
(1981) 12 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 2541 of 1981

Mario Miranda

APPELLANT

Vs

Pilot Bunder Co-operative Housing Society Ltd. and Others

RESPONDENT

Date of Decision : 21-12-1981

Acts Referred:

Citation : (1982) 1 BomCR 186

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : B.R. Naik and Y.R. Naik, for the Appellant; N.B. Shastri and N.D. Bhatkar, A.G.P., for the Respondent

Judgement

R.A. Jahagirdar, J.

1.This petition under Articles 226 and 227 of the Constitution seeks to challenge the order of the Assistant Registrar of Co-operative Societies at Bombay by which he decided that the dispute raised by respondent No. 1 is a dispute within the meaning of section 91 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as "the Societies Act." The Assistant Registrar who gave that decision on 13th of May, 1981 is jointed as the third respondent in this petition while the Third Co-operative Court established u/s 91A of the Societies Act has been joined as the fourth respondent. The second respondent in the petition is a member of the first respondent society and it is he who, according to the allegations made in the dispute, inducted the petitioner in one of the flat in the society.

2. It is not necessary for me to refer to the details of the dispute between the parties because the challenge in this petition is confined to the manner in which the order of 13th May, 1981 has been passed by the third respondent. The petitioner contends that the third respondent, namely the Assistant Registrar, has not given him a hearing before he passed the impugned order; secondly he has passed the aforesaid order mechanically without application of mind as can be

seen from the cancellation of certain words in a proforma order and insertion of certain figures in the said proforma order. The question that has to be primarily decided in this petition is whether any party to a dispute arising u/s 91 of the Societies Act is entitled to be heard before the Registrar or the Assistant Registrar record his satisfaction u/s 93(1) of the Societies Act as to the existence or non-existence of a dispute, One may, therefore, go straightway to the relevant provisions of the Act. I will make a brief reference to the authorities on which the learned Advocates appearing before me have relied after the relevant provisions under the Act, which are according to me quite clear, are examined.

3. Section 91 of the Act mentions that notwithstanding anything contained in any other law for the time being in force, any dispute of the type mentioned therein can be referred by any of the parties, to the dispute to the Registrar if both the parties thereto are one or the other of the several categories of persons mentioned in sub-section (1). It is not necessary to refer to the same. Section 91(1), therefore, mentions the reference of a dispute by a party to the Registrar. The next step that takes place after such reference is made to the Registrar is to be found in section 93(1) which is in the following terms :---

"If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 91, the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a Co-operative Court."

It is thus clear that before the matter is taken up by the Registrar for adjudication or is referred by him for disposal to a Co-operative Court, a decision that the dispute referred to him is a dispute within the meaning of section 91 must be given by the Registrar. Such a decision is the sine qua non of any adjudication that may take place under the other provisions of the Act. The adjudication takes place at the hands of the Registrar himself or at the hands of one of the Co-operative Courts established by the State Government u/s 91A of the Act, which provides that the State Government may, by notification in the Official Gazette, constitute one or more Co-operative courts for the adjudication of disputes referred to the Registrar u/s 91 or section 105 or other provisions of the Act. The jurisdiction of a Co-operative Court to adjudicate upon a dispute is derived directly from the reference made to it for disposal of dispute by the Registrar u/s 93(1) of the Act. There is no provision in the entire Act for a party to go directly to the Co-operative Court with its dispute and invite the Court to adjudicate upon the same. The Co-operative Court itself, therefore, cannot decide whether a dispute is a dispute within the meaning of section 91 of the Act because that decision has to be given only by the Registrar under provisions of the Act. It is only after a reference of the dispute, which has received the stamp of a dispute u/s 91 of the Act at the hands of the Registrar, that the Co-operative Court gets jurisdiction to adjudicate upon the same.

