai Nandodaria

APPELLANT

Vs

Vandematram Co-operative Society Ltd.

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Co-operative Societies Act, 1961 — Section 153(1), 153(6) , 155, 36, 36(1)

Limitation Act, 1963 — Article 113

Citation : (2003) 23 GLH 482

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Y.N. Ravani, for the Appellant; Shirish Joshi and Baiju Joshi for Respondent No. 1-2, for the Respondent

Judgement

K.A. Puj, J.—The present petition is filed under Article 227 of the Constitution of India challenging the order dtd. 06.05.1995 passed by the Gujarat State Cooperative Tribunal, Ahmedabad in Appeal No. 369/1993.

2. The brief facts giving rise to the present petition are that the petitioner who was the original plaintiff, had filed Lavad Suit No. 2575/1991 in the Board of Nominees Court, Ahmedabad contending that the present respondent No.1 Society had wrongfully excluded him from the membership of the Society, by passing resolution No.2 in its Annual General Meeting held on 16.09.1979. It is further stated that the reason behind his expulsion was that present respondents No.2 and 3 were mismanaging the affairs of the Society and, therefore, the petitioner had addressed a letter to the District Registrar on 27.11.1978. The said action of the petitioner was not liked by the office bearers of respondent No.1 Society and, therefore, with malafide intention to remove the petitioner from the membership of the said Society, the aforesaid resolution was passed.

3. It is further stated that the said resolution was not approved by the District Registrar and, therefore, the Society had preferred an Appeal No. 488/1981

which came to be dismissed on 09.10.1986 by the Registrar of Cooperative Societies, Gujarat State, Gandhinagar. Being aggrieved by the said order, the respondent No.1 Society had preferred a Revision Application u/s 155 of the Gujarat Cooperative Societies Act before the Deputy Secretary (Appeals), Cooperative Department, Gandhinagar and the said Revision Application was allowed by an order dtd. 01.09.1988. The order passed in the said Revision Application rested there and the same was not challenged by the present petitioner in any further proceedings.

4. It is further stated that the petitioner, thereafter, was advised to file a substantive suit and, accordingly, the petitioner had filed Lavad Suit No. 2575 of 1991 in the Board of Nominees Court at Ahmedabad. The said Lavad Suit came to be allowed by the Board of Nominees Court, holding that the resolution passed by the Society in its meeting held on 16.09.1979 was bad in law, illegal and void ab initio and, therefore, permanent injunction was served on the respondent No.1 Society restraining them from not giving any effect to the said Resolution.

5. Being aggrieved by the said order of the Board of Nominees Court, the respondent No.1 Society had preferred an Appeal No. 369/1993 before the Gujarat State Cooperative Tribunal, Ahmedabad and the said appeal came to be allowed by the Tribunal vide its judgment and order dtd. 06.05.1995 and the order passed by the Board of Nominees in Lavad Suit No. 2575/1991 was quashed and set aside by the Tribunal.

6. It is this order of the Tribunal which is under challenge in the present petition.

7. Mr. Y.N. Ravani, learned advocate appearing for the petitioner submitted that the order passed by the Tribunal is contrary to the provisions of law and against the evidence on record. He has further submitted that the Tribunal has failed to appreciate that the resolution of the Society removing the petitioner from the membership of the Society, in its Annual General Meeting dtd. 16.09.1979 is per se, illegal, bad in law and, therefore, the same is required to be quashed and set aside. The Board of Nominees Court has rightly granted the relief to the petitioner and while reversing the said order of the Board of Nominees, the Tribunal has committed an error in upholding the stand of the respondent No.1 Society. Mr. Y.N. Ravani has further submitted that the District Registrar and the Registrar both have decided the matter in favour of the petitioner and hence, it cannot be said that the petitioner had no case. Mr. Y.N. Ravani has further submitted that so far as the Deputy Secretary's order is concerned, that order was not in favour of the respondent Society on merits but the same was only on technical ground. He has further submitted that even the Deputy Secretary has also observed to the effect that the proceedings could be challenged by way of Lavad Suit u/s 96, accordingly, the petitioner has adopted the same course of action.

