

(2007) 07 BOM CK 0068

In the Bombay High Court

Case No : Letters Patent Appeal No. 51 of 2007 in Writ Petition No. 755 of 2007

Sanjaykumar Shah and Others

APPELLANT

Vs

Uttamlal Ratilal Shah (died) through Bharatkumar Uttamlal
Shah and Girivihar Co-op. Housing Society Ltd.

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A, 28
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2
Maharashtra Co-operative Societies Act, 1960 — Section 12, 163(1), 2, 2(16), 43
Maharashtra Co-operative Societies Rules, 1961 — Rule 10, 10(1)

Citation : (2007) 5 ALLMR 195 : (2007) 5 BomCR 694 : (2007) 109 BOMLR
1701 : (2008) 1 MhLj 205

Hon'ble Judges : N.V. Dabholkar, J; M.G. Gaikwad, J

Bench : Division Bench

Advocate : R.R. Mantri, for the Appellant; P.M. Shah, instructed by S.P. Shah,
for the Respondent

Judgement

M.G. Gaikwad, J.—Heard learned Counsel, appearing on behalf of respective parties.

2. Letters patent appeal is admitted and with the consent of learned Counsel for respective parties, this matter is taken up for final hearing and disposal.

3. This letters patent appeal is directed against the order dated 13-03-2007 in Writ Petition No. 755/2007, whereby the learned Single Judge of this High Court summarily dismissed the writ petition by confirming the Judgment of learned Member, Maharashtra State Cooperative Appellate Court, Mumbai in Appeal No. 350/1994 as well as the Judgment of the Cooperative Court, Jalgaon in Dispute No. 134/1989 directing present appellants to surrender peaceful possession of the suit property to the respondent No. 1 and payment of past mesne profits to the extent of Rs. 18,000/-.

4. The subject matter in dispute is plot No. 8-B (bungalow No. 48), situated in respondent No. 2 Society at Nandurbar. Present respondent No. 1 is the Chairman of respondent No. 2 Society. Original disputant No. 2 Uttamlal who was father of present respondent No. 1 was the Chairman of respondent No. 2 Society in his life time.

Present appellants are the legal representatives of one Amrutlal who was real brother of deceased Uttamlal, the father of respondent No. 1. They were having two other brothers, by name, Ramniklal and Zutalal. They had constituted a joint family. Besides the subject matter of this litigation, they also owned three other bungalows and some other properties, but the present dispute is in relation to plot No. 8B (bungalow No. 48), which is a bungalow allotted by the respondent No. 2 Society. Admittedly, the allotment of the said plot by the respondent No. 2 Society is in the name of deceased Uttamlal, the father of respondent No. 1. After allotment of said plot in the name of deceased Uttamlal, construction of a bungalow has been raised. It is not in dispute that the said bungalow is in occupation of present appellants. Uttamlal, original disputant No. 2 issued a notice dated 07-02-1989 contending that he is exclusive owner of the bungalow. The bungalow was let out to Amrutlal in the year 1975 with monthly rent of Rs. 500/- and by this notice, the tenancy came to be terminated and the appellants were called upon to give vacant possession of the bungalow. This notice came to be replied by the present appellants. They have denied title of Uttamlal over the bungalow as well as the alleged tenancy. According to them, the plot has been acquired by the joint family of all four brothers. In the family partition, bungalow is allotted to deceased Amrutlal and since then, Amrutlal and his legal representatives (present appellants) are the owners in possession of the suit property. After this notice-reply, deceased Uttamlal, who was then the Chairman of the respondent No. 2 Society, and the Society jointly filed Dispute No. 134/1989 in the Cooperative Court at Jalgaon. In the Dispute, same contentions were raised that Disputant No. 2 is the owner of the suit bungalow and present appellants were occupying the same as tenants, however, they denied the tenancy, as such, they are unauthorised occupants. Thus, the Society and deceased Uttamlal filed Dispute claiming possession of the bungalow. These appellants also raised the same contentions before the Cooperative Court, claiming themselves to be the owners of this property since the partition, denying the alleged tenancy. One more contention was raised by them that the dispute between the parties does not fall within the ambit of Section 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the MCS Act", for brevity). Hence, the Cooperative Court is having no jurisdiction to entertain the Dispute.

5. The Cooperative Court framed issue about title claimed by disputant No. 2. A specific issue also came to be framed as to whether the Dispute is maintainable u/s 91 of the MCS Act. After hearing the parties, a finding came to be recorded that disputant No. 2 is the owner of the plot in question. On the issue of jurisdiction, finding came to be recorded that the Cooperative Court is having

jurisdiction as the Dispute comes within the purview of the provisions of Section 91 of the MCS Act. On these findings, a decree came to be passed directing the present appellants to surrender possession to disputant No. 2 and the appellants were also directed to pay an amount of Rs. 18,000/- towards the profit or damages for three years prior to filing of the Dispute.

This decision of the Cooperative Court dated 12-04-1994 came to be challenged by preferring an appeal bearing Appeal No. 350/1994 before the Maharashtra State Cooperative Appellate Court at Mumbai. The Appellate Court dismissed the appeal preferred by these appellants confirming the findings recorded by the Cooperative Court, Jalgaon, by its Judgment dated 14-03-1997.

6. Though the decree passed by the Cooperative Court dated 12-04-1994 is confirmed by the Appellate Court by Judgment dated 14-03-1997, respondent No. 1 did not execute the same till 2002. Darkhast No. 54/2002 came to be filed by the respondent No. 1 in the court of learned Civil Judge, Senior Division, Nandurbar. Present appellants appeared before the Executing Court and raised contention that the decree sought to be executed being a decree passed by the Court having no jurisdiction, same is not executable. This objection is not entertained by the Executing Court. Hence, present appellants did file two writ petitions bearing Writ Petition No. 755/2007 challenging the order of the Cooperative Court and another writ petition No. 775/2007 challenging the order of the Executing Court. After hearing the learned Counsel, appearing on behalf of both parties, the learned Single Judge by his Judgment dated 13-03-2007, dismissed writ petition No. 755/2007. The learned Single Judge observed that the Dispute being jointly filed by the Society and the allottee of the plot, such a Dispute is covered by the provisions of Section 91 of the MCS Act. Hence, the Cooperative Court had jurisdiction to entertain the same. The learned Single Judge also observed that the Cooperative Appellate Court decided the appeal by Judgment dated 14-03-1997 and the writ petition came to be filed after about a period of ten years and there is an inordinate delay and the reason given for this delay is not plausible and the petition was liable to be rejected on the ground of delay and laches, but in the interest of justice, case is considered on merit and the petition was found to be without merit. For these writ petition came to be dismissed.