4. Chapter VIII of the Maharashtra Co-operative Societies Rules, 1961 hereinafter referred to as "the Rules" contains certain rules which relate to the

manner in which the Registrar has to record his satisfaction regarding the existence of a dispute. These rules have been made by the State Government in exercise of the powers conferred upon it by section 165(1)(iii) of the Act. Rule 75 prescribes a form in which a reference of a dispute u/s 91 shall be made in writing to the Registrar. The said rule also empowers the Registrar to require the party referring the dispute to him to produce a certified copy of the relevant records on which the dispute is based and such other statements on records as may be required by him before proceeding with the consideration of the reference. It must be remembered at this stage that this reference is made to him u/s 93(1) only on limited question as whether it is a dispute within the meaning of section 91(1) of the Act. Rule 76, which has been substituted in the present form on 14th of February, 1975 is in the following terms :---

"Registrar"s satisfaction regarding existence of a dispute---

"Where any reference of a dispute is made to the Registrar or any matter is brought to his notice, the Registrar shall, on the basis of the reference (if any) made to him in form "P" and the relevant record and statements submitted to him, record his decision together with the reasons, therefore whether he is or is not satisfied about the existence of a dispute within the meaning of section 91. Such recording of decision shall be sufficient proof of the Registrar"s satisfaction that the matter is or is not a dispute, as the case may be."

The aforesaid rule shows that the satisfaction that is arrived at by the Registrar about the existence or non-existence of a dispute within the meaning of section 91 is to be given in the form of a decision and the recording of such a decision is made sufficient proof of his satisfaction.

5. The following are thus the steps which are taken or are to be taken before a dispute goes to the Co-operative Court under the provisions of the Act. In the first place a party makes a reference of a dispute alleging that it is a dispute within the meaning of section 91 of the Act to the Registrar of Co-operative Societies. After this is done, the Registrar exercise his power u/s 93(1) of the Act. In exercise of this power he decides as to whether there is a dispute within the meaning of section 91 of the Act. While exercising this power he of course necessarily has to follow the procedure prescribed by Rules 75 and 76 of the rules framed under the Act. After he has decided that a dispute exists or does not exist, that decision is to be regarded under the provisions of the rules as sufficient proof of the existence or non-existence of a dispute under the Act. Lastly, if he has come to the conclusion that it is a dispute within the meaning of section 91 of the Act, then he is empowered to refer the same to the Co-operative Court under the latter part of section 93(1) of the Act. It is after this reference is made that the Co-operative Court established u/s 91A of the Act gets jurisdiction to adjudicate upon the same. Till this is done, the Co-operative Court cannot proceed to adjudicate upon the dispute.

6. These provisions of the Act, which have remained substantially the same for a

number of years, have been examined in great details by a Division Bench of this Court in *I.R. Hingorani v. Pravinchandra*, 67 Bom.L.R. 306. The nature of the power exercised by the Registrar u/s 93 of the Act has been meticulously examined by the Division Bench and in particular on page 309 onwards of the report. The Division Bench has referred to a certain practice which, it was told, was prevalent when any applications to the Registrar were made u/s 93(1) of the Act. They were discussing the question as to whether the practice was in accordance with law. That practice was that whenever a dispute was referred to the Registrar, the matter was referred to an authority called the Registrar's nominee. If before the Registrar's nominee a contention was raised that the nominee had no jurisdiction because no dispute existed within the meaning of section 91, then the nominee referred the matter back to the Assistant Registrar who would then decide whether a dispute existed or not. This practice was examined by the Division Bench in the light of the provisions of the Act.

7. It may be mentioned at this stage that before the Division Bench which decided *Hingorani's* case, there was another provision in the form of sub-section (2) of section 91 in the following words :---

"When any question arises whether for the purposes of the foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final."

It was urged before the Division Bench that the said provision, namely section 91(2), referred to a decision of the Registrar and not to the satisfaction of the Registrar and that what sub-section (1) of section 93 contemplated was provisional satisfaction of the Registrar arrived at after perusal of the application for reference once made to him, but without hearing the parties. This argument did not commend itself to the Division Bench which proceeded to point out as follows :-

"The jurisdiction of the Registrar or his nominee to decide a dispute is, therefore, dependent on the Registrar being satisfied that such a dispute exists. The Registrar cannot, however come to the conclusion that a dispute exists unless he first applies his mind to the matter."