8. Mr. Y.N. Ravani has further relied on the Circular issued by the State Government dtd. 22.07.1988 whereby the State Government has taken the view

that even after taking recourse to the proceedings u/s 36 of the Gujarat Cooperative Societies Act, the Board of Nominees Court has the jurisdiction to entertain the dispute u/s 96 of the Act.

9. Mr. Y.N. Ravani has further submitted that the Lavad Suit filed by the petitioner before the Board of Nominees Court was maintainable as Hon''ble Supreme Court in the case of Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others, , while upholding the action of the Bank removing the member by invoking powers u/s 36 of the Act, the Hon''ble Supreme Court has held that nothing in the judgment shall be construed as an opinion touching the validity or otherwise of the resolution passed by the appellant Society under Sub-section (1) of Section 36 of the Gujarat Cooperative Societies Act, 1961. The Hon''ble Supreme Court has left the question to be determined by the appropriate statutory authority, namely, by raising a dispute before the Registrar, Co-operative Societies under Sub-section (1) of Section 96 of the Act, if permissible.

10. Mr. Y.N. Ravani has further submitted that the Tribunal has also committed an error while holding that when the order of Board of Nominees Court is without jurisdiction, the aspect of limitation is not required to be examined. In this connection, he invited this Court's attention to the decision of the Hon''ble Supreme Court in the case of STATE OF PUNJAB AND OTHERS V/s. GURDEV SINGH AND ASHOK KUMAR (A.I.R. 1992 SUPREME COURT 111) wherein the Hon''ble Supreme Court has held that a suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires, is governed by Art. 113 of the Limitation Act. To say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable.

11. Mr. Y.N. Ravani has further submitted that the Board of Nominees Court's jurisdiction is not excluded from entertaining the dispute regarding expulsion of a member from the membership of the Society as the member has no remedy if the District Registrar does not take any decision either regarding approval or disapproval within the period of three months from the date of receipt of the said resolution from the Society. In the petitioner's case, the District Registrar has not taken any decision within three months. However, the decision was taken after the expiry of the said period and the District Registrar has not approved the resolution passed by the Society. The Society, being aggrieved by the said decision has preferred an appeal before the Registrar of Cooperative Societies which was also dismissed and, thereafter, in Revision Application, the decision of Registrar of Cooperative Societies was reversed by the Deputy Secretary. It is at that point of time only, the cause of action arose, so far as the petitioner is concerned and instead of challenging the said decision before this Court, the petitioner, in receipt of legal advise has filed Lavad Suit before the Board of Nominees Court. Therefore, that Lavad Suit was rightly entertained by the Board of Nominees Court and it cannot be said that the said suit is not maintainable. He

has relied on the judgment of the Hon'ble Supreme Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . Though the said decision is rendered in the context of M. B. Sales Tax Act, the principles laid down therein are normally applicable to the present case. It is held that the questions of correctness of assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie, if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry. Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

12. Mr. Y.N. Ravani has lastly submitted that the petitioner being one of the members of the cooperative Society and the Act being beneficial to the members, and keeping in mind the cooperative concept, an equitable or judicious approach should be taken and the petitioner should not have been excluded merely on technicalities though on merits the authorities were with the petitioner. In this context, Mr. Y.N. Ravani has invited my attention to the observations made by the Tribunal in its order to the effect that both the authorities have concurred on merit in disapproving the resolution of expulsion. Despite this fact, the Tribunal has decided the matter only on the ground that the Board of Nominees Court has no jurisdiction to entertain the suit.

13. On the basis of the aforesaid submissions as well as the authorities relied upon by him, Mr. Y.N. Ravani has strongly urged before the Court that the order passed by the Tribunal is absolutely illegal, unlawful, unjust and contrary to the principles of law, equity and justice and hence, the said order is required to be quashed and set aside.