The appellants by preferring present letters patent appeal challenged the said Judgment and order passed by the learned Single Judge of this High Court dismissing the writ petition at the admission stage itself. Learned advocate Shri Mantri, on behalf of the appellants while challenging the correctness of the orders of the courts below including the order of the learned Single Judge dismissing writ petition summarily, advanced following submissions.

[i] The dispute between appellants and Uttamlal or his legal representative (respondent No. 1) is of title to bungalow and not a dispute touching the business of the Society, and hence, the Judgment of the Cooperative Court is without jurisdiction.

[ii] Disputant No. 2 Uttamlal by notice dated 07-02-1989 contended that appellants are tenants and he is landlord. Hence, suit ought to have been filed in the Rent Court.

[iii] Society is Tenant-Ownership Society as specified in the Rules, and hence, Society has no locus and is an idle or formal party. Solely on the ground that Society is joined as a party, dispute cannot be said to be a dispute touching the business of Society.

[iv] Society in the present case being Tenant Ownership Society, ratio laid down by the Apex Court in the case of O.N. Bhatnagar is not applicable as in that case the Society being a Tenant Co-partnership Society is held to have locus.

[v] Letters patent appeal is maintainable as the order on merit came to be passed in a petition under Article 226 of the Constitution of India.

7. Learned advocate Shri Mantri, appearing on behalf of the appellants submitted that the finding on the issue of jurisdiction is not sustainable. According to him, the real dispute between deceased Uttamlal and Amrutlal or their respective legal representatives relates to their title over the property in question. Uttamlal claimed that he is exclusive owner of the suit bungalow and Amrutlal also claimed that it is acquired by the joint family and same is allotted to him in the family partition. The issue of title needs to be decided by the Civil Court only and it cannot be said to be a Dispute covered by Section 91 of the MCS Act. The Cooperative Courts assumed jurisdiction to decide that dispute which was not vested in them. Hence, the decree passed by the Cooperative Court is without jurisdiction and it being a case of lack of inherent jurisdiction, the decree is not executable. However, this aspect is not considered by the learned Single Judge while dismissing the writ petition summarily.

The second contention advanced by learned advocate Shri Mantri is that the disputant himself by a notice issued on 07-02-1989 before filing of the Dispute, alleged relations of landlord and tenant between him and his brother. In view of that notice and admission therein, a Suit ought to have been filed in the Rent Court and the Cooperative Court was having no jurisdiction to entertain the Dispute.

The third contention raised on behalf of the appellants by learned advocate Shri Mantri is that the respondent No. 2 Society is a tenant-ownership Society as specified at Entry No. 5 in Rule 10(1) of the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as "the MCS Rules", for brevity). Such a contention was also raised before the learned Single Judge and it was submitted that the ratio in the case of O.N. Bhatnagar is not applicable as the Society in the reported case was a Co-partnership Housing Society and the Society in the present case is an ownership Society. The learned Single Judge observed in paragraph No. 16 of the Judgment that he is unable to find out any distinction in the Judgment of the Apex Court in the case of O.N. Bhatnagar Vs. Smt. Rukibai Narsindas and Others, , with respect to two types of Societies. Learned advocate

Shri Mantri further submitted that in the Bhatnagar's case itself, such a distinction is appearing in paragraph No. 21 of the Judgment and according to him, as the structure of bungalow belongs to the allottee and the Society being a tenant-ownership Society, Society has no locus and the Dispute cannot be said to be a Dispute touching the business of the Society, solely on the ground that Society is joined as a party to the dispute. According to Shri Mantri, therefore, the dispute is not a Dispute covered under the provisions of Section 91 of the MCS Act. Hence, the decree passed by the Cooperative Courts is without jurisdiction, but this aspect is not considered by the learned Single Judge. The decision of the learned Single Judge, therefore, needs interference.

As regards the maintainability of letters patent appeal, submission is advanced that the petition preferred by the appellants was a petition under Article 226 of the Constitution of India. The order of dismissal of writ petition came to be passed considering the merit in the matter and is not an interim order as such. Hence, the letters patent appeal is maintainable.

8. Learned Senior Counsel Shri P.M. Shah, appearing on behalf of the respondents relying upon the notice dated 07-07-1979 (paper-book page 87), submitted that there is an admission of the appellants' father Amrutlal that bungalow No. (subject matter of this appeal) is exclusively owned and possessed by Uttamlal, the father of respondent No. 1. Amrutlal who died in 1988 never claimed title over the suit bungalow, nor he denied Uttamlal's exclusive title over it. There is, therefore, no substance in the contention of the appellants that the suit bungalow is allotted to Amrutlal, the father of present appellants. First time, by notice-reply dated 10-03-1989, the appellants claimed title to the property denying the tenancy in their favour. However, they could not produce any document, nor anyone of them was examined before the Cooperative Court to prove their title or acquisition of the property by the joint family from common nucleus. In a suit for partition between the brothers, this bungalow is not included as subject matter of that partition suit. Hence, that is one more circumstance which negatives the contention of the appellants about acquisition of the property by joint family or allotment of the same to the appellants' father in a family partition. As such, the respondents contended that there was absolutely no evidence in proof of appellants' contention of their title over the suit bungalow.

Another submission advanced by learned Senior Counsel on behalf of the respondents is that to show the class of the respondent No. 2 Society, one certificate came to be produced in the writ petition. It was never placed before the trial court. There is no specific pleading to that effect in the written statement. There is also no cross-examination on this point to the witnesses examined on behalf of the Society. According to him, the Society allotted the plots to members and the bungalows came to be constructed with the help of loan borrowed by the Society. The title over the plot remains with the Society though the structure of a bungalow is of ownership of a member. As such, the

Society is having interest and locus, even if the contention of the appellants is accepted that it is a tenant-ownership Society. As the interest of the Society is subsisting in the subject matter, the ratio laid down by the Apex Court in the case of Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay, is inapplicable to the matter at hands. The Judgment of the Cooperative Court is confirmed by the Cooperative Appellate Court while dismissing the appeal of these appellants by its Judgment dated 14-03-1997. However, the said decision came to be challenged first time in 2007 after a long delay of ten years. Hence, the writ petition suffered from laches and ought not to have been entertained.

