

(2014) 09 AHC CK 0045

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12304 of 2008

Regional Manager, U.P. Cooperative Federatin Ltd.

APPELLANT

Vs

Additional District Judge

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Companies Act, 1956 — Section 3

Constitution of India, 1950 — Article 14, 19, 31A(1)(c)

Uttar Pradesh Co-operative Societies Act, 1965 — Section 2(f), 4

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(8), 3(p), 8, 9

Citation : (2014) 9 ADJ 697 : (2014) 107 ALR 456 : (2014) 4 UPLBEC 3188

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Vikash Chandra Tripathi, Advocate for the Appellant; Sudama Ji Shandilya and V. Shandilya, Advocate for the Respondent

Judgement

Pankaj Mithal, J.—Heard Sri Vikash Chandra Tripathi, learned counsel for the petitioner, learned Standing Counsel for the respondent Nos. 1, 2 and 3 and Sri Sudama Ji Shandilya, learned counsel for the respondent No. 4. Respondent No. 4 is the owner and the landlord of the premises in dispute which is a ground floor portion having an area of 1793 sq. ft. of building No. 173, Gosaipura, Jhansi. It is under tenancy of the petitioner U.P. Cooperative Federation Ltd.

2. Respondent No. 4 applied under Section 21(8) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) for the enhancement of its rent from Rs. 250/- per month to Rs. 2250/- per month w.e.f. 10.7.1987. The application was allowed by the District Magistrate/Rent Control and Eviction Officer vide order dated 18.5.1996 and the rent was fixed at Rs. 1500/- per month. The aforesaid order has been approved vide judgment and order dated 29.11.07 passed by the appellate Court.

3. The aforesaid two orders have been impugned by the petitioner by invoking the writ jurisdiction.

4. The Courts below holding the petitioner to be a public sector corporation and accordingly, treating the building to be one which has been let out to a public sector corporation directed for the enhancement of rent.

5. The only argument of Sri Tripathi, is that the petitioner is a society under the U.P. Cooperative Societies Act, 1965 and the state Government is simply its member. It is not a public sector corporation. Therefore, enhancement of rent taking recourse to Section 21(8) of the Act is not permissible in law.

6. Shri Shandilya on the other hand, contends a cooperative society is body corporate and is a public sector corporation.

7. It is relevant to note that Section 21(8) of the Act provides that the provisions of Section 21(1)(a) of the Act for the release of the building on the ground of bona fide need of the landlord and his family, shall not apply to a building which has been let out to the state Government, local authority, public sector corporation or to a recognized educational institution but in cases of such buildings the District Magistrate/Rent Control and Eviction Officer may enhance the monthly rent.

8. In other words, the provision of Section 21(8) for the enhancement rent is applicable to only those buildings which have been let out to state Government or to a local authority or to a public sector corporation or to a recognized educational institution.

9. Whether the petitioner can be regarded or treated as a public sector corporation for applying Section 21(8) of the Act.

10. A Public Sector Corporation has been defined under Section 3(p) of the Act as under:

"Public Sector Corporation" means any corporation owned or controlled by the Government and includes any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty percent of the paid up share capital is held by the Government."

11. It means any corporation owned or controlled by the Government and even a company in which the Government holds 50% or more of the paid up share capital, is a public sector corporation.

12. In view of the above I consider it proper to first consider as what is meant by a corporation and a cooperative society.

13. A corporation is a specie of legal persons invented by law and invested to carry out functions sanctioned by law. It is distinct from its members and has a legal existence of its own.

14. A "corporation" as a word is used in general popular and legal sense to mean a "corporation aggregate" which is composed of a number of individuals as distinguished from corporate sole.

15. Blacks" Law Dictionary (9th edition) defines "corporation" as a business entity having authority under law to act as a single person distinct from its shareholders who own it.

16. In simpler form, it is a juristic person established in accordance with law, having a legal personality distinct from the natural persons who make it up, that exists indefinitely.

17. Chief Justice Marshall in the famous case of *Trustee of Dartmouth College v. Woodward*, 17 US (4 Wheat) 518, defined corporation as an artificial being, invisible, intangible and existing only in contemplation of law.

18. In contrast, a cooperative society though an union of individuals commonly labourers, farmers, businessmen or small capitalists formed to provide services to its members rather than with the object of sharing profits and governed by a particular statute, is distinct from a corporation in a technical sense as well as in the sense commonly understood by the people in India.

19. A Cooperative Society generally takes the form of a cooperative corporation, an entity that has a corporate existence, but primarily organized for the purpose of providing services to its members and not for corporate profits.

20. A cooperative society as defined under Section 2(f) of the U.P. Cooperative Societies Act, 1965 means a Society registered or deemed to be registered under the aforesaid Act. Section- 4 of the said Act provides for the registration of a co-operative society and for issuance of the certificate of registration under Section 8 of the Act. Section 9 of the Act mandates that on registration, a cooperative society shall be a body corporate by the name under which it is registered, having perpetual succession and a common seal competent to act as a juristic person.

21. In the above sense, a duly registered cooperative society is a body corporate and would be a corporation.

22. Similarly, a society registered under the Societies Registration Act, 1908 would also be a body corporate and a corporation and so is any company incorporated and registered under the Companies Act, 1956. There may be many other forms of body corporate which may be recognized as corporation in the wider sense.