The Division Bench further pointed out that the question whether a dispute exists will arise as soon as the Registrar applies his mind to the matter in order to satisfy himself about the existence of a dispute within the meaning of section 91. If he decides that a dispute exists, then he will take further action under sub-section (1) of section 93 to decide the dispute himself or refer it for disposal to his nominee. It was noticed by the Division Bench that the question about the existence of a dispute has to be decided by the Registrar judicially and that the proceeding before him is a quasi-judicial proceeding. That necessarily implies that the Registrar must hear the parties before he decides or satisfies himself about the existence of the dispute. In other words, it was noticed by the Division Bench that the finality of the decision mentioned in sub-section (2) of section 91

did not refer to a decision of a back reference by the Registrar's nominee and the subsequent decision by the Registrar u/s 93(1) of the Act. It was in the light of this interpretation that the Division Bench proceeded to say that "the present practice, therefore, does not appear to us to be in accordance with law. The correct practice would be for the Registrar to issue notices to both the parties and give them an opportunity of being heard on the question whether a dispute exists. It is only after the Registrar has heard the parties or given them an opportunity of being heard that he can decide or satisfy himself whether a dispute within the meaning of section 91 exists. It is his decision so arrived at which will be final under sub-section (2) of section 91 of the Act."?

8. The subsequent deletion of sub-section (2) from section 91 has, in my opinion, made no difference to the nature of the power exercised by the Registrar u/s 93(1) of the Act. The Division Bench has pointed out that the only time when the Registrar exercises his power u/s 93(1) is when he decides the question as to whether a dispute is a dispute within the meaning of the Act. This exercise of power must necessarily take place before the dispute is taken up by himself for adjudication or before he refers it to the stated authority for adjudication. The application of mind to the question as to whether it is a dispute within the meaning of section 91 must take place before the matter is taken up for adjudication or before the reference is made to any authority for adjudication. In other words, the application of mind must precede the stage of adjudication. The deletion of sub-section (2) of section 91, in my opinion, has not affected at all the interpretation of the powers exercised by the Registrar u/s 93(1) of the Act. If this is so, then, as laid down in Hingorani's case, it is incumbent upon the Registrar to give a hearing to the parties before any decision on the existence or non-existence of the dispute is given.

9. If it is thought that the deletion of sub-section (2) of section 91 of the Societies Act would reduce the burden that is placed upon the Registrar then the thought is clearly mistaken. It is not under sub-section (2) of section 91 that the Registrar is placed under the burden of deciding the question as to whether a dispute is a dispute within the meaning of section 91(1) of the Act. That burden is placed upon him by the provisions of section 93. The purported elimination of the finality of a decision given by the Registrar u/s 93(1) does not eliminate the duty cast upon him of deciding the question as mentioned in section 93(1). The argument which is being examined in greater details hereafter, that the deletion of sub-section (2) of section 91 has made all the difference to the interpretation of section 93(1) given by this Court in Hingorani's case must, therefore, be rejected.

10. Mr. Shastri and Mr. Bhatkar appearing for the first respondent and the State respectively have laid considerable emphasis upon the deletion of sub-section (2) from section 91 of the Societies Act. According to them, the decision relating to the existence of a dispute given u/s 93(1) is a sort of tentative or provisional decision and if the matter goes to the Co-operative Court, that Court can always

as a jurisdictional point decide whether it has jurisdiction or not. Both of them have contended that the petitioner has un-necessarily rushed to this Court without raising this question of jurisdiction before the Co-operative Court to which the reference of the present dispute has been made.

11. I am unable to accept this contention. I have already mentioned above that the deletion of sub-section (2) of section 91 of the Act has not made any difference to the nature of the powers exercised by the Registrar, as interpreted by this Court in Hingorani's case. The duty to give hearing to the parties, therefore, is not dispensed with by the deletion of sub-section (2) from section 91. I also notice that the finality of the decision relating to the existence or non-existence of the dispute is still preserved by the other provisions in the Act. For example, section 152(4) of the Act provides as follows :---

"Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions."

