
(1965) 09 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 1815 of 1964

Omparkash Gowardhandas Singhanian and Another

APPELLANT

Vs

G.V. Koimatlur and Another

RESPONDENT

Date of Decision : 13-09-1965

Acts Referred:

Citation : AIR 1967 Bom 7 : (1966) 68 BOMLR 176 : (1966) ILR (Bom) 491 : (1966) MhLj 514

Hon'ble Judges : Chainani, C.J.;Kotwal, J

Bench : Division Bench

Advocate : P.D. Kamerkar, for the Appellant; G.N. Vaidya, Asstt. Govt. Pleader and `R.R. Soni, for D.R. Dhanuka, for the Respondent

Judgement

Chainani, C.J.

(1) The petitioners, are members of a Co-operative Housing society Opponent No. 2. Their mother was allotted a plot by the Society. This was subsequently transferred to the petitioners. The by-laws of the Society were amended and a new by-law No. 11A was added. This by-law employers the Society to forfeit a plot if the member, to whom it is allotted, does not start construction of a house on the plot and does not complete the work of construction within the period mentioned in this by-law of such further period as may be approved by the managing committee on valid grounds. Under this by-law the petitioners' plot was forfeited by the Society, The petitioners then raised a dispute before the Registrar u/s 91 of the Maharashtra Co-operative Societies Act. In their application they prayed that by-law 11A should be declared to be ultra vires of the provisions of the Act, otherwise bad in law and not binding on the petitioners and also that the forfeiture of their plot was bad in law, void and not binding on them. They also claimed other incidental reliefs. The first by-law made by a Society require the approval of the Registrar under S. 9 of the Act. u/s 13 no amendment to the by-laws shall be valid until it is registered by the Registrar. The Assistant Registrar, who considered the petitioners' application, was of the

approval to the by-law by the Registrar, that the Registrar's nominee had no jurisdiction to change the by-laws by declaring them as ultra vires and bad law, once they were registered by the registering authority and that the matter could not form the subject of a dispute u/s 91. In referred to the other reliefs sought by the petitioners he was of the opinion that they could file a separate plaint seeking those specific reliefs. He therefore rejected the petitioner's application to refer the matter to arbitration u/s 91 of the Act.

(2) Sub-section (1) of Section 13 of the Act provides that no amendment to the by-laws of a society shall be valid until registered under the Act. Sub-section (2) of the same section lays down that when the Registrar registers a amendment of the by-laws of the Society, he shall issue to the Society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered. Sub-section (1) of Section 152 makes provisions for an appeal against the order of the Registrar u/s 13. sub-section (4) of this section as recently amended stated:-

"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 ot such revision provisions".

It has been contended by Mr, Soni that it was open to the petitioners to appeal against the order of the Registrar registering the amendment by which by-law 11A was added and that as they did not do so, the order of the Registrar registering the amendment has become final and that consequently the petitioners cannot challenge the validity of this by-law. There does not appear to be much force in this argument. What is made a final under sub-section (4) of Section 152 is not the amendment which is registered, but the order of the Registrar registering the amendment. A by-law cannot take effect until it is registered, but if it is otherwise invalid , registration of it will not make it valid. Under sub-section (1) of Section 9 of the by-laws of a Society must not be contrary to the act or the Rules. If therefore a by-law is inconsistent with or repugnant to any provisions of the Act, the by-law will be invalid, even though it has been registered u/s 13. If therefore no appeal is filed against the order registering a by-law, a party affected by it may not be able to contend that the Registrar was wrong in registering the by-law . In other words, he may not be able to challenge the by-law on its merits. But there is nothing in sub-section (4) of Section 152 which prevents a challenge to the validity of a by-law, after it has been registered.

(3) Mr. Soni has relied on Keshavlal Kalidas v. State of Bombay (1957) 57 Bom LR 220. The facts of that case are distinguishable. The dispute in that case was as regards one about the power of the Registrar to register an amendment. This will be seen from the following observation at p. 222:-

"In our opinion, the only dispute which really arises is the dispute with regard to the power of the Registrar to register the amendment under s. 16 and S. 54 does not contemplate a reference to arbitration when there is a dispute between a member and the Registrar."

In the present case, however, what the petitioners are challenging is the validity of a by-law for the reasons given by them in their application. Moreover, the main relief claimed by the Petitioners is that the forfeiture of their plot by the Society was illegal and invalid. A dispute in regard to such a matter can be the subject matter of a reference u/s 91. For the purpose of deciding this question an incidental question will have to be decided whether by-law 11A was or was not valid. Such a question, a decision of which is necessary for deciding the main dispute between the parties, can also be gone into by the Registrar.

(4) In our opinion, therefore, the Assistant Registrar was wrong in declining to refer the dispute to arbitration, under the provisions of the Act, We set aside his order and direct that he should entertain the reference u/s 91 and either decide the dispute himself or refer it to a nominee u/s 93 of the Act. Interim injunction to continue for one month more.

(5) No order as to costs.

(6) petition allowed.