

(2023) 09 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No.4589 Of 2011

Shilpchintamani Co-operative Housing Soc. Ltd

APPELLANT

Vs

Prasad Govindrao Jamdar And Others

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 — Section 3, 149(9), 152, 154, 154(1), 154(2)
Maharashtra Land Revenue Code, 1966 — Section 257
Rajasthan Co-Operative Societies Act, 1965 — Section 128

Citation : (2023) 09 BOM CK 0044

Hon'ble Judges : Sunil B. Shukre, J; Manish Pitale, J; Rajesh S. Patil, J

Bench : Full Bench

Advocate : Nilesh Wable, Mahesh Arjun, Umesh R. Mankapure, Pradeep D. Dalvi, Priya Dalvi, Kuldeep S. Pati, P. P. Kakade, M. P. Thakur

Final Decision : Disposed Of

Judgement

Manish Pitale, J

1. The present reference has come up for consideration before this Bench pursuant to order dated 07.12.2011, passed by a learned Single Judge of this Court. A perusal of the said order shows that in paragraphs 6 to 9, the learned Single Judge discussed the reasons why such a reference was made. Although the question for reference is not specifically framed in the referral order, a proper reading of the said order shows that the following question arises for consideration before this Bench:-

"Whether the Full Bench judgement of this Court in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others, 2011 (3) Mh.L.J. 486 had correctly answered the question for consideration before the Full Bench, concerning maintainability of second revision application under the provisions of the Maharashtra Co-operative Societies Act, 1960 (MCS Act), in view of the judgements of the Supreme Court in the case of Ishwar

Singh Vs. State of Rajasthan, (2005) 2 SCC 334 and Gurudassing Nawoosing Panjwani Vs. State of Maharashtra, (2016) 2 SCC 213?”

2. A very brief reference to the facts leading to filing of the present writ petition is necessary, to appreciate the backdrop in which the referral order was passed by the learned Single Judge of this Court.

3. By the present writ petition, the petitioner Co-operative Housing Society has challenged order dated 21.10.2010, passed by the Minister for Co-operation, State of Maharashtra, while entertaining a second revision application under Section 154 of the MCS Act. One of the questions arising in the said writ petition is, as to whether such a second revision application would be maintainable, for the reason that the order made subject matter of the second revision, was itself passed by respondent No.3 - Divisional Joint Registrar of Co-operative Societies, exercising revisional jurisdiction under the very same provision i.e. Section 154 of the MCS Act.

4. The petitioner society had filed first revision application under Section 154 of the MCS Act, before respondent No.3 - Divisional Joint Registrar of Co-operative Societies, being aggrieved by orders passed by respondent No.2 - Assistant Registrar of Co-operative Societies, whereby certain directions were given to the petitioner society to induct respondent No.1 as a member of the petitioner society. The said revision application was partly allowed and one of the orders impugned before respondent No.3 - Divisional Joint Registrar, was set aside.

5. Aggrieved by the same, respondent No.1 filed second revision application under Section 154 of the MCS Act before the Minister for Co-operation, State of Maharashtra. The said revision application was not only entertained, but the order of the Divisional Joint Registrar dated 26. 12.2008, was set aside. The said order is subject matter of challenge in the present writ petition.

6. As noted hereinabove, by order dated 07.12.2011, a learned Single Judge of this Court referred the matter to a larger Bench. It was noted in the referral order that the Full Bench of this Court in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) did not consider the judgement of the Supreme Court rendered earlier in the case of Ishwar Singh Vs. State of Rajasthan (supra) and also judgement of a Division Bench of this Court in the case of Gurudassing Panjwani Vs. State of Maharashtra in LPA No.55 of 2003, having taken a different view while interpreting Section 257 of the Maharashtra Land Revenue Code, 1966 (MLR Code).

7. Mr. Nilesh Wable, learned counsel appearing for the petitioner submitted that the Full Bench of this Court in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) had considered all the relevant aspects of the matter, while holding that the second revision under Section 154 of the MCS Act was not maintainable. It was submitted that the Full Bench in the said judgement took into consideration the specific provision under the MCS Act i.e. Section 154 thereof, post its amendment, and

therefore, no ground was available to reconsider the view taken in the said Full Bench judgement. It was submitted that the earlier judgement of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra) concerned interpretation of Section 128 of the Rajasthan Co-operative Societies Act, 1965 (Rajasthan Act), language of which was different from Section 154 of the MCS Act. It was further submitted that the judgement of Division Bench of this Court in the case of Gurudassing Panjwani Vs. State of Maharashtra (supra) as well as that of the Supreme Court between the same parties, also concerned a different provision i.e. Section 257 of the MLR Code. On this basis, it was submitted that even if the judgement of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra) was not brought to the notice of the Full Bench while deciding the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra), it would not make any material difference to the reasons stated in the Full Bench judgement, while holding that second revision under Section 154 of the MCS Act was not maintainable. On this basis, it was submitted that the question framed hereinabove deserved to be answered in the affirmative.