23. In *Daman Singh and others v. State of Punjab and others*, AIR 1985 SC 973, a controversy arose whether cooperative societies were corporation within the meaning of Article 31-A(1)(c) of the Constitution of India which provided that no law providing for the amalgamation of two or more corporations shall be deemed to be void on the ground of inconsistency with Articles 14 and 19 of the Constitution of India. The five Judges Constitution Bench repelled the argument that Cooperative Societies would not be covered by the word "corporation" as used under Article 31-A(1)(c) of the Constitution of India and held that there is no doubt that a cooperative society is a corporation as commonly understood.

24. The aforesaid decision thus covers the field. It has been followed by this Court in *Zila Sahakari Sangh Limited Bulandshahr v. District Judge, Bulandshahr and another*, 1997 (2) ARC 199, to hold that the Zila Sahakari Sangh Limited, Bulandshahr a co-operative society registered under the provisions of the U.P. State Cooperative Societies Act, 1965 is a corporation but not a public sector corporation as the State Government was not found to be the controlling authority of it.

25. The position in India in the general perspective is not much in consonance with the legal definition of the corporation as discussed above. It is taken in its somewhat a narrower sense to mean a body corporate created by the Legislature either Central or State, like Municipal Corporations, LIC and FCI etc., as distinguished from companies, Societies and Cooperative Societies which are registered and governed by particular statutes but are not the creation of them.

26. In *S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others*, , a three Judges Constitution Bench was seized of the controversy whether a cooperative society would be included in the term "corporation". Their Lordships held that the expression "corporation" must be given a narrow legal connotation. It held that a corporation means a body corporate created by Legislature and not a body or society brought into existence by an apt of a group of individuals. A, Cooperative Society is not a statutory body as it is not a creation of a statute. It is body created by an act of a group of individuals in accordance with the provisions of the statute. It is therefore not a corporation established by an Act of the Central or the State Legislature.

27. The Supreme Court in the aforesaid decision taking a narrow meaning of the corporation ruled that a Cooperative Society is not a corporation.

Thus, a Cooperative Society in the -wider sense has been held to be a "corporation" whereas in narrow sense it has been excluded from its ambit.

28. The difficulty now posed before the Court is as to which of the two connotations be accepted and adopted for the purposes of Section- 21(8) read with Section 3(p) of the Act.

29. A plain reading of the definition of public sector corporation as contained in Section 3(p) of the Act shows that the definition is inclusive in nature. The use of the word "includes" is indicative that the Legislature intends to enlarge the scope of the word corporation by including within its fold companies incorporated under the Companies Act, 1956.

30. A company under the Companies Act is ordinarily, a corporation in the wider sense like societies or cooperative societies and as such there was no necessity to widen the definition by including it. The legislature included it not to widen the scope of corporation but to clarify and emphasis that companies are part of it and not the other forms of body corporates.

31. The Legislature was conscious that company is a corporation but even then

provided for its inclusion in the definition of the corporation but not the societies or the cooperative societies. The enlargement of the definition of corporation as such is limited to companies only. If the Legislature provides for inclusion of companies there appears to be no logic in excluding the societies or the cooperative societies from the definition of the corporation all of whom are corporations within the wider sense. The purpose appears to be simple. The Legislature in its wisdom took the narrow meaning of the word corporation and had enlarged it to a limited extent by providing for the inclusion of the companies only and thereby impliedly excluding the societies and the cooperative societies.

32. In *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, , the five Judges constitution bench observed that the word "includes" may in certain contexts be a word of limitation. 21

Thus, if the Legislature itself has not considered it appropriate to include cooperative societies within the purview of the definition of corporation and has taken a narrow meaning of it, there is no justification for this Court to adopt the wider definition of the "corporation" and to hold a cooperative society to be a corporation within the meaning of Section 3(p) of the Act

33. In *M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh*, , the definition of "Tobacco" in context with Andhra Pradesh General Sales Tax Act came up for consideration before the Supreme Court. The definition of the "Tobacco" therein was as under:

"Tobacco means any form of tobacco, whether cured or uncured and whether manufactured or not and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth."

34. The aforesaid definition explains the meaning of "Tobacco" and includes certain items therein. The definition was held to be explanatory and inclusive. The Court interpreting the words "mean and include" placing reliance upon the observation of Lords in *Dilworth v. Commissioner of Stamps*, 1899 AC 99, held that the "Tobacco seed" does not fall within the definition of "Tobacco" because the second part of the definition specifically mentions leaves, stalks and stems but leaves out seeds.

35. In short, what was not included in the definition was not held to be part of it.

36. Accordingly, as societies and cooperative societies have not been included in the definition of the Public Sector Corporation and the inclusion to confine to companies only they would not form part of it.

37. A corporation controlled by the Government is a public sector corporation. In the instant case when the cooperative society is not a corporation the issue of it being a public sector corporation pales into insignificance.

38. Accordingly, the petitioner Cooperative Society which is an apex Society is

not a corporation that would fall in the definition of the "public sector corporation" for the purposes of Section 21(8) of the Act.

39. In view of the above, the Courts below fell in patent error in treating the petitioner cooperative society as a corporation for enhancing and fixing rent of the tenanted accommodation under Section 21(8) of the Act. The enhancement of rent is therefore not only illegal but without jurisdiction. Accordingly, The impugned orders dated 15.5.1996 and 29.11.07 are quashed.

40. It has been informed that premises in dispute was vacated by the petitioner on 31.8.2000 and the enhanced rent till then had been paid. It is therefore, considered equitable to set at rest the litigation by providing that no part of the rent paid be refunded as it would involve further proceedings for its realisation. The writ petition is allowed as above with no order as to costs.