On the point of maintainability of present letters patent appeal, learned Senior Counsel Shri Shah submitted that solely on the ground that the writ petition is styled as a petition under Article 226 of the Constitution of India does not change the nature of the dispute. The reliefs sought in the writ petition are under supervisory jurisdiction of this High Court under Article 227 of the Constitution. Hence, the letters patent appeal against such a decision is not maintainable. In support of this contention, reliance is placed on the decision of this Court in the case of Uttam Gawali Vs. State of Maharashtra and Others, . As such, the submissions advanced by learned Senior Counsel on behalf of the respondents, in nutshell, are as under.

[i] The letters patent appeal itself is not maintainable.

[ii] The writ petition itself was not maintainable and ought not to have been entertained because of delay and laches.

[iii] The dispute falls u/s 91 of the Maharashtra Cooperative Societies Act and all the courts below have rightly recorded finding that the Cooperative Court had jurisdiction to entertain the Dispute as it was a dispute touching the business of the Society as the interest of the Society is still subsisting in the subject matter.

9. In view of the rival submissions advanced on behalf of both the parties, the first material point for our consideration is as to "whether the dispute in the present case falls within the ambit of Section 91(1) of the MCS Act". In case the finding on this point is in the affirmative, then the Cooperative Court is the only competent court which can adjudicate the issue. However, in case the answer on the above point is in the negative, then in that case, the Cooperative Court may not have jurisdiction to entertain the dispute and the remedy to the disputants/ present respondents No. 1 and 2 will be to approach either the Civil Court in case they claimed possession of the suit bungalow on the basis of title, or to the Rent Court in case they want eviction of the appellants from the suit bungalow under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in view of their contention in respect of their relations with appellants as landlords and tenant.

10. At this stage, it will be proper to refer to the provision of Section 91(1) of the MCS Act, which runs thus.

91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, election of the committee or its officers other than elections of committees of the specified societies including its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to a co-operative Court, if both the parties thereto are one or other of the following:

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the Official Assignee of a de-registered society;

(b) a member, past member or a person claiming (16) through a member, past member or a deceased member of a society, or a society which is a member of the society or person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed u/s 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restriction have been prescribed u/s 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the Liquidator of such a society or deregistered society or the Official Assignee of such a de-registered society.

Provided that, an industrial dispute as defined in Clause (k) of Section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society u/s 73IC or a society specified by or u/s 73G, or refusal of admission to membership by a society to any person qualified therefor, or any proceeding for the recovery of the amount as arrears of land revenue on a certificate granted by the Registrar under Sub-section (1) or (2) of Section 101 or Sub-section (1) of Section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under Sub-section (1) of Section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal u/s 152 or 152A and revision u/s 154 of the Act have been provided, shall not be deemed to be a dispute for the purposes of this section.

On plain reading of this section, it can be said that in case the dispute is of a nature touching the business of a Society, then such a dispute needs to be adjudicated by an authority under the MCS Act i.e. the Cooperative Court and in

view of specific provision u/s 163(1a) of the MCS Act, which excludes the jurisdiction of other civil or revenue courts, only the cooperative court will be having jurisdiction to adjudicate such a dispute. Section 163(1b) runs thus.

163. Bar of jurisdiction of Courts

(1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of

(a) *****

(b) any dispute required to be referred to the Cooperative Court for decision

11. The respondent No. 2 Society and father of present respondent No. 1 filed Dispute bearing Dispute No. 134/1989 in the Cooperative Court. Their pleading in the said dispute is that disputant No. 1 is a Cooperative Society registered under the provisions of MCS Act and disputant No. 2 is a member and shareholder of the said Society. As regards the property in dispute, it is pleaded that disputant No. 2 being a member, plot No. 8B (bungalow No. 48) of the Society is allotted to disputant No. 2. Deceased Amrutlal, the father of present appellants was permitted to occupy the bungalow and he was occupying the same till his death i.e. upto 30-08-1988 and thereafter, present appellants are occupying the same. Their possession over the suit bungalow is alleged to be a permissive possession. It is also specifically pleaded that the bungalow is of exclusive ownership of member disputant No. 2 and his title was never questioned by Amrutlal. However, after his death, present appellants were called upon to surrender the possession by notice dated 07-09-1989 and in notice-reply, they denied title of disputant No. 2. Hence, the Dispute came to be filed in the Cooperative Court for recovery of possession.

Respondent No. 2 Society came to be joined as a co-disputant as permission of the Society was not obtained by Amrutlal to occupy the said premises and on that ground, a resolution was alleged to have been passed to take legal action.

Except the contention that permission of the Society was not obtained to allow Amrutlal to occupy the premises, no other contentions have been raised in the Dispute showing any right of the Society over the bungalow. On the contrary, in the Dispute itself, it is pleaded that bungalow is exclusively owned by disputant No. 2 Uttamlal. Present appellants in their written statement specifically raised contention that the dispute does not fall within the ambit of Section 91(1) of the MCS Act and the Dispute cannot be filed in the Cooperative Court, and a request to that effect was made to frame a preliminary issue. In the written statement, exclusive ownership of disputant No. 2 Uttamlal (deceased father of present 1) was denied and the appellants set up a title in themselves contending that same is allotted to Amrutlal in family partition. In view of these contentions, the Cooperative Court framed issue No. 3 which runs thus:

Whether the present dispute is maintainable u/s 91 of the MCS Act?