8. Mr. Pradeep Dalvi, learned counsel appearing for respondent No.1 also, surprisingly, submitted that the question framed for consideration, in the present proceedings, deserved to be answered in the affirmative and that the view taken by the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) does not need reconsideration. We thought that since respondent No.1 had filed the second revision before the Minister for Co-operation in which the impugned order was passed, the learned counsel for respondent No.1 would have sought reconsideration of the view taken by the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra). The tenor of submissions made on behalf of respondent No.1 when the referral order was passed on 07.12.2011, appears to be diametrically opposite to the submissions made before us on behalf of the said respondent. The learned counsel for respondent No.1 sought to indicate that the first revision filed before the respondent No.3 - Divisional Joint Registrar was actually in the nature of an appeal and hence, the revision filed before the Minister for Co-operation was actually the first revision. But, this would be a submission on the merits of the matter, for the regular bench to consider. Be that as it may, since a question of law has cropped up for consideration, we heard the learned counsel appearing for respondent No.1 with reference to the judgements brought to our notice.

9. Mr. P. P. Kakade, learned Government Pleader, submitted that the second revision was maintainable before the Minister for Co-operation under Section 154 of the MCS Act. He referred to the view taken by the Division Bench of this Court in the case of Gurudassing Panjwani Vs. State of Maharashtra (supra), which was upheld by the Supreme Court in its judgement rendered in the year 2015. It was submitted that in the light of the position of law clarified by the Supreme Court in its judgements in the case of Ishwar Singh Vs. State of Rajasthan (supra) and

Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra), this Court may take an appropriate view in the matter.

10. Having heard the learned counsel for the rival parties in the backdrop of the question framed hereinabove, we are of the opinion that since doubts are sought to be raised about the correctness of the view taken in the Full Bench judgment in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra), in the light of an earlier judgement of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra) and a subsequent judgement of the Supreme Court in the case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra), it would be appropriate to first refer to the Full Bench judgement of this Court in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra).

11. A perusal of the said judgement of the Full Bench shows that out of the three questions framed for consideration, the first two questions are relevant for the present matter. The said two questions read as follows:-

"(i) Whether sub-section (1) of Section 154 of the Maharashtra Co-operative Societies Act, 1950 gives concurrent jurisdiction to the Registrar and the State Government to exercise power?

(ii) Whether the power of revision under sub-section (1) of Section 154 of the said Act can only be exercised once and cannot be exercised twice over?"

12. The Full Bench answered the aforesaid questions, holding that the power of revision under Section 154(1) of the MCS Act could be exercised only once and not twice over. While arriving at such a finding, the Full Bench referred to the conflicting views of learned Single Judges on the question of maintainability of a second revision. Various aspects of such conflicting views were considered in the said judgement and specific reference was also made to the judgement of the Supreme Court in the case of Everest Apartments Co-operative Housing Society Limited, Bombay Vs. State of Maharashtra, AIR 1966 SC 1449. The Full Bench considered, both, sub-sections (1) and (2) of Section 154 of the MCS Act and held that the interplay between the two sub-sections clearly indicated that once revisional power was exercised by the Registrar under Section 154 of the MCS Act, a second revision application would not lie before the State Government. The relevant portion of the judgement of the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra), in this context, reads as follows:-

"6. Perusal of the provisions of sub-section 1 of Section 154 shows that the revisional jurisdiction is conferred by that provisions on both the State Government and the Registrar. That revisional jurisdiction can be exercised by them either suo motu or on application. The revisional jurisdiction can be exercised in relation to decision or orders by sub-ordinate officers and no appeal lies against such decision or orders. In our opinion, the provisions of sub-section

