

(1992) 08 KAR CK 0048

In the Karnataka High Court

Case No : Regular First Appeal No. 415 of 1983

Narasegowda

APPELLANT

Vs

HMT Employees House Building Co-operative Society Ltd.

RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 118, 125, 70

Citation : (1992) ILR (Kar) 3564

Hon'ble Judges : N.D.V. Bhat, J

Bench : Single Bench

Advocate : Gangi Reddy, for K. Subba Rao, for the Appellant; Mohammed Nasiruddin, for D. Leelakrishna, for the Respondent

Final Decision : Dismissed

Judgement

N.D.V. Bhat. J

1. This Appeal is preferred against the judgment and decree dated 27.7.1983 passed by the XII Additional City Civil Judge, Civil Station, Bangalore in O.S. No. 8565/1980. The Appeal is filed by the unsuccessful plaintiff.

2. Plaintiff filed the said suit against the defendants praying for a decree to declare that the resolution of the Board of Directors of Defendant-1 Society dated 7.2.1980 cancelling the allotment of the site to the plaintiff as illegal and further to declare that the allotment of the schedule site in favour of the 2nd defendant as illegal, void and inoperative and also to pass a decree for specific performance of the allotment of the schedule site in favour of plaintiff directing defendant-1 to execute the sale deed in respect of the schedule site in favour of the plaintiff and for other reliefs referred to there on the basis of the allegations made in the plaint. The suit of the plaintiff was resisted by the 1st defendant by its written statement. It appears that defendant-2 has not filed any written statement. Defendant-1 resisted the suit of the plaintiff on various grounds, Among other things, defendant-1 took up a contention that the suit is hit by the mischief of

Section 70 of the Karnataka Co-operative Societies Act, 1950 R/W Section 118 of the said Act as also under the provisions of Section 125 of the Karnataka Co-operative Societies Act (for short "the Act").

3. The lower Court on the basis of the pleadings of the respective parties raised the following issues:

(1) Is the plaintiff entitled for a declaration that the resolution of the Board of Directors of the first defendant society dated 7.2.1980 cancelling the allotment of the site in his favour as illegal?

(2) If so, is the plaintiff further entitled for a declaration of the allotment of the schedule site in his favour the 2nd defendant as illegal, void and inoperative?

(3) Is the plaintiff entitled for specific performance of the allotment of the schedule site in his favour and for consequential relief?

(4) Is the suit not maintainable as contended by the first defendant and the suit dispute would fall within the meaning of Section 70 of the Karnataka Co-operative Societies Act?

(4A) Whether suit is not maintainable for want of statutory notice u/s 125 of Co-operative Societies Act?

Before the lower Court plaintiff examined himself. Documents at Ex.P.1 to P.19 were marked for the plaintiff. On behalf of defendants, three witnesses are examined. Ex.D.1 to D.8 are marked for the defendants.

4. On the basis of the evidence on record and for the reasons reflected in its judgment, the lower Court answered Issue Nos. 1 to 4 in the negative and issue No. 5 was answered in the affirmative. In the result, the suit of the plaintiff came to be dismissed by the judgment of the lower Court dated 27.7.1983. It is this judgment of the learned City Civil Judge which is challenged in this Appeal.

5. I have heard the arguments of Sri Gangireddy, learned Counsel for the appellant and Sri Mohamed Nasiruddin, learned Counsel for the respondents,

6. Sri Gangireddy, learned Counsel for the appellant submitted that the findings given by the lower Court and which have gone against the plaintiff, are incorrect. In particular, the learned Counsel submitted that the evidence on record clearly warranted an inference that the site in question was actually allotted to the plaintiff. In this connection, the learned Counsel invited the attention of this Court to the intimation of allotment as evidenced by Ex.P.5 dated 15.7.1978. The learned Counsel also submitted to the Court that the plaintiff had deposited Rs. 160/- as an advance and he had already deposited an amount of Rs. 4,000/- with reference to the site which was allotted to him earlier, that is to say, site No. 612 and in lieu of which the plaintiff has prayed for the allotment of the disputed site that is to say, site No. 478. The learned Counsel relying on the evidence of D.W.1 has pointed out that it is permissible for the Society to adjust the amount deposited in respect of the earlier site, towards the price of the latter site which