12. Learned Senior Counsel Shri Shah, appearing for the respondents contended that the present appellants have not challenged the jurisdiction of the Cooperative Court, nor any issue was framed, but the issue of jurisdiction was first time raised in the writ petition, which is not permissible. We are not inclined to accept this contention. The appellants in their written statement paragraph No. 2 raised specific contention that the dispute does not fall within the ambit of Section 91(1) of the MCS Act and the dispute cannot lie before the Cooperative Court. Not only this, in paragraph No. 14 of the written statement, a specific contention has been raised that disputant No. 1 Society is having no right to file the dispute, but came to be joined as disputant only to support the cause of disputant No. 2. By this pleading, present appellants raised specific contention that the Society has no interest in the property or in the dispute and also raised a contention that dispute does not fall within the ambit of Section 91(1) of the MCS Act and same is not entertainable by the Cooperative Court. In view of this contention, issue No. 3 came to be framed as to whether the dispute is maintainable in the Cooperative Court u/s 91(1) of the MCS Act. The Cooperative Court also recorded a finding on this issue and observed that the opponents raised contention that the dispute does not fall within the ambit of Section 91 of the MCS Act. It is further observed that burden lies upon the opponent to prove the said fact. However, they have not led any evidence to that effect. On these observations, the Cooperative Court concluded that the dispute does fall u/s 91 of the MCS Act and it is maintainable before the Cooperative Court.

On perusal of finding on issue No. 3 recorded by the Cooperative Court, we are of the opinion that the Cooperative Court has not recorded any reasons and referring the provisions u/s 94 of the MCS Act, jumped to the conclusion that the dispute falls u/s 91 of the MCS Act.

13. Present appellants challenged the award passed by the Cooperative Court by preferring appeal No. 350/1994 before the Maharashtra State Cooperative Appellate Court, Mumbai. A copy of the Judgment of the appellate court is at Exhibit-E of the record. In the appeal also, on behalf the present appellants, a ground was raised that the dispute does not fall within the ambit of Section 91 of the MCS Act and dispute cannot lie before the Cooperative Court. The appellate court in the Judgment observed that the respondent No. 1 before it was a member of respondent No. 2 Society and the plot was allotted to the respondent No. 1. The respondent No. 1 constructed a bungalow by obtaining the loan. Respondent No. 1 refunded the loan amount. Permission from respondent No. 2 Society was not obtained when deceased Amrutlal was allowed to occupy the plot, and in view of the above referred circumstances and there being no evidence in support of the title of present appellants over the suit bungalow, the appellate court held that the appellants have no rights to continue in possession and contention that the Cooperative Court had no jurisdiction is negatived. Again it can be said that the appellate court is also found to have not recorded any reasons on the point in controversy as to whether the dispute can be said to be a dispute touching the business of the Society, nor any reasons have been

recorded whether the Society is having any interest and had locus to file the dispute. Both the trial court and the appellate court appear to have come to the conclusion that the dispute is a dispute u/s 91 of the MCS Act, because the disputant No. 2 is a member of the Society and he is found to have constructed the bungalow and the present appellants who denied his title did not lead any evidence to prove their title over the property, but no reasons were found to have been recorded as to whether the dispute falls within the ambit of Section 91 of the MCS Act and such a dispute about the title can be entertained by the Cooperative Court.

14. Although the trial court and the appellate court did not record any reasons for coming to the conclusion that the dispute falls within the ambit of Section 91 of the MCS Act, the learned Single Judge of this Court while dismissing the writ petition gave reasons that the dispute squarely falls within the ambit of Section 91. Before the learned Single Judge, on behalf of these appellants, a contention was raised that the Housing Society in question is a tenant-ownership Society. The Society allotted the plot and the bungalow is constructed by the member. Hence, the Society had no existing interest in the dispute. However, in the dispute filed before the Cooperative Court, the Society joined as disputant No. 2. By mere joining the Society as a party to the dispute, dispute cannot be said to be a dispute u/s 91 of the MCS Act. However, the learned Single Judge did not accept this submission and came to the conclusion that as per the ratio laid down by the Division Bench of this High court in the matter of *Kalawati Ramchand Malani v. Shankar Rao Patil and Ors.* reported in 1974 Mh.L.J. 908, even in the case of ownership societies, if the dispute is raised by a Cooperative Society and a member thereof, then the dispute falls u/s 91(1) of the MCS Act. Before the learned Single Judge, reliance was also placed on the decision of the Apex Court in the case of *Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay*, , an argument was advanced that the decision of the Apex Court in the case of *O.N. Bhatnagar Vs. Smt. Rukibai Narsindas and Others*, , is not applicable as the Society in *O.N. Bhatnagar's* Society was a tenant-partnership Society. This submission is also not accepted and in paragraph No. 12 of the Judgment of learned Single Judge, it is observed that the claim by the Society together with a member for ejection of a person who was permitted to occupy having become a nominal member thereof upon revocation of licence is a dispute falling within the purview of Section 91(1) and on these observations, the learned Single Judge came to the conclusion that even for tenant-ownership societies, if the dispute is raised by a Cooperative Society and its members against a person unauthorisedly in occupation, the dispute falls within the ambit of Section 91 and the writ petition thus came to be dismissed. This finding of the learned Single Judge is challenged. Learned advocate Shri Mantri advanced submission that the decision in the case of *O.N. Bhatnagar* (supra) is not applicable to the tenant-ownership society, as such a Society after allotment of plot ceases to have any interest in the subject matter and the dispute does not fall u/s 91 of the MCS Act. In view of this contention, the main point for consideration before us is as to

whether the present dispute falls u/s 91(1) of the MCS Act. For recording finding on this issue, we are required to consider the following points.

[i] Whether the Society ceases to have interest in the property after allotment of plot in case of tenant-ownership societies?

[ii] Whether mere joining of such a Society as a party to the dispute is sufficient to treat the dispute as dispute u/s 91(1) of the MCS Act?

[iii] Whether a dispute about the title and claim for possession on the basis of title can be entertained in a dispute u/s 91(1) of the MCS Act?

15. The Society - disputant No. 1 is alleged to be a tenant-ownership Society and a contention is raised that in case of such Society, to seek possession from licensee by a member, the Society has no locus and the dispute does not fall u/s 91 of the MCS Act. On behalf of respondents (original disputants), submission is advanced that no such defence was taken at the trial and first time, such a contention cannot be entertained. In the writ petition before the learned Single Judge, this contention was raised and the learned Single Judge recorded finding on that point also. Even in the pleadings of the dispute, as referred to above, it is alleged that the plot is allotted to the disputant No. 2 by the Society and the disputant No. 2, the member raised construction thereon and he is the owner of the bungalow, the subject matter. Hence, even in the pleadings of the disputants themselves, they admitted the status of the Society as tenant-ownership society. We are, therefore, not inclined to accept the contention raised on behalf of the respondents that such a contention as to the tenant-ownership society was raised by the appellants for the first time.