(2) of Section 154 hold the key for deciding whether the revisional jurisdiction conferred on the State Government and the Registrar is concurrent or not. The provisions show that the revisional jurisdiction conferred on the State Government and the Registrar is not concurrent. Sub-section (2) of Section 154 lays down that the State Government has revisional jurisdiction against the decisions or orders passed by the Registrar, Additional Registrar or Joint Registrar and the Registrar has revisional jurisdiction in relation to the decisions or orders passed by officers sub-ordinate to him. Thus, the State Government does not have revisional jurisdiction in relation to decisions or orders passed by officers who are sub-ordinate to the Registrar, Additional Registrar or Joint Registrar and the Registrar does not have any revisional jurisdiction in relation to the orders passed by the Additional Registrar or Joint Registrar. He has revisional jurisdiction in relation to the orders or decisions passed by officers who are sub-ordinate to him, except Additional Registrar and Joint Registrar. Thus, the revisional jurisdiction conferred by Section 154 on the State Government and the Registrar is in two separate compartments. The State Government exercises revisional jurisdiction in relation to orders and decisions of the Registrar, Additional Registrar and Joint Registrar. Whereas the Registrar has revisional jurisdiction in relation to orders or decisions passed by any other officer. In our opinion, useful reference in this connection can be made to the provisions of Section 3 of the Co-operative Societies Act. It reads as under:

3. Registrar (and his subordinate) The State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint 'one or more persons to assist such Registrar (with such designations, and in such local areas or throughout the State, as it may specify in that behalf) and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar. (They shall be subordinate to the Registrar, and subordination of such persons amongst themselves shall be such as may be determined by the State Government).

7. Perusal of the above provisions show that the State Government has power to appoint one or more persons to assist the Registrar and to confer on such persons powers of the Registrar, and such persons who have been appointed to assist the Registrar and on whom powers of the Registrar are conferred work under the general guidance, superintendence and control of the Registrar. Thus, so far as the officers sub-ordinate to the Registrar are concerned, they are under the control of the Registrar and therefore, it is the Registrar who has the revisional jurisdiction in relation to the decisions or orders passed by such officers who are under his control and supervision. So far as the State Government is concerned, it exercises revisional jurisdiction in relation to the decisions and orders passed by the Registrar. In our opinion, therefore, it is apparent that the revisional jurisdiction conferred on the State Government and

the Registrar is not concurrent jurisdiction.”

13. The Full Bench in the said judgement further took note of the fact that when the Supreme Court decided the case of Everest Apartments Co-operative Housing Society Limited, Bombay Vs. State of Maharashtra (supra), it was considering unamended Section 154 of the MCS Act. The relevant observations in the Full Bench judgement in this regard read as follows:-

“10. It is further to be seen that the provisions of Section 154 before they were amended in the year 1974 were considered by the Supreme Court in its judgment in the case of Everest apartments Co-operative Housing Society Ltd. v/ s. State of Maharashtra and ors, AIR 1966 SC 1449. We have quoted above the provisions of sub-section (1) of Section 154 after they were amended in the year 1974. Perusal of those provisions shows that no revision lies against an order referred to in sub-section (9) of Section 149. That provision was present in Section 154 even before its amendment in 1974. The Supreme Court in its judgment in Everest Apartment's case has considered the purpose why that provision has been made in Section 154. In paragraph 5 the Supreme Court observed "This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal under S.149(9) of the Act. The exception was considered necessary because the legality or the propriety of an order having once been considered, it would be an act of supererogation to consider the matter twice." The Supreme Court, thus, has clearly held that once legality or the propriety of an order has been examined by an authority possessing revisional jurisdiction, there is no question of another authority in exercise of the same revisional jurisdiction again considering the legality and propriety of the decision in revision. In other words, a decision taken in revisional jurisdiction cannot be subjected to a further revision unless there is a specific provision made in that regard. In our opinion, therefore, in view of the clear scheme of Section 152 and Section 154 and the observations of the Supreme Court referred to above, the position is absolutely clear that an order passed in exercise of the revisional jurisdiction under section 154 cannot be subjected to scrutiny in exercise of revisional jurisdiction again under the provision of Section 154 of the Act. The question is, therefore, answered accordingly.”

14. Although the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) did not, in terms, refer to the actual difference in the language between unamended Section 154 of the MCS Act and the amended version thereof, the Full Bench was clearly conscious of the said fact. In order to properly consider the question framed hereinabove as regards the view taken by the earlier Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra), it would be necessary to refer to the unamended as well as the amended version of Section 154 of the MCS Act.