14. Mr. Baiju Joshi, learned advocate appearing with Mr. Shirish Joshi, learned advocate appearing on behalf of respondent Nos.1,2 submitted that the order passed by the Tribunal is in accordance with the principles of law laid down by the Hon'ble Supreme Court and also in consonance with the statutory provisions contained in the Act and hence, this Court, while exercising extra ordinary powers under Article 227 of the Constitution of India should not interfere with the said order. He has further submitted that the resolution was passed at the Annual General Meeting held on 16.09.1979 expelling the petitioner from the membership of the Society. The said resolution was forwarded to the District Registrar for his approval on 21.02.1980 and the District Registrar has not granted his approval on 05.07.1980 i.e. after the expiry of the statutory period of three months. The respondent Society has challenged the said decision of the Registrar in appeal before the Registrar of Cooperative Societies. However, the said appeal was dismissed and matter was taken up further in Revision before the Deputy Secretary (Appeals), Cooperative Department, Gandhinagar. The said appeal was allowed in favour of the respondent Society and order passed by the Deputy Secretary has become final and conclusive as no further action was taken

by the petitioner so far as the said order is concerned. Once the said order has become final, it is not open for the petitioner to challenge the decision of the Society by filing a Lavad Suit before the Board of Nominees Court. Board of Nominees Court has no jurisdiction once the resolution of expulsion is concluded by the process leading up to the decision rendered by the final authority, namely, the Deputy Secretary which has not been challenged before this Court.

15. Mr. Joshi has relied on the decision of this Court in the case of JITENDRA NATVARLAL THAKER AND OTHERS V/S. HIRABAG COOPERATIVE HOUSING SOCIETY LTD. AND OTHERS (1978) 19 G.L.R. 92) wherein it is held that specific type of dispute which would clearly fall under the provisions of Section 96 of the Act, where the legislature has provided for specific machinery for its resolution including a right of appeal would not be covered by Section 96 of the Act. The decision of Society to expel the deceased member which has been duly approved by the Registrar would become final under sub-sec. 6 of sec. 153. If an appeal is preferred, the order passed in appeal would become final. Such a final decision cannot be a subject matter of dispute under sec.96 of the Act.

16. Mr. Joshi has further submitted that once the resolution regarding expulsion of a member is passed by the Society u/s 36 of the Act and once it is submitted to the District Registrar for his approval or disapproval, the District Registrar shall have to take decision on the said resolution within three months from the date of the receipt of the said resolution from the Society and if no decision is taken within this period, the Registrar has no power to grant approval or disapproval subsequently. Since in the present case, the Registrar has not granted approval after almost five months from the date of receipt of the resolution, the said disapproval is not in accordance with the statutory provisions and hence, the said disapproval cannot be considered to be a valid one. In this connection, Mr. Joshi has relied on the decision of the Hon''ble Supreme Court in the case of THE BALASINOR NAGRIK COOPERATIVE BANK LTD. V/s. BABUBHAI SHANKERLAL PANDYA AND OTHERS (SUPRA) wherein it is held that after the society communicates a resolution for the expulsion of a member for acts detrimental to the working of the society passed in the manner required by sub-sec. (1) of S. 36 to the Registrar for his approval under the first proviso, there is a duty cast on the Registrar to exercise his power of according approval or disapproval within a period of three months from the date of such submission, as provided by the second proviso. The second proviso places a limitation on the powers of the Registrar. The obvious intention of the Legislature is that once the period of three months stipulated expires, the Registrar becomes functus officio and his power to accord approval or disapproval to the resolution passed by the society for expulsion of the member under sub-sec. (1) of sec. 36 lapses.

17. Mr. Joshi has further submitted that evenafter conclusion of the proceedings upto the level of Deputy Secretary, the petitioner has filed the Lavad Suit before the Board of Nominees Court which is not maintainable in view of the settled legal position and also in view of the statutory provisions contained in Section