16. On behalf of the appellants, a certificate issued by the District Deputy Registrar, Cooperative Societies, Dhule is produced on record. This certificate came to be issued on 29-01-1966 and it is certified that this Society is classified as a Housing Society i.e. tenant-ownership society u/s 12 of the MCS Act read with Rule 10(1) of the MCS Rules. Admittedly, this document was not produced at the trial, but these facts were within the knowledge of disputants as one of the disputants is a Housing Society and disputant No. 2 was the then Chairman of the said Society for number of years. Hence, in view of this certificate, there is no dispute that this Society is a tenant-ownership society.

17. The next point for our consideration is about the rights of the Society and its members in relation to the property allotted to the members. Section 2 Sub-section 16 of the MCS Act defines "Housing Society", which reads thus:

[2] (16) "housing society" means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services.

Section 12 of MCS Act empowers the Registrar to classify all societies into one or other of the classes of societies defined in Section 2 and also into such sub-

classes thereof as may be prescribed by rules. The certificate referred to above is clear that this Society is classified as a tenant-ownership Society by the Registrar exercising powers u/s 12 of the MCS Act.

Rule 10 of the MCS Rules is relevant at this stage to find out the rights of the Society and its members. This Rule empowers the Registrar to classify the Society into one or other of the classes and sub-classes of the society, mentioned in detail in this Rule. Housing societies are sub-classified under different sub-classes as referred at serial No. 5 of the classification. These sub-classes are:

- (a) Tenant-Ownership Housing Society;
- (b) Tenant Co-partnership Housing Society;
- (c) Other Housing Societies.

This entry at serial No. 5 also makes it clear that in case of Tenant-Ownership Societies, the land is held either on lease-hold or free-hold basis by the Societies and houses are owned or are to be owned by the members. In case of Tenant Co-partnership Housing Societies, the Society holds both land and buildings either on lease-hold or free-hold basis and allot them to their members. There is thus clear distinction between the nature of these two types of societies. In case of Tenant Co-partnership housing society, the Society holds both land and buildings on lease-hold or free-hold basis and allots the same to their members. However, in case of Tenant-Ownership Societies, the land is held either on lease-hold or free-hold basis by the society and the houses are owned or to be owned by its members.

This Society being a Tenant-Ownership Society, the member is an owner of the house and the Society has no concern with the ownership of the bungalow. This legal position is not disputed by the disputants themselves. Because in their pleadings itself, they have specifically pleaded that the disputant No. 2 (present respondent No. 1) is the owner of the property in question and in the dispute, the Society did not claim ownership over the suit bungalow. Apart from this admission in the pleadings, the witness examined on behalf of the Society who was the then Secretary of the Society has stated that plot No. 8B was allotted to the defendant No. 2 by the Society. Construction was raised on that plot. According to him, the Society borrowed loan from the Maharashtra Cooperative Housing Finance Corporation (MSFC). He also contends that for creating licence in favour of the appellants' father, permission of the Society was not obtained. Though he made such a statement in the examination-in-chief, he has admitted that appellants' father deceased Amrutlal was not a member of this Society. Further he admits that in the year 1970, the rights over the bungalow were given to the members. He also admitted that in respect of this bungalow, the entire loan obtained is repaid upto 1990 only. In respect of Society's rights, he gave clear admission that except to recover the loan instalments and the service taxes, the Society is having no concern with the bungalow. Not only this, but he admitted that in the bye-laws of the Society also, there is no provision

authorizing the Society to recover the loan dues or the taxes. He also admits that some of the members in this Society had filed suits for recovery of possession from the tenants and the Society did not take any action against those persons. From these admissions, it is clear that this Society is having no interest over the bungalows or in the matter of letting out the bungalows by the members of the Society to third persons.

Deceased Uttamlal (original defendant No. 2) was examined at the trial and he deposed that he is the member of the Society. Plot is allotted to him. He permitted his deceased brother Amrutlal to occupy the bungalow and he claimed to be the owner of this bungalow. He also admits issuance of notice dated 07-02-1989 to the present appellants and the appellants' reply to the said notice on 10-03-1989. He has further deposed that before occupying the bungalow, the permission of the Society was not obtained. He denied the contentions of the appellants that this bungalow was allotted to Amrutlal in family partition. Though he is not cross-examined on behalf of these appellants, even in the examination-in-chief itself, he has not uttered a single word about the Society's rights over the bungalow or about existence of the Society's rights over the property after allotment of a plot to the member. From this material on record, it is clear that the Society had no existing right over the bungalow after the allotment of the plot to the members. The only right as claimed by the Secretary of the Society is to recover service taxes from the members and the loan instalments, but the admission of the Secretary of the Society makes it clear that such a right is not incorporated in the bye-laws. Uttamlal only raised a contention that permission of the Society was not obtained for creating licence or granting permission in favour of Amrutlal. Unfortunately, no material is placed on record to show that for creating the licence under any of the provisions of bye-laws, such permission from the Society is essential. In absence of any statutory provision or any provisions in the bye-laws, it cannot be presumed that there was restriction or prohibition on the member in creating licence in favour of third party or permission of the Society was required for such licence.

From the above facts and the evidence on record, it is clear that the Society had no existing interest over the suit bungalow, nor there is any prohibition on the right of a member to create licence in favour of third person.

18. The next question for our consideration is whether in case of Tenant-Ownership Society, the Society can be said to have any interest over the plot or bungalow? and to recover possession from third party, the Society can file a dispute alongwith such a member.

The learned Single Judge in the impugned order observed that in view of the ratio laid down by the Apex Court in the case of O.N. Bhatnagar and the ratio laid down by the Division Bench of this Court in the case of Kalawati Ramchand Malani, as the Society and members jointly filed a dispute, dispute falls u/s 91 of the MCS Act and the Cooperative Court is held to have jurisdiction to entertain and decide such a dispute. This finding being challenged on behalf of the

appellants, it is necessary to make a reference to the said decisions to find out as to whether the ratio in those cases supports the contention of disputants/present respondents.