The words "in accordance with the provisions of this Act" to be found in the abovementioned provision must necessarily mean in accordance also with the Rules framed under the Act. I have already referred to Rule 76 which speaks of a decision on the question to be decided by the Registrar u/s 93(1) of the Act. That decision will naturally be final in view of section 152(4). It is, therefore, impossible to suggest that the Co-operative Court, to which a dispute is referred for adjudication by the Registrar, can sit in judgment over the decision of the Registrar that a dispute exists. The Co-operative Court is a creature of the statute and all its powers must be found within the four corners of the statute which created it and no inherent power can be attributed to such a creature of the statute.

12. Mr. Shastri at one stage suggested that Rule 76 which speaks decision is ultra vires because section 93 itself, which gives power to the Registrar to decide the question about the existence of a dispute, does not speak of a decision. According to Mr. Shastri, what is done by the Registrar u/s 93(1) is the arrival at a subjective satisfaction about the existence or non-existence of a dispute and not any decision on the merits or otherwise of the dispute. It is in the nature of an administrative decision analogous to the decision of an-appropriate Government u/s 10 of the Industrial Disputes Act. In view of this, says Mr. Shastri, Rule 76 is ultra vires of the Act. Mr. Bhatkar appearing for the State has not supported the contention that Rule 76 is ultra vires, though he has shared with Mr. Shastri the opinion that the decision u/s 93(1) of the Act is administrative in character and not judicial or quasi-judicial in character. I reject the argument that Rule 76 is ultra vires on the ground that it talks of a decision while section 93 talks only of satisfaction. The judgment of this Court Hingorani's

case is binding upon me and that judgment had held that the satisfaction u/s 93(1) is in the nature of a decision. If this is so Rule 76 cannot be said to be ultra vires of the Act because it speaks of a decision.

13. Mr. Shastri relied upon a judgment of S.K. Desai, J., in *Paramand Joshi v. T.M. Singh* delivered on 4th August, 1977 in Miscellaneous Petition No. 570 of 1975 reported in 1979 Bom.C.R. on the original side of this Court. Certain observations in this judgment apparently support the view-point canvassed by Mr. Shastri that the question as to whether a dispute exists or not can still be argued before the adjudicating authority, but on a proper reading of the judgment it is clear to me that there is no warrant for holding that as the law stands at present an adjudicating authority such as the Co-operative Court can decide as to whether the dispute referred to it by the Registrar is a dispute within the meaning of section 91. Before S.K. Desai, J., a judgment and award of the Officer on Special Duty, Mr. Mirchandani, had been impugned. That award itself was challenged after it had originally been challenged before the Co-operative Appellate Court. It was contended before Desai, J., that u/s 93 of the Maharashtra Co-operative Societies Act it was necessary for the Registrar to have satisfied himself that the matter sought to be raised by the disputants would constitute a dispute within the meaning of section 91 and that before it was referred to the O.S.D. the Registrar was required to have given notice to the petitioner and heard him before making a reference. In that case also reliance was placed on the observations in *Hingorani's* case. It was observed by Desai, J., as follows :---

"At the outset it must be pointed out that the decision in the said case contained some observation on section 93 as it originally stood before its amendment. After the amendment, the very point can be referred by the Registrar for the decision to the O.S.D. and the O.S.D. may give decision, on the point, both at the stage of a preliminary point (as a demur) or subsequently after the full trial. As the law now stands, two enquiries are not contemplated."

14. In other words, before Desai, J., the Officer on Special Duty was the adjudicating authority. It is agreed by the parties before me that the Officer on special Duty in that case was none other than the person appointed by the Government u/s 3 of the Societies Act to assist the Registrar of Co-operative Societies. In the case before Desai, J., the Officer on Special Duty was Mr. Mirchandani who had been appointed by notification dated 2nd of December, 1970 and had been invested with all the powers of the Registrar including the power u/s 93. In other words, the Officer on Special Duty himself could have decided as to whether the dispute was a dispute within the meaning of section 91 of the Act and could have also adjudicated upon the dispute. The facts of the case before Desai, J., therefore, are not analogous with the facts of the case before me.