is allotted in lieu of the earlier one. It is pointed by the learned Counsel that the observation made by the learned Civil Judge to the contrary in the course of his judgment is not correct. He also submitted that all the ingredients required to obtain a decree for specific performance have been established by the plaintiff by acceptable evidence. In particular, it is pointed out by the learned Counsel for the appellant that the evidence on record would clearly go to show that the plaintiff was always ready and willing to perform his part of the contract and that the agreement to sell in substance, can be spelt out from the materials on record. Further it is pointed out by the learned Counsel that the amount was also available with defendant-1. Pressing his submissions on these lines, the learned Counsel argued that there was no justification on the part of the lower Court in dismissing the suit of the plaintiff particularly after having held that the suit of the plaintiff is not hit by the mischief of either Section 70 of Section 125 of the Act.

7. On the other hand, the learned Counsel for respondents submitted that the decree passed by the lower Court deserves to be confirmed. The learned Counsel, however, pointed out that though the learned Additional City Civil Judge has, in fact, given a finding in favour of the plaintiff with reference to the applicability, of the provisions of Section 70 of the Act, the learned Judge has erred in that behalf, It is pointed out by the learned Counsel that the provisions of Section 70 of the Act are, in fact, applicable to the facts of the case and that the dispute is one between a member on the one hand and the Society and another member on the other.

8. The learned Counsels on either side have referred to the Decisions which are alluded to hereinbelow.

9. I have given my anxious consideration to the submissions made by the learned Counsels on either side.

10. In the light of the submissions made at the Bar, the following points arise for consideration in this appeal:

(1) Whether the suit is hit by the mischief of Section 70 R/W Section 118 and/or Section 125 of the Act?

(2) Whether the plaintiff is entitled to the decree prayed for?

(3) What order?

11. It is not in dispute that the plaintiff - appellant is a member of defendant-1 Society. It is also not in dispute that the business of the Society is to purchase sites from different persons and to allot the same to its members according to its Bye-laws. It is in the context of these disputed facts, this Court is required to decide as to whether the suit is barred u/s 118 of the Act, At this juncture, it would be indeed convenient to cull out the provisions of Section 70 of the Act. Section 70 of the Act reads as under:

"Disputes which may be referred to Registrar for decision -

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises -

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased employee of the society, or

(d) between the society and any other co-operative society (or a credit agency) such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely -

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand is admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the Society.

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment working conditions and disciplinary action taken by a co-operative society.

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not.

(3) If any question arises whether a dispute referred to the Registrar under this Section is a dispute touching the constitution, management or the business of a co-operative Society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

Section 118 of the Act will come in for consideration if only this Court reaches a conclusion that the dispute in the instant case falls within the purview of Section 70 of the Act. The learned Counsel for the appellant submitted that the dispute in the instant case is one between the member of the society on the one hand and the society and another member on the other and that therefore, it is not governed by the provisions of Section 70 of the Act at all. The learned Counsel contended that the dispute in question cannot be deemed to be a dispute within the meaning of Section 70 of the Act, having regard to the wording of Section 70(2) of the Act. I may point out here that a submission like the one made by the learned Counsel for the appellant here appealed to the learned trial Judge. The learned trial Judge has taken the view that having regard to the provisions of Section 70(2) of the Act, the dispute in question cannot be deemed to be a dispute falling u/s 70 of the Act. I find that the learned Judge was wrong in not taking notice of the provisions of Section 70(1) of the Act. Section 70(1) of the Act is already culled out hereinabove. Clause (b) therein would go to show that a dispute touching the business of a co-operative society between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society is a dispute required to be referred to the Registrar of Co-operative Societies. What is the business of defendant Society? This question, in fact, should not pose any difficulty having regard to the undisputed facts. The evidence on record goes to show beyond a pale of doubt that the business of the society is to purchase the sites from different persons and to sell the same to its members. The learned Counsel for the appellant however, wanted to make a distinction by submitting that cancellation of a plot however is not "a business" of the society. In my opinion, the distinction sought to be made by the learned Counsel for the appellant is a distinction without any difference. If once it can be held that the purchase of the sites and the allotment of the same to its members is the business of the society, the dispute relating to cancellation of sites incidentally and allotment of the same to some other member will also come within the compass of, that expression "dispute touching the business of the society". In fact, this aspect should not detain me long having regard to a Decision of the Division Bench of this Court. This Court in the Decision in MURUGAYYA v. L.B. PAWAR AND ORS. 1969 (1) Mys. L.J. 196 has pointed out, among other things, that a complaint by two members of a Housing Society against the society and another member that the houses which should have been allotted to them had been wrongly allotted to the other member is a dispute falling within Section 70 of the Act. It will suffice if it is observed that the ratio laid down in the said Case applies on all fours to the facts of this Case. The learned Counsel for the appellant, however, invited the attention of this Court to