19. The Apex Court in the case of Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay, , considered the provisions of Section 91 of the MCS Act and scope and ambit of the term "touching the business of the Society", and ruled thus "Where the objects of a society were to carry on the trade of buying, selling, hiring and letting land in accordance with the co-operative principles, the letting by a member of such society on the flat purchased from the society could not be said "to touch the business of the society". The fact that such letting was forbidden by a regulation of the society was immaterial."

The respondent No. 1 in the said case was the owner of the flat in the Society. She was member of that Society and acquired flat from the said society. The appellants in the said case of M/s Sabharwal Brothers were put in possession of the flat. The agreement in their favour was for a period of eleven months and it was renewed from time to time. M/s Sabharwal Brothers also became members of the said Society. Respondent No. 1 made demand of possession, but occupants refused to vacate, hence, a dispute u/s 91(1) of the MCS Act came to be filed. Pending that dispute, appellants filed a suit in Small Causes Court. The Small Causes Court held that the suit is maintainable. Against that decision, appeal came to be filed and Bench of said Small Causes Court held that the Registrar's nominee did have jurisdiction to try the dispute and remanded the matter to the Small Causes Court. This order came to be challenged before the High Court. However, said civil application is dismissed by the High Court on a finding that it was not open to the plaintiffs to contend that the Registrar or his nominee had no jurisdiction to entertain the dispute. Said decision was challenged before the Apex Court. Before the Apex Court, an argument was advanced mainly on two points i.e.

[i] Whether there was any dispute between the parties touching the business of the Co-operative Society which could be decided by the Registrar or referred by him to a nominee for disposal; and

[ii] Whether the suit filed in the Small Cause Court was maintainable having regard to the nature of the relief sought.

Their Lordships observed that the central question before them is, whether the dispute between the parties is capable of reference under the Cooperative Societies Act and while recording finding on this issue, it has been held that the business of the Society was to let out the premises and member had no unqualified right to let out his flat or tenement to another by virtue of the bye-law and a breach of the bye-law could affect the defaulting member's right to membership. However, it has been held that letting by a member to another member would touch the business of the society. The relevant portion of the observations by Their Lordships runs thus:

...The letting of flat by respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but such letting by itself did not concern the business of the society in the matter of its letting out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the later had himself been a tenant of the flat under the society. "To touch" means "to come in contact with" and it does not appear that there is a point of contact between a letting by the respondent No. 1 and the business of the society when the society was not itself the landlord of the flat.

In our opinion, the ratio in the above case is squarely applicable in case of Tenant-Ownership Society. As admitted by the Secretary of the Society and also pleaded by both the disputants, the bungalow in question is presently exclusively owned by Uttamlal (predecessor-in-title of respondent No. 1). The Society had no control or existing right over that bungalow. Thus, except to recover the taxes, no provision is pointed out which prohibits letting by a member to a third person. It cannot be, therefore, said that the Society had any existing right and the dispute is a dispute touching the business of the society.

20. Both the parties placed reliance on the decision of the Apex Court in the case of O.N. Bhatnagar (supra), in support of their respective contentions. According to the respondents, in view of the ratio laid down in O.N. Bhatnagar's case, dispute to recover possession from the licensee of a flat squarely falls u/s 91(1) of the MCS Act. On behalf of the appellants, submission is advanced that the Society in O.N. Bhatnagar's case was a Tenant Co-partnership Society and the Society in the present case being a Tenant-Ownership Society, the ratio in O.N. Bhatnagar's case is not applicable and placing reliance on the observations of Their Lordships in paragraph No. 21, submission is advanced that the present case is distinguishable from the ratio in O.N. Bhatnagar's case. In view of these submissions, it has to be seen as to whether the ratio in O.N. Bhatnagar's case laid down by the Apex Court is applicable in the present matter.

It is not disputed that the Society in the case of O.N. Bhatnagar was a Tenant Co-partnership Society. The member of said Society inducted third party, a nominal member under an agreement of leave and licence. The licensee in that case had filed a suit for declaration of his tenancy rights and said suit was dismissed. Thereafter, a dispute came to be filed jointly by the Society and the member. Their Lordships held that in view of the above facts, as the agreement of leave and licence stood terminated, the licensee was nothing but a rank trespasser and was not entitled to the protection of Section 15A of the Rent Act. It has also been held that as the parties did not stand in the jural relationship of landlord and tenant, the dispute would be governed by Section 91(1) of the MCS Act and the proceedings u/s 91(1) were not barred by Section 28 of the Rent Act. No doubt, in the present case, the disputants alleged the status of present appellants as licensees, but the appellants claimed to be the owners. Before filing the suit, the member - disputant No. 2 had served a notice dated 07-02-1989 wherein he has

specifically alleged that the appellants are the tenants in the suit bungalow with monthly rent of Rs. 500/- and by the said notice, the alleged tenancy came to be terminated and the tenant was called upon to vacate the premises and pay rent arrears. Notice was replied by appellants and the alleged tenancy was denied. Even in the witness box, Uttamlal, the member admitted service of this notice. As such, there is no decision about the status of the parties as to whether the appellants are tenants as claimed in the notice or the owners. The Cooperative Court was not expected to record finding on these issues. The issue of title as raised by the appellants may be a point for adjudication by a Civil Court and the issue of tenancy will be a matter of adjudication by the Rent Court.

In the matter of O.N. Bhatnagar, a contention was raised that the Society in that matter was not a disputant. The Tribunal during pendency of the proceedings allowed transposition of the Society as co-disputant. That order not being challenged, the Apex Court held that the appellants cannot be permitted to challenge the transposition. A submission was advanced before the Apex Court that the dispute between licensor and licensee was not a dispute falling within purview of Section 91. It was also contended that the dispute between the flat owner and the occupants thereof as regards tenancy cannot be taken cognizance by the Registrar u/s 91 of the MCS Act. On behalf of the respondents, a submission was advanced that the dispute is a dispute touching the business of the Society. Their Lordships considered the scope of phrase "touching the business of the society". The society in the said case being a Tenant Co-partnership Housing Society, its object was to provide residential occupancy to its co-partner tenant members. Their Lordships observed that the nature of the business which a society carries on, has necessarily to be ascertained from the object for which the Society is constituted, and it logically follows that whatever the society does in the normal course of its activities such as by initiating proceedings for removing an act of trespass by a stranger, from a flat allotted to one of its members, cannot but be part of its business.

