

(1967) 11 BOM CK 0003

In the Bombay High Court

Case No : Spl. Civil Application No. 733 of 1966

Narayan Tanbaji and others

APPELLANT

Vs

Kamgar Co-operative Housing Society Ltd. and others

RESPONDENT

Date of Decision : 24-11-1967

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 154, 91

Citation : (1968) MhLj 570

Hon'ble Judges : N.L. Abhyankar, J;M.N. Chandurkar, J

Bench : Division Bench

Advocate : K.H. Deshpande, for the Appellant; C.S. Dharmadhikari, Asst. Govt. Pleader for Respondents Nos. 2 to 5 and Respondents Nos. 6 to 10 were not represented, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Abhyankar, J.—It is unfortunate that in spite of the peculiar facts giving rise to this petition, the petitioner has unnecessarily delayed the termination of the proceedings already taken under the remedies provided by the statute under which both the parties claim rights.

2. The petitioners, 43 in number, claim to be members of the respondent No. 1-Society, which is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960. The Annual General Meeting of the respondent No. 1-Society was held on 16-9-1962, and N. L. Rao was declared elected the President of the Society. This N. L. Rao however is not impleaded individually as a party to this petition, though his name figures as the President of the Society. The election of N. L. Rao as the President was challenged by the respondent No. 6 Khobragade by an application u/s 91 of the Maharashtra Co-operative Societies Act. The application was decided by the Registrar's Nominee on 31-3-1964 in which it was held that the election of N. L. Rao was invalid. This decision of the Registrar's Nominee was challenged before the Co-operative Tribunal by the Society. To this appeal, the respondents Nos. 6 to 10 in this petition and Borne

other persons were impleaded as parties; but it is an admitted position that all those persons who claimed to be members of the Society were not impleaded as such to this appeal. An application was put in by the parties to the appeal which was registered as Appeal No 247 of 1964 before the Co-operative Tribunal, that both sides were ready to abide by the decision of the District Deputy Registrar, Co-operative Societies, to formulate a list of members on the basis of audited reports and any other documentary proof, and it was further stated that the parties agreed that the District Deputy Registrar should hold an election of office-bearers of the Society on the basis of the list so prepared, before 30-9-1964. In view of such an application the two members of the Co-operative Tribunal, who heard the matter, recorded the application as a compromise and in substitution of the award which was impugned, this compromise was treated as the award.

3. The District Deputy Registrar, as agreed to under the compromise in appeal, prepared a list of 86 members showing as members of the respondent No. 1-Society. He compiled this list on 14-9-1964, but this list was again revised by the District Deputy Registrar on 17-9-1964 and the number of members was reduced from 85 to 82. In the new list showing 82 persons as the members, it is alleged that the persons shown as members at serial Nos. 12, 20, 35, 44, 46 and 47 in the earlier list of 14-9-1964 were omitted and the names of persons now appearing at serial Nos. 42, 43, 44, 45 and 48 in the new list were added. The reason given for revising the list as stated in the order-sheet dated 16-9-1964 is that on verification of the list of members, it was found that three persons, i.e. 1. Harbaji Warluji Ahirkar, 2. Narayan Sadasheo Dhakulkar and 3. Narayan Tukuram Bawankule, were the persons whose names appeared twice in the earlier list dated 14.9-1964.

4. On 19.9-1964 some of the petitioners filed an application purporting to be u/s 91 of the Maharashtra State Co-operative Societies Act for making a reference to the Registrar or his nominee for adjudication of a dispute relating to elections. The application was presented to the District Registrar himself, and to this application only two parties were added, namely, the respondent No. 1-Society itself and the District Deputy Registrar himself. A prayer in the application was that the names of the petitioners who were 43 in number should be included in the list of members and until that was done the meeting for holding elections which were scheduled to take place on 30-9-1964 should be postponed. The application seems to have been marked for disposal under the powers of delegation to the Assistant Registrar-II. i.e. perhaps the third respondent impleaded to this petition. The third respondent rejected the application for stay and also rejected the application u/s 91 itself on the ground that there was no provision to admit a dispute purporting to be a dispute between the Co-operative Society and the District Deputy Registrar as the title of the application will show.