36, 96, 153 and 155 of the Act. Mr. Joshi has further submitted that even if it is assumed that the Lavad Suit is maintainable, the same is barred by the period of limitation and hence, the order passed by the Board of Nominees Court is rightly quashed and set aside by the Tribunal and this Court, therefore, should not interfere with the said order of the Tribunal. He has further submitted that the petitioner has filed an appeal u/s 153(1)(b) of the Act as the appeal is filed against the order of the District Registrar not granting approval to the resolution passed u/s 36 of the Act. The decision rendered in the said appeal was taken up further in Revision before the Deputy Secretary and the decision of the Deputy Secretary has become final. He has, therefore, submitted that an appealable order cannot be made the subject matter of dispute u/s 96 of the Act and Board of Nominees Court has therefore no jurisdiction to entertain the suit raising the said dispute. He has further submitted that the Deputy Secretary has decided the Revision on 01.09.1988 and the Lavad Suit was filed on 31.12.1991. Section 97 of the Act prescribes the period of limitation. Section 97(2) of the Act states that the period of limitation in case of any dispute other than those mentioned in sub-sec. (1) which are required to be referred to the Registrar u/s 96 shall be regulated by the provisions of the Indian Limitation Act, as if the dispute were a suit, and the Registrar a civil court. Mr. Joshi has submitted that the dispute raised by the petitioner before the Board of Nominees Court does not fall within the purview of Section 97(1) of the Act and hence, it is governed by the Indian Limitation Act and the prescribed time limit for filing the suit is of three years which expired in September, 1991 and the suit having been filed in December, 1991 is, therefore, clearly barred by limitation. If one takes the view that the resolution expelling the petitioner from the membership of the Society is passed on 16.09.1979 and the District Registrar has granted his approval in July, 1979, or if one takes the view that deemed approval was granted after the expiry of three months, the cause of action for filing the Lavad Suit arose after the expiry of three years from the date of deemed approval of the resolution by the District Registrar and within the period of three years, the Lavad Suit should have been filed by the petitioner. Thus, in any view of the matter, the suit filed by the petitioner before the Board of Nominees Court is, as per the submission of Mr. Joshi is barred by the limitation. There was neither any delay condonation application before the Board of Nominees Court nor any decision rendered by the Board of Nominees with regard to the condonation of delay. Hence, by virtue of the provisions contained in Section 97(3) of the Act, it cannot be said that the delay was condoned by the Board of Nominees Court.

18. I have heard learned advocates appearing for the respective parties and have also seriously considered the submissions made on their behalf. I have also given my anxious thoughts to the relevant statutory provisions and the authorities cited before me. To appreciate the controversy raised in the present petition in its proper perspective, it is necessary to have a close look to the relevant provisions contained in the Act. Section 36 of the Act deals with expulsion of members which reads as under :-

36. Expulsion of members

(1) A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society :

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is submitted to the Registrar for his approval and approved by him:

Provided further that, the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective.

19. As per the above provision, the resolution is passed at the Annual General Meeting with three-fourth majority of all the members present and voting and the condition precedent for passing such resolution is that the Acts done by the member are detrimental to the proper working of the society. It is further laid down in the section that the resolution would not come into effect unless and until it is submitted to the Registrar for his approval and approved by him. It is further laid down that the Registrar has to take decision on the said resolution with regard to the approval or disapproval within a period of three months from the submission of the said resolution and if no decision is taken, the resolution would come into force. As stated earlier, it is an admitted position that the Registrar has not taken any decision within a period of three months from the date of submission of the resolution and the decision was taken by him after the expiry of that period i.e. after a period of five months whereby he had not granted approval to the said resolution passed by the Society. It is also an admitted position that after expiry of period of three months, the Registrar has not taken any decision and the petitioner has not challenged the said action of the Registrar of not granting approval or disapproval to the said resolution and considering the same as deemed approval, no action is taken by the petitioner. It is also an admitted position that the respondent Society has challenged the said decision of the Registrar in Appeal and Appeal was dismissed by the Registrar of Cooperative Societies and on further challenge to the decision of the Registrar, a Revision before the Deputy Secretary was filed and the said Revision came to be allowed. So, the action taken by the Society of removing the petitioner from the membership of the Society is upheld by the Deputy Secretary who is final authority and no further action is taken against his decision.

20. In light of the above admitted factual position, the question that arises for the consideration of this Court is as to whether the Lavad Suit filed by the petitioner before the Board of Nominees Court is maintainable or not. For this purpose, provisions contained in Section 96 as well as Section 153 are relevant.