Before Their Lordships, reliance was also placed on the ratio laid down in M/s Sabharwal Brothers' case. Their Lordships observed that the authority decided only one point albeit a point of great importance namely, that the society having sold the flat, like any other vendor of immovable property, the letting out of the flat by the flat-owner was no concern of the society. It was further observed that there was nothing to show that such letting would affect the business of the society once it has sold the flat. In paragraph No. 21 of the Judgment in case of O.N. Bhatnagar, certain observations are made on which learned advocate Shri Mantri for the present appellants placed reliance and according to him, those observations are squarely applicable in the present case. The said observations in paragraph No. 21 of Their Lordships in the Judgment in O.N. Bhatnagar's case run thus:

It logically follows, as a necessary corollary, that if the transaction between the society and the holder of the flat were governed by Regulations in Form A, as

here, that is to say, if the society had let out the flat to her, the decision of the Court would have been otherwise.

In paragraph No. 22 of the said judgement, Their Lordships held that the decision in M/s Sabharwal's case is distinguishable on two grounds i.e.

[i] There was an outright sale of the flat by the society and not that it had been let out to her under Regulations in Form A, and;

[ii] The Society having sold the flat, the letting of the flat by the flat owner did not in any way affect the business of the society in the matter of its letting out the flat.

From these observations, it is clear that if the bungalow or flat is owned by a member and the member not being a tenant, letting of flat by him to third person cannot be said to be a business which affects the business of the society.

In the present case, the Society is a Tenant-Ownership Society. As discussed to above, the Society had no concern with the bungalow constructed on the plot allotted by it to its member. As contended by the disputants themselves in the dispute, bungalow is exclusively owned by the disputant No. 2. The Society had no existing right over the bungalow as admitted, except to recover the taxes. Disputant No. 2 himself by issuing a notice alleged that he has let out the bungalow to his brother Amrutlal and also claimed possession of the bungalow and arrears of rent by terminating the tenancy. Thus, the jural relations as landlord and tenant being admitted by disputant and the society having no existing right, the dispute cannot be said to be a dispute covered by Section 91(1) of the MCS Act. This is a dispute which may need adjudication under the Rent Act. The alleged tenant denied the relations as landlord and tenant and set up a title in themselves. In that case, the remedy available to the disputant No. 2 was to file a suit for possession on the basis of title in a civil court and in any case the dispute cannot be said to be a dispute falling within the ambit of Section 91(1) of the MCS Act.

21. The next contention raised and also accepted by the learned Single Judge is that the society and the disputant No. 2 jointly filed a dispute alleging appellants as unauthorised occupants, hence, such a dispute is governed by Section 91(1) of the MCS Act. Learned Single Judge while accepting this submission, placed reliance on the decision of Division Bench of this Court in the case of Kalawati Ramchand Malani v. Shankar Rao Patil and Ors. reported in 1974 Mh.L.J. 908. It has now, therefore, to be seen as to whether the ratio laid down by the Division Bench in the matter of Kalawati supports the contention of the respondents.

In the matter of Kalawati Ramchand Malani (supra), the society was a tenant co-partnership type housing society. The said society was formed with an object of constructing buildings and allotting them to the members. The member of the society allowed licensee to occupy the allotted building. The dispute was between a member and licensee after termination of licence. It has been held that the

dispute between the member and licensee after termination of licence is not one touching the business of the society and is not covered by Section 91 though it may ultimately "affect" business of the society if license is given in contravention of the Rules or bye laws of the society. No doubt, the Division Bench also held that a dispute touching the business of the society cannot be conceived without the society itself feeling aggrieved and choosing to raise such dispute and being a disputant in the same. Referring these observations, the learned Single Judge held that in the present matter, the society being a co-disputant alongwith the member, the dispute is covered by the provisions of Section 91. However, in the very case, it has been held that when a member entered into an agreement of leave and licence in favour of third person cannot by his own acts touch the business of the society unless the society objects and raises a dispute. It has also been observed that mere joining of the society as an idle party will not suffice. These observations are very much relevant. On account of mere joining the society as party, the dispute cannot be said to be a dispute covered by Section 91, unless the society is having any existing rights. In paragraph No. 22 of the Judgment in Kalawati's case, the Division Bench specifically observed that a dispute between the licensor and licensee, even if assumed, touches the business, the petition is still liable to be rejected, unless the petitioner further succeeds in showing that while entering into the leave and licence agreement with the non-member, his capacity as member was involved. It has been further held that to form a dispute u/s 91, it is also necessary that there exists some nexus between the party and his connection with the affairs of the society giving rise to the dispute. A contention in that case was also raised that member's right to allow anybody to occupy the flat as a licensee, springs from his right to possess the flat, which in turn springs from his membership of the society. However, this submission is held to be devoid of any merit.

The observations of Their Lordships in paragraph No. 16 of the Judgment in Kalawati's case are very much relevant to the facts of the present case. Said observations run thus:

...The learned advocates appearing for the petitioners could not draw our attention to any other activity of the Co-operative Societies concerned in this and the connected case beyond constructing the building, allotting the flats therein to its members, looking after the maintenance thereof, collecting monthly instalments for maintenance charges and of loans, if any, obtained for the purposes of construction of the building of the society. It is difficult to conceive how allowing any third person to occupy a flat on leave and license basis by a member of the society can touch the business of the society, if the entire gamut of the business carried on by the society particularly after the construction of the building is completed, is the one enumerated above.

From the ratio laid down in Kalawati's case, it is clear that unless the society is having some existing rights and objects for creating license or letting of the flat/property to a third person and files a dispute alongwith member, the case cannot

be said to be a dispute u/s 91 of the MCS Act. As recorded above, in our case, the society is a Tenant Ownership Society and as pleaded by the disputants themselves, the bungalow is owned by the member. No provision is pointed out from the bye-laws or any resolutions of the society which prohibits a member to let out such bungalow or creating license in favour of third party. The only right with the Society as admitted by the Secretary of the Society is to recover the loan instalments and taxes. In the present matter, in connection with this bungalow, as admitted by the Secretary of the Society, no loan is outstanding. The society has only concern to recover the taxes and that act by itself cannot be said to be a right existing over the bungalow, so that the dispute will fall u/s 91. The facts in the present case as admitted are clear that deceased Uttamlal - disputant No. 2 was Chairman of this society for many years till his death. He issued a notice alleging the tenancy in favour of the appellants and also claimed rent arrears and when the appellants denied the tenancy and set up a title, he managed to file the dispute and the society of which he was Chairman came to be joined as party - co-disputant. The society was found to be a society having no existing right. Hence, the society in the present case is an idle party and therefore, solely on the ground that the society also joined as a co-disputant, the dispute cannot be said to be a dispute covered by Section 91 of the MCS Act.

