
(1968) 03 BOM CK 0001

In the Bombay High Court

Case No : Spl. C. Application No. 1685 of 1967

N. Nageshwar Rao

APPELLANT

Vs

Ruth Moses

RESPONDENT

Date of Decision : 04-03-1968

Acts Referred:

Constitution of India, 1950 — Article 227

Maharashtra Co-operative Societies Act, 1960 — Section 165, 91, 91(1), 93, 94

Citation : (1968) MhLj 631

Hon'ble Judges : J.L. Nain, J;D.V. Patel, J

Bench : Division Bench

Advocate : Minocher Homji, for the Appellant; J.S. Raymond for Respondent No. 1 and R.T. Sippy, for the Respondent

Judgement

D.V. Patel, J.—This is a petition under Article 227 of the Constitution of India challenging the decision of the Maharashtra Co-operative Tribunal whereby it set aside the award made by the Registrar's Nominee and remitted the matter for retrial. The short facts necessary for the purpose of the case may be stated as follows: The petitioner, who was the original opponent No. 1 in the reference, is the owner of the flat consisting of three rooms and a kitchen on the ground floor of a building known as "Mirabelle" belonging to Mirabelle Cooperative Housing Society Limited, which is the original disputant in the reference. The petitioner purchased this flat essentially for his personal residence. However, because of certain difficulties in his way he could not occupy the said premises and he, therefore, gave the same to respondent No. 1 as a licensee on June 9, 1962, for a period of eleven months. In November 1962 the Co-operative Society gave notice to the petitioner saying that respondent No. 1 and the members of her family were a nuisance to the occupants of the building. The petitioner, therefore, called upon respondent No. 1 to vacate the premises and deliver possession to him. It seems that since February 1963 not a pie has been paid to the petitioner towards compensation for the occupation of the premise)!. In the meantime, there have been litigations between these parties to which it is needless to refer.

The compensation that has accumulated to this day comes to near about Rs. 11,520. In pursuance to the Society's notice, the Society made a complaint before the Registrar regarding the conduct of respondent No. 1 and the members of her family as she was a source of nuisance and sought eviction. The Registrar after hearing respondent No. 1 referred the matter u/s 91 of the Cooperative Societies Act to his Nominee by an order dated December 17, 1965, in the following terms;

I, Shri D. D. Naik, Assistant Registrar, Co-operative Societies, (II), Bombay do hereby hold that the dispute within the meaning of section 91 (1) of the Maharashtra Co-operative Societies Act, 1960, exists in this case and the same is therefore referred to Shri S. M. Dixit, Registrar's Nominee for decision.

Respondent No. 1 took the matter to the Co-operative Tribunal challenging the reference by the Registrar. However, this appeal was rejected by the Tribunal and the Nominee was directed to decide the matter. The Nominee made his award on November 1, 1966. Respondent No. 1 took an appeal to the Co-operative Tribunal. The contention before the Tribunal was that the Nominee had ceased to have jurisdiction because by a general order the Registrar had appointed a body of Nominees for a period of one year and that the term expired on June 30, 1966. It was argued that as the award was made after this date, the award was a nullity. This contention found favour with the Tribunal with the result that it set aside the award and referred the matter back to the Registrar for reference to any other Nominee for disposal or trial by himself. The petitioner, who is the owner of the flat, seeks to challenge this decision.

2. Section 91 of the Maharashtra Co-operative Societies Act, 1960, requires that all disputes touching the business of a Society shall be referred to the Registrar. u/s 93 after being satisfied that the matter referred to him is a dispute within the meaning of section 91, the Registrar may (a) decide the dispute himself, or (b) refer it for disposal to a nominee, or (c) a board of nominees, appointed by the Registrar. Sub-sections (2) and (3) of section 93 are procedural sections. Sub-section (2) gives the Registrar the power to withdraw for reasons to be recorded in writing a dispute referred by him to the nominee or board of nominees, and, to decide it himself or to refer it for decision to any other nominee or board of nominees. Sub-section (3) gives him power to suspend the proceedings under certain circumstances with which we are not concerned. Sections 94 and 95 are procedural sections and do not concern us. Section 96 requires the Registrar or his nominee or board of nominees to make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and the fees and expenses payable to the Registrar or his nominee or board of nominees. The section further protects the award and says that it would not be invalid merely because it has been made after the expiry of the period fixed for deciding the dispute by the Registrar and shall subject to an appeal or review or revision be binding on the parties to the dispute.