15. It has not been contended before me, as indeed it could not have been contended, that the Co-operative Court has been invested with any power u/s 93

of the Act. The Co-operative Court, therefore, cannot decide the question as to whether the dispute which has come before it by an order made by the Registrar in exercise of the powers vested in him u/s 93(1) is or is not a dispute within the meaning of section 91. I cannot help expressing some surprise in the manner in which the impugned order u/s 93(1) has been passed in the instant case. A proforma has been used and certain words have been struck off while certain words and figures have been inserted in it. Reading the order itself, it is impossible to know what persuaded the Assistant Registrar to decide that this is a dispute within the meaning of section 91 of the Act. A duty has been cast upon the Registrar by Rule 76 to record his decision with the reasons therefore. There is in the impugned order a clear contravention of the duty cast upon the Assistant Registrar by Rule 76. No reasons at all have been given in the impugned order. Though one may sympathise with the heavy burden that is probably being borne by the Registrar and the other officers entrusted with the functions u/s 93(1) of the Act, one cannot easily condone this lapse on the part of the authorities entrusted with the statutory powers. They must conform to the rules framed under the Act.

16. The propositions emerging from the discussion of the extent law on the subject can now be summarised. The question as to whether a dispute is a dispute u/s 91(1) of the Act has to be decided only once and that decision has to be given by the Registrar u/s 93(1) of the Act. It is only after this decision is given that the dispute can be taken up by the Registrar himself for adjudication or can be referred to the Co-operative Court for adjudication. It is only after that reference is made that the Co-operative Court acquires jurisdiction to adjudicate upon the dispute. Neither under the Act nor under any rule framed thereunder the Co-operative Court possesses jurisdiction to decide whether a dispute referred to it by the Registrar by an order made u/s 93(1) is a dispute within the meaning of section 91. The decision given by the Registrar, under which a reference of a dispute is made to the Co-operative Court, is binding upon the Co-operative Court which cannot question the same because that decision is made final by the other provisions of the Act. The requirement mentioned in Hingorani's case that before deciding the question u/s 93(1) as to whether a dispute is a dispute within the meaning of section 91 hearing must be given to the parties is still good law and has not been affected in any manner by the deletion of sub-section (2) of section 91 of the Act. It will be an improper exercise of jurisdiction vested in the Registrar to pass an order in a proforma without giving reasons therefore as required by Rule 76 of the Rules.

17. Before I part with this case I cannot help mentioning that the complications which had arisen earlier and which are now arising can be easily avoided by the legislature providing that the parties may directly go to the Co-operative Court with their disputes. Prior to the establishment of the Co-operative Courts u/s 91A of the Act, either the Registrar's nominees were appointed for the purpose of adjudicating upon the disputes or Officers on Special Duty u/s 3 of the Act were appointed as and when necessary. Now the machinery of the Court is a

permanently established machinery and one does not see why the parties should not file their complaints in the courts themselves in a manner that may be prescribed. The Co-operative Courts, like other courts, can decide the question of the jurisdiction themselves. I have been told that the Registrar or the Assistant Registrar invested with the powers u/s 93(1) of the Act very rarely, if at all, refuse to refer a dispute to the Officer on Special Duty or to the Co-operative Court. If this is so, one does not see the necessity of burdening these functionaries under the Act with the duty of deciding as a preliminary point about the existence or non-existence of a dispute within the meaning of section 91 of the Act.

18. In the result, this petition must succeed. The order dated 13th May, 1981 passed by the Assistant Registrar of Co-operative Societies, Bombay, in Arbitration Case No. 155/ABN/671 of 1981 is set aside. The proceedings in the said case before the Co-operative Court are quashed. The Assistant Registrar is free to decide the question afresh after hearing the parties.

19. There will, however, be no order as to costs in the petition.