

(1973) 03 BOM CK 0015
In the Bombay High Court
Case No : A.F.O.D. No. 147 of 1973

Shere-E-Punjab Co-operative Housing Society Ltd. and Others	APPELLANT
Vs	
G.W. Kshirsagar and Others	RESPONDENT

Date of Decision : 23-03-1973

Acts Referred:

Citation : AIR 1974 Bom 269 : (1974) 76 BOMLR 22 : (1974) ILR (Bom) 580 : (1974) MhLj 247

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : D.S. Parikh, V.A. Phadke and instructed by Co., Attorneys, for the Appellant; S.C. Pratap, Asst. Govt. Pleader and M.J. Divwala, for the Respondent

Judgement

1. The only question which arises in the above First Appeal directed against the decision of the City Civil Court, Bombay, dated December 20, 1972 is whether the learned Judge was right in dismissing the appellants suit on the ground that the Civil Court had no jurisdiction to entertain the said suit in view of the entertain the said suit in view of the provisions of section 163 (3) of the Maharashtra Co-operative Societies Act.

2. The suit was filed by the appellants who are a Co-operative society and its Managing Committee members challenging the validity and propriety of the order dated July 31, 1972 passed by the District Deputy Registrar, Co-operative Societies, Bombay - respondent No. 1, The order runs as follows:-

"As show cause notice u/s 78 of the Maharashtra Co-operative societies Act, 1960 was issued to the Managing Committee of the Sher-E-Punjab Co-operative Housing Society Ltd., Bombay, under this Office No. BOM/HSG/4529 of 1972 dated 29th May, 1972 calling upon it to state as to why for the various reasons enumerated therein, it should not be superseded and an Administrator appointed in its place. A copy of the show cause notice was also endorsed to the Chairman, Greater Bombay and Thana District Co-operative Housing Federation Ltd., Bombay, with a request to offer his remarks within a period of 15 days format

the date of issue of this notice. In response to the show cause notice Sarvashri Sanmukh singh, Hon. Secretary, Harcharan singh. Chairman, Dilip singh, Surjit Singh and Harbans Singh. Managing Committee members have jointly filed their reply on 16.6.1972. The matter was fixed for hearing on 16.6.1972, when Sarvashri Sanmukh singh, Harcharan Singh, Dilip singh, Surjit Singh and Harbans singh were present. The other members of the Managing Committee have not filed their replies to the show cause notice nor have they remained present at the time of hearing. The grounds on which the Managing Committee has been sought to be removed are stated in the show cause notice.

In reply to the show cause it is stated that the audit rectification report for 1968-69 could not be submitted as the audit report was received by the Society in July 1971. The explanation given by the Society has not submitted its rectification report even up till this date.

As regards maintaining of the record of the Society, it is stated that the Society could not maintain the records as the same was of technical nature and was never pointed out by the Auditors. This explanation is also not acceptable as it was the duty of the Society to maintain the records as required under Rule 65 of the Maharashtra Co-operative Societies Rules 1961. As regards keeping of huge cash balance in hand and payment of amounts exceeding Rs. 20/- in cash. that the Society has agreed to have done so. Regarding the repayment of loan installments of the Finance Society, it is stated that the dues will be wiped off to nil for the year ending 30.6.1972. The fact, however remains that the Society has defaulted the loan installment. As regards the payment of property taxes it is stated that the same are paid up-to-date now. As regards recovery of arrears from the members, it is stated that all possible efforts are made by the managing Committee. It has not been indicated as to what are the results of the recovery drive. with regard to the misutilisation of the loan from Finance Society, it is stated that the Managing Committee is not responsible. As regards the payment of 12% interest and brokerage, the Managing Committee has tried to justify its action under bye-law No. 3 92). Bye-law No. 3 92) pertains to the restriction the limits of raising deposits and loans and not the rate of interests. As regards delay in construction work, it is stated that the Society had to overcome a number of difficulties and the position of the Society has improved now. It is stated by the office-bearers that out of 294 plots, 220 plots have been given in the possession to the members and necessary conveyance has also been givens to the said members. \\It is for the plot owner members to complete the construction on the plots allotted to them. with regard to the construction of 32 buildings of 208 flats, 2 buildings will be ready for possession by July, 1972 and 2 buildings thereafter every month. It is agreed by the office-bearers that the Society could not provide residential accommodation even to a single member up till now. The Managing Committee is responsible for not taking up the construction programme in a systematic way and has delayed the completion of the whole project.

The explanations given by the members of the managing Committee are not satisfactory for the reasons cited above. It is found necessary to remove the Managing Committee and appoint an Administrator in its place. The following order is therefore, passed.