3. The present argument has arisen because of the Rules made by the State

Government by virtue of its rule-making powers u/s 165 of the Act of 1960. Rule 76 of the Co-operative Societies Rules, 1961 empowers the Registrar, by a general or special order notified in the official gazette, to appoint any person to be his nominee for deciding disputes arising in any one or more societies situated in a particular area and for such period as may be specified. Similarly, he is also entitled to appoint a board of nominees for the same purpose. In the present case, these nominees were appointed by the Registrar under rule 76 in the following terms:

Under rule 76 of the Maharashtra Co-operative Societies Rules, 1961 the Divisional Joint Registrar, Co-operative Societies is pleased to appoint the persons shown in the list enclosed to perform the duties as the Registrar's nominees for deciding disputes arising in any of the Co-operative Societies within the year specified against the respective names for the period from July 1, 1965 to June 30, 1966.

For Bombay and Bombay Suburban District as many as fifty-six gentlemen have been named as nominees.

4. The Tribunal holds that as soon as the year ended on June 30, 1963, the jurisdiction of the nominee ended and his award became a nullity. In our view, there are two answers to this conclusion.

5. A plain, reading of the notification shows that the appointment of the nominees is not for a period of a year as is erroneously supposed by the Tribunal. The appointment is "...for deciding disputes arising.... within the year specified...." Clearly the appointment is for disputes that arise during the year. The dispute in the present case arose at the latest on December 17, 1965, when the Registrar referred the same to the nominee. He had, therefore, jurisdiction to decide the dispute which had arisen within the year. Unfortunately, this wording of the notification has not been noticed by the Tribunal and hence the error.

6. Secondly, it is obvious from a reading of the notification that these nominees are not the servants of the Registrar's Office or of the Government n;>r are they supposed to do the duties of a Court as a Court is supposed to do, to decide every matter that is brought before the person concerned. A dispute cannot be referred to fifty-six persona simultaneously. They are not constituted a body corporate in the sense of a specific office where all the disputes are to be lodged. The only function of the notification or appointment is that it serves as a tentative list of nominees prepared by the Registrar and whenever a dispute arises and is required to be referred to a nominee u/s 91, the Registrar or the officer concerned chooses a particular nominee from amongst the list and refers the matter to the nominee. The result is that the reference is not to someone who holds an office. It is to the nominee as such named in the order of reference regarding a particular dispute. The Co-operative Societies Act does not contemplate the appointment of a nominee for a particular period. The Act contemplates the appointment of a nominee for a particular dispute and u/s 91

of the Act this is what the Registrar purported to do in his order dated December 17, 1965. There is no limit on the power of the nominee to decide the dispute within a particular time. Nor does it say that after the year of the office is over, he would cease to be a nominee of the Registrar. Rule 76, which permits the Registrar to make these appointments, does not say that immediately after the so called term of the nominee ends, he shall cease to function as a nominee. Even if the Rule had so provided, we doubt very much whether the Rule could be a valid one.

7. Reliance was placed on Rule 77 which apparently expects the nominee to dispose of the matter within two months. Even this rule is not a peremptory rule. It merely provides that when a dispute is not decided by the nominee within two months, the Registrar may withdraw the dispute from the nominee or from the board of nominees as the case may be and decide the dispute himself or refer it again to any other nominee or a board of nominees for decision. This rule is a permissive rule and it merely enables the Registrar in a case where the nominee does not decide the dispute within two months to withdraw the case and proceed with it as mentioned in the said Rule. It does not say that the nominee's power comes to an end if the nominee does not decide the dispute within two months. That this could never be intended either by the Legislature or the rule-making authority is obvious. Though this Act is supposed to be in the interest of the Co-operative Societies and its members and is made with the intention that all these disputes should be speedily decided, unfortunately, as it may seem, it has provided a large number of loopholes which enable the parties to prolong the proceedings as much as they desire. Curiously enough, even though u/s 91 the Registrar has to decide whether a dispute has been made out prima facie or not, it is made an appealable order. From the decision in appeal there is a further revisional application as decided by this Court in another matter. Thereafter, there is still the remedy of the writ open to the party and all this only because a decision has been given whether a dispute exists and whether the matter should be referred to arbitration. After all, whether there is any merit in it has to be decided by the nominee when the matter is actually heard by him. If the contentions raised by the petitioner or the applicant are frivolous, the other side can be adequately protected by an order of costs in ordinary litigation. Be that as it may, having regard to the course these things take at the moment, no matter which is referred to the nominee may possibly be finished within a period of two months referred to in rule 77 and it is for this reason that the Rules in the said Act do not make a provision that if the nominee does not render his award within two months, the nomination ends. For the reasons stated above, the decision of the Tribunal cannot be upheld. In our view, it is clearly erroneous. 8. We, therefore, set aside the decision of the Tribunal and direct that the matter shall be heard on merits. The petitioner will get his cost from respondent No. 1. The Tribunal to decide the matter within a month from the date of the record and the order reaching it.