Section 96 of the Act reads as under :-

96. Disputes :-

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society shall be referred in the prescribed form either by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if the parties thereto are from amongst the following :-

(a) a society is a committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society or the Liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of Section 46, and any person claiming through such a person;

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society u/s 46, whether such a surety is or is not a member of the society;

21. From the plain reading of section, one may argue that the expulsion of a member from the membership of the Society is a dispute touching the constitution and management of the society and it, therefore, clearly falls within the ambit of Section 96 of the Act. However, Section 36 deals with expulsion of the member and the same would come into effect or not only after approval, deemed approval or disapproval within the meaning of Section 36 by the District Registrar. The said action can be a subject matter of challenge in appeal within the meaning of Section 153(1)(b) of the Act and decision rendered in the said appeal can also be made subject matter of further Revision u/s 155 of the Act. The parties, after having taken recourse to these provisions u/s 36, 153 and 155 of the Act, can not raise the dispute u/s 96 of the Act by filing a Lavad Suit before the Board of Nominees Court. Though Hon''ble Supreme Court in the case of Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others, has observed that they have left the question to be determined by the appropriate statutory authority, namely, by raising a dispute before the Registrar, Cooperative Societies under Sub-sec. (1) of Sec. 96 of the Act, if permissible, this observation is in the nature of obiter dicta. As the Hon''ble Supreme Court was not directly concerned with the issue regarding dispute to be raised before the Board of Nominees u/s 96 of the Act, precisely for that reason, the Hon''ble Supreme Court has put the word "If permissible." This issue is, therefore,

squarely covered by the decision of this Court in the case of JITENDRA NATVERLAL THAKER AND OTHERS V/s. HIRABAG COOPERATIVE HOUSING SOCIETY LIMITED AND OTHERS (1978 (19) G.L.R. 92) wherein this Court has categorically held that " The decision of Society to expel the deceased member which has been duly approved by the Registrar would become final under Sub-sec. 6 of Section 153. If an appeal is preferred, the order passed in appeal would become final. Such a final decision cannot be a subject matter of dispute u/s 96 of the Act. This Court is, therefore, of the view that the Board of Nominees Court has no jurisdiction when the resolution is passed at the Annual General Meeting of the Society regarding expulsion of the member from the membership of the Society and the process for approval / disapproval or deemed approval is concluded by the machinery provided u/s 36 i.e. District Registrar, Registrar and Deputy Secretary u/s 36, 153 and 155 of the Act.

22. The reliance placed by the petitioner on the Circular issued by the State Government is also uncalled for and unwarranted as in the said Circular, it is specifically stated that if the expelling member has any objection against the said resolution, he can file Lavad Suit u/s 96, 97 and 98 of the Act. However, the resolution is required to be approved or disapproved by the District Registrar within three months from the date of submission of the resolution by the Society, the expelling member can wait upto three months and if no decision is taken by the Registrar within the said period, he can still file the Lavad Suit u/s 96, 97 or 98 of the Act. As a matter of fact, this Circular is not applicable to the facts of the present case as the Circular has come into force on 22.07.1988 and the petitioner was expelled from the membership of the Society at an Annual General Meeting held on 16.09.1979. It was sent for approval of the District Registrar on 21.02.1980 and the District Registrar has granted approval on 05.07.1980. In any case, Lavad Suit was not filed by the petitioner within the period of three years from the date of deemed approval. It cannot be said that the Board of Nominees court has power to entertain the Lavad Suit on the basis of this Circular. Even otherwise, the Circular issued by the State Government cannot override the statutory provisions contained in the Act and for this reason also, the Circular does not render any assistance to the petitioner.

23. Even with regard to the question of limitation in filing the Lavad Suit before the Board of Nominees Court raised before this Court, this Court found that there is no discussion in the order passed by the Board of Nominees and there is nothing on record to show that an application was preferred for condonation of delay and the delay was condoned by the Board of Nominees by exercising powers u/s 97(3) of the Act. It appears that this issue was not raised before the Board of Nominees Court. Therefore, there was no finding of the Board of Nominees Court to this effect and in absence of any material, this issue is raised for the first time before this Court. This Court is not expressing any opinion on that point, especially when this Court has come to the conclusion on the issue that the Board of Nominee has no jurisdiction to entertain the Lavad Suit filed by the petitioner. Since this Court is in confirmity with the view taken by the

Tribunal on the issue of jurisdiction and this view is further supported by the binding decision of this Court as well as by the Hon''ble Supreme Court, referred to hereinabove, this Court is not inclined to interfere in the order passed by the Tribunal and hence, the petition fails. Rule discharged with no order as to costs.