22. The dispute thus is not found to have been covered by Section 91 of the MCS Act. The Cooperative Court was not competent to entertain the same. The remedy for respondent No. 1 was either to approach the civil court by filing a suit on the basis of title or to file a suit in Rent Court claiming possession on the basis of notice of termination of tenancy dated 07-02-1989. As such, the orders passed by the Cooperative Court and the Cooperative Appellate Court are not sustainable. The learned Single Judge was not justified in confirming the said orders of the Cooperative Court and the Appellate Court, which orders are found to have been the orders without jurisdiction. Hence, the said order of the learned Single Judge needs interference.

23. The last point for our consideration is about maintainability of present letters patent appeal. Learned Senior Counsel Shri Shah, appearing on behalf of the respondents advanced two-fold submission. According to him, decision of the Cooperative Appellate Court rendered in 1997 is challenged after ten years. The writ petition itself was liable to be rejected on the ground of delay and laches. As stated above, we are not inclined to accept this contention because the learned Single Judge did not reject the writ petition on the ground of delay and laches. Another submission advanced on behalf of the respondents is that the letters patent appeal is not maintainable because the order under challenge is an order passed in a writ petition, while exercising supervisory jurisdiction under Article 227 of the Constitution.

In reply to this submission, learned advocate Shri Mantri for the appellants submitted that the writ petition came to be filed under Articles 226 and 227 of the Constitution to invoke the extraordinary jurisdiction of this High Court. It was

not a petition under Article 227 of the Constitution. Hence, the order not being an order passed invoking jurisdiction under Article 227 of the Constitution, letters patent appeal is maintainable. In support of this submission, he has placed reliance on the decision of the Apex Court in the matter of *Surya Devi Rai v. Ram Chander Rai and Ors.* reported in AIR 2003 SCW 3872, wherein the Apex Court held that the petition filed under Article 226 challenging the order of interim injunction passed under Order-39 Rules 1 and 2 of the CPC is also maintainable, as the party invoked jurisdiction under Article 226 of the Constitution.

On behalf of the respondents, reliance was sought to be placed on a decision of the Division Bench of this Court in the matter of *Uttam Gawali Vs. State of Maharashtra and Others*, wherein the Division Bench held that though the petition is titled under both Articles i.e. Article 226 and 227, it was in effect a petition under Article 227 of the Constitution. Therefore, letters patent appeal against the Judgment delivered by the learned Single Judge in exercise of Article 227 is expressly barred. Admittedly, in the present matter, writ petition came to be filed under Articles 226 and 227 of the Constitution. On perusal of relief clause of the writ petition, it is clear that the petitioner invoking the jurisdiction under Article 226 prayed for issuance of writ of certiorari to quash the orders in question. As observed by the Apex Court in the case of *Surya Devi Rai* (supra), jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved. Hence, the letters patent appeal cannot be said to be not maintainable and the submission advanced on behalf of the respondents cannot, therefore, be entertained.

24. In view of above discussion, the orders passed by the Cooperative Court and the Cooperative Appellate Court were found to be without jurisdiction as the dispute does not fall in the ambit of Section 91 of the MCS Act. At the initial stage itself, present appellants made a request to the Cooperative Court to frame preliminary issue, but instead of framing and deciding preliminary issue, the dispute came to be finally decided. The finding of the Cooperative Court that the dispute can lie before the Cooperative Court is not justified. Hence, the decree passed in favour of the respondents is not justified and the same needs to be set aside by allowing present letters patent appeal.

25. The next point for our consideration is in view of our above observations and findings whether the Cooperative Court needs to be directed to return the plaint (memo of dispute) for being filed and presented before appropriate court as observed by us either in the Civil Court or in the Rent Court, as per choice of the disputant No. 2. When the dispute itself was found to be not a dispute covered u/s 91 of the MCS Act, the Cooperative Court was not justified to entertain the said dispute. The order simplicitor to set aside the judgements of the Cooperative Court and the Cooperative Appellate Court may cause injustice to the respondent No. 1. The issue of title of the parties over the suit bungalow is yet to be decided by a competent court. Any observations made by the Cooperative Court on that issue will be irrelevant as the Cooperative Court was not competent to decide

that issue. Initially, the respondent No. 1 came with a case of tenancy in favour of the appellants who denied the tenancy and claimed to be the owners of the bungalow, even though they admitted that the initial allotment of plot is in the name of deceased Uttamlal, the predecessor-in-title of respondent No. 1. The appellants claimed allotment and acquisition of this property by joint family and allotment of the same to the appellants' branch in a family partition. All these questions need to be considered by the Civil Court or by Rent Court. Hence, the order simpliciter setting aside the decisions of the Cooperative Court and the Cooperative Appellate Court may cause injustice to the respondent No. 1 as the appellants are enjoying this property and their rights about title or tenancy are yet not adjudicated upon.

In our opinion, therefore, directions need to be given to the Cooperative Court to return the plaint (dispute) to the respondents for being presented before appropriate court or forum i.e. the Civil Court or the Rent Court.

26. In the result, this letters patent appeal is allowed. The decree for possession passed in favour of respondents by the Cooperative Court, Jalgaon in Dispute No. 134/1989, dated 12-04-1994 and the order dated 14-03-1997 passed by the Maharashtra Co-operative Appellate Court, Bombay, confirming the decree of the Cooperative Court dated 12-04-1994 in Appeal No. 350/1994, as well as the order of dismissal of writ petition No. 755/2007 passed by the learned Single Judge of this Court on 13-03-2007, are hereby quashed and set aside. The plaint (memo of dispute No. 134/1989) is hereby ordered to be returned to the respondents/original disputants for being presented before the appropriate court or forum of the choice of the respondents, either the Civil Court or the Rent Court.

Letters Patent Appeal is thus disposed of, with no orders as to costs.