ORDER

I.G.W. Kshrisagar, District Deputy Registrar, Co-operative societies, Bombay, by virtue of powers vested in me u/s 78 of the Maharashtra Co-operative Societies Act. 1960, hereby remove the managing Committee of the Sher-E-Punjab Co-operative Housing Society Ltd., Bombay and appoint Shri. R.S. Rambhad as the Administrator to manage the affairs of the Society for a period of one year from the date of issue of this order in the first instance. The Administrator shall draw a remuneration of Rs. 1,000/- per month from the funds of the Society".

3. It is clear that such an order cannot be challenged in a Civil Court in view of the provisions contained in Section 163 of the Maharashtra Co-operative Societies Act. 1960 which runs as follows:-

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

(a) the registration of a Society or its bye-laws or the amendment of its bye-laws or the dissolution of the Committee of a Society, or the management of the Society on dissolution thereof; or

(b) any dispute required to be referred to the Registrar or his nominee, or board of nominees, for decision:

(c) any matter concerned with the winding up or dissolution of a Society.

(2) While a Society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the Society or any member thereof, or any matter touching the affairs of the Society, except by leave of the Registrar, and subject to such terms as he may impose.

(3) All orders, decisions or awards passed in accordance with this Act or the rules, shall subject to the provisions for appeal or revision in this Act, be final and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever".

4. Before the Maharashtra Act 27 of 1969 was enacted, clause (3) had the words "except for want of jurisdiction".

5. Mr. Parikh learned Counsel for the appellants however submitted that notwithstanding these provisions and notwithstanding the deletion of the words "except for want of jurisdiction". it is always open to a citizen to file a suit in the City Civil Court challenging such an order u/s 78 as (1) ultra vires or (2) as opposed to the principles of natural justice. In support of his argument, he has

relied on Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, where, he has relied on Dhulabhai v. State where the case law relating to assessment and refund of tax illegally collected and Hidayatullah C.J. after review of the entire case law laid down the following propositions:

(1) Where the status gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into the question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Question of the correctness of the assessment apart from its constitutionality is for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

6. Now examining the relevant provisions of the Maharashtra Co-operative Societies Act in the light of these principles it is clear that every order u/s 78 is

subject to an appeal u/s 152. In the present case it was fairly conceded on behalf of the plaintiffs in the lower Court and also here that no vacillation of the constitution by any section of the Maharashtra Co-operative societies act was alleged by the plaintiffs and the only ground on which the order of the District Deputy Registrar was being challenged was that it violated the principles of natural justice. Such a ground is open to the plaintiffs in an appeal u/s 152. The decision of the appeal authority is further subject to revision in certain cases u/s 154. There are no limitations on the powers of the appellate authority or the revisional authority with regard to the nature of the grounds which the plaintiffs can take before them. It is therefore clear that this case falls squarely within the first proposition laid down by Hidayatullah, C.J., in the above case.

7. The orders are made final u/s 163 (1) (a) as it relates to the dissolution of the Committee of a Society and the orders Committee of a Society and the orders cannot be challenged in a Civil Court having regard to Section 163 (1) and 163 (3) as there are adequate remedies provided by the Act itself by way of appeals and revisions to do what the Civil Court would normally do in a suit where an order of the kind is challenged on the ground of violation of the principles of natural justice. The words in Section 163 (3) "in any other ground whatsoever" show that the Legislature has used an plain words as can be reasonably expected, to exclude the jurisdiction of the Civil Court in the matter of the removal of the Committee of the Society u/s 78..

8. There is nothing ambiguous or arguable about the provisions contained in Section 163 (3). Plain words must be given their plain meaning. Lord Radcliffe rightly observed in *Smith v. East Elloe R.D.C.* (1956) AC 736 referred to in *Maxwell on the Interpretation of Statutes*: "Whatever innocence of view may have been allowable to the lawyers of the eighteenth and nineteenth centuries, the twentieth century lawyer is entitled to few assumption in this field. It is not open to him to ignore the fact that the legislature has often shown indifference to the assertion of rights which Courts of law have been accustomed to recognize and enforce and that it has often excluded the authority of Courts of law in favour of other preferred tribunals".

9. I cannot imagine more unambiguous and emphatic words than the words used by the Legislature in Section 163 (3) to exclude the jurisdiction of the Civil Court relating to the removal of the Committee of a Co-operative Section u/s 78. The learned Judge of the City, Civil Court was therefore right in dismissing the suit of the plaintiffs on the ground that it was barred under that section. The appeal is therefore dismissed with costs.

10. Appeal dismissed.