a Decision of the Supreme Court in THE ALLAHABAD DISTRICT CO-OPERATIVE LTD. v. HANUMAN DUTT TEWARI AIR 1982 SC 120. The Supreme Court in the said case has, among other things, observed as under:

"The expression "business of the society" has been construed by several decisions of this Court. In Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, it was pointed out "the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws." In Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, it is said "but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society."

A careful perusal of the Decision of the Supreme Court would go to show that the said Case was one where the question for consideration was as to whether the retrenchment of the official concerned was an item falling within the meaning of the expression "business of the society". The Supreme Court with reference to its earlier Decisions has ruled that having regard to the fact that the expression "business" in Section 70 of the Act is used in narrower connotation, the said item of retrenchment cannot fall within the compass of the expression "business" used in the relevant Co-operative Societies Act. In that view of the matter, the Supreme Court observed that the matter in the said Case was not hit by the mischief of the relevant provisions of the said Act. In my opinion, the observation made by the Supreme Court in the said Case would not at all apply to the facts of the instant case. It is necessary to point out here that in the instant case the very business of the society is the business of purchase of the property and the business of allotment of the property. In the instant case, the plaintiff had challenged the cancellation of allotment said to have been made in the first instance in his favour and allotment of the same in favour of defendant-2. In my view, it is clear that the dispute now raised by the plaintiff would squarely fall within the compass of a dispute falling under the provisions of Section 70 of the Act. I may point out here that the ratio laid down in the Decision of the Division Bench of this Court referred to earlier will apply on all fours to this case and it is, therefore, not necessary to dilate on this aspect. It will suffice if it is held that Section 70 would apply to the facts of this case. The learned Counsel for the appellant, however, submitted that having regard to the fact that the present suit

is one for specific performance and for other reliefs prayed for by the plaintiff, the suit of this nature will have to be filed in the Civil Court only. I do not agree with the submission made by Sri Gangireddy, learned Counsel for the appellant. It is necessary to point out here that the powers of the Registrar u/s 70 of the Act are circumscribed by the provisions of the Act. Whenever the dispute touching upon the business of the Society arises for consideration that dispute will have to be referred to the Registrar of Co-operative Societies. It is necessary to remember that the award passed by the Registrar can be executed in the same manner as a decree of a Civil Court. Under these circumstances, I am not impressed by the submission made by the learned Counsel for the appellant that the fact that a suit in question is one for specific performance will make any difference to the issue.

12. For the reasons stated hereinabove, I am of the view that the present suit is barred by the provisions of Section 118 of the Co-operative Societies Act. Once when it is held that the dispute like the one which has presented itself for consideration is a dispute falling under the provisions of Section 70 of the Act, it would follow as a matter of logical corollary that the provisions of Section 118 of the Act would operate as a bar to the Civil Court to decide the same. Incidentally, the suit would attract the provisions of Section 125 of the Act also. Under these circumstances, it is clear that the suit is barred by law, that is to say, by reason of Section 118 R/W Section 70 of the Act. Point No. 1 is answered accordingly.

13. In view of my finding on Point No. 1, Point No. 2 does not fall for consideration. It is clear that once when it is held that the suit is barred under some law, the question of giving findings on the other issues does not arise at all. Therefore, the findings given on the other issues do not survive and as such they do not survive for consideration in this Appeal also and the plaint is liable to be rejected on that count alone.

14. For the reasons stated hereinabove, the Appeal is dismissed. In the facts and circumstances of the case, I make no order as to costs.