5. Against the order of the Assistant Registrar, the petitioners file 1 Special Civil Application No. 564 of 1964 in this Court praying that the list prepared should be quashed or in any case, to direct the District Deputy Registrar to entertain the

application u/s 91. It is alleged by the petitioners that this Court quashed the order passed by the Assistant Registrar on 25-9-1964, on 2-2-1966. The direction in the writ issued by this Court was, as alleged in the petition, that the petitioners may be heard before passing the orders on that application u/s 91 of the Act. The matter was thereafter decided by the Assistant Registrar again, and after hearing the parties, the application was rejected on 28-6-1966 holding that there was no dispute within the meaning of section 91 of the Act.

6. Against this order dated 28-6-1966, the petitioners filed a revision application u/s 154 of the Maharashtra Co-operative Societies Act in July 1966. After the revision application was filed, the petitioners applied for stay of the elections in virtue of the previous decision of the District Deputy Registrar. This application for stay was rejected by the Divisional Joint Registrar on 22-8-1966 as per intimation given to the counsel for the Petitioners. Soon thereafter, i.e., on 28-8-1966, the present petition was filed in this Court. Among other prayers, the petitioners desire that this Court should quash the list dated 17-9-1954 showing certain persons as the members and hold that the question involved in their application amounts to a dispute and that pending decision of application, the meeting convened for Holding elections should be stayed. This latter prayer of an interim stay of holding of the meeting for election was granted, but it may be noted that there was neither a prayer nor any order of this Court regarding the hearing of the revision application on merits by the Joint Registrar.

7. The respondents Nos. 2 to 5, namely, the officers of the Department concerned at various stages with these proceedings, have filed a detailed return in this case, but we do not think that it is necessary to go into the merits of the contentions raised by the petitioners, as we are satisfied that the petitioners have already taken steps to avail of the remedies provided under the Act, namely, by filing a revision application u/s 154 of the Maharashtra Co-operative Societies Act, and it would be inappropriate for this Court to adjudicate on any of the matters in controversy when the parties have availed of the remedies under the Act. In fact, we are surprised that an application should have been made to this Court merely because an application for stay of the election was not granted by the Joint Registrar. Even such an order rejecting the stay could be revised in exercise of the powers u/s 154 and it could not therefore be said that there was no adequate or effective remedy to the petitioners, so as to justify invoking the extraordinary jurisdiction of this Court.

8. If there was any doubt the powers of the revisional authorities, such a doubt should no longer exist in view of a Division Bench decision of this Court in *Krishnarao v. State of Maharashtra* 1966 Mh. L J 1145, as well as another decision of the Supreme Court in *Everest Apartments Co-operative Housing Society v. State of Maharashtra* 1966 Mb. L J 643. The ratio of these two decisions makes it clear that any person aggrieved by an order of a statutory authority subordinate to the Registrar or the State Government has been given the right to make an application for revision u/s 154 of the Maharashtra Co-

operative Societies Act challenging the orders adverse to the interests of such a person. We do not see how merely because the elections scheduled to be held were not stayed by the Joint Registrar, that could have furnished any valid grounds to the petitioners to invoke the extraordinary jurisdiction of this Court. On this short ground, the petition must fail. Moreover, it is pertinent to note that the revision application filed by the petitioners is actually pending before the Joint Registrar. The Learned Counsel appearing for the respondents Nos. 2 to 5 has brought to our notice that at one stage when the revision application was likely to be heard, an application was moved before that authority saying that the same matter was pending in this Court. Even assuming that there was a possibility of this petition being heard, when the matter was ripe for hearing before the Joint Registrar, we do not think that it was for the petitioner or even for some of the respondents to prevent the Joint Registrar from disposing of the revision application without any express order from this Court to that effect being obtained. The petitioners are agitating rights created under the statute and their rights and remedies are necessarily restricted to those provided under the statute. It is only in the last resort, if the authorities empowered to give relief to any one claiming a right under a statute are unable to give the necessary relief, that the jurisdiction of this Court can be invoked. It is not as if in spite of the existence of adequate remedies under the statute under which a citizen is claiming, the jurisdiction of this Court could be invoked and we must discourage this tendency to rush to the High Court even in such cases.

9. The result is that the petition fails and is dismissed with costs.