15. The unamended Section 154 of the MCS Act, as quoted in the judgement of

the Supreme Court in the case of Everest Apartments Co-operative Housing Society Limited, Bombay Vs. State of Maharashtra (supra), reads as follows:-

"154. Power of State Government and Registrar to call for proceedings of subordinate officer and to pass orders thereon.-The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them, except those referred to in sub-section (9) of section 149 for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government, or the Registrar, that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard pass such order thereon as to it or him may seem just."

16. The amended Section 154(1) and (2) of the MCS Act reads as follows:-

"154. Revisionary powers of State Government and Registrar - (1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer."

17. It is crucial that while the unamended Section 154 of the MCS Act used the word 'and' between the words "State Government" and "Registrar", in the amended Section 154 of the MCS Act, the word used is 'or'. It is also significant that in the unamended version, only suo motu power could be exercised while after amendment, under Section 154 of the MCS Act, power could be either exercised suo motu or on an application. This aspect was also appreciated by the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) and it was held as follows:-

"13. Comparison of provisions of Section 154 as it now stand and we have quoted above with the provisions of Section 154 which is quoted in the judgment of the Supreme Court in Everest Apartment's case shows that before its amendment Section 154 conferred concurrent revisional jurisdiction on the State

Government and the Registrar. Secondly, the revisional jurisdiction which was vested in the State Government and the Registrar could be exercised by them only suo-motu and not on an application made. Now, after amendment of Section 154 in the year 1974, the revisional jurisdiction can be exercised either suo motu or on an application. ...”

18. In fact, this aspect of the matter concerning use of the word ‘and’ in the unamended Section 154 of the MCS Act and the use of the word ‘or’ in the amended version thereof was noted in paragraph 7 of the referral order dated 07.12.2011 passed by the learned Single Judge of this Court. We are of the opinion that the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) correctly took into consideration the amended Section 154 of the MCS Act and upon an analysis of the provision post-amendment, found that revisional jurisdiction exercised once was not open to be exercised again as per the scheme discernible from the amended Section 154 of the MCS Act read with Section 152 thereof.

19. The whole basis of the referral order is that, the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) did not take into consideration an earlier judgment of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra) and Division Bench judgement of this Court in the case of Gurudassing Panjwani Vs. State of Maharashtra (supra), which appear to hold a contrary view. It is significant that the Division Bench judgement in the case of Gurudassing Panjwani Vs. State of Maharashtra (supra) was subsequently confirmed by the Supreme Court in the year 2015 in the aforementioned judgement in the case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra).

20. But, it is important to note that the judgement of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra) was rendered under the Rajasthan Act, particularly concerning Section 128 thereof and the judgement of the Supreme Court in the case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra) concerned Section 257 of the MLR Code.

21. It would be necessary to refer to Section 128 of the Rajasthan Act and Section 257 of the MLR Code to understand the background in which the aforementioned two judgements of the Supreme Court were rendered.

22. Section 128 of the Rajasthan Act reads as follows:-

“128. Power of the Government and Registrar to call for proceeding of subordinate officers and to pass orders thereon - (1) The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter, of any officer subordinate to them, except those referred to in section 125, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government or the Registrar, that any decision or order or proceeding so called

for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he thinks just:

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant:

Provided further that the Registrar shall not exercise the powers under this section in case in which an appeal lies to him under this Act.

Explanation:- For the purpose of this sub-section, the Assistant Registrar, Deputy Registrar and Joint Registrar exercising all or any of the powers of the Registrar under this Act shall be deemed to be subordinate to the Registrar.

(2) pending the hearing under sub-section (1), the government or the Registrar may pass such interlocutory order as it or he thinks fit to prevent the ends of justice from being defeated."

23. Relevant portion of Section 257 of the MLR Code reads as follows:-

"257. Power of State Government and of certain Revenue and Survey Officers to call for and examine records and proceedings of subordinate officers -

(1) The State Government and any Revenue or Survey Officer, not inferior in rank to an Assistant or Deputy Collector, or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate Revenue or Survey Officer, for the purpose of satisfying itself or himself, as the case may be, as the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer:

...

(2) A Tahsildar, a Naib-Tahsildar, and a District Inspector of Land Records may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit:

...

(4) Revision of an order issued under sub-section (1) or (2) by any officer referred to therein shall not be permissible; but it shall be lawful for the State Government alone to modify, annul or reverse any such order issued under sub-section (1) or (2)."

24. A perusal of the above-quoted Section 128 of the Rajasthan Act and Section 257 of the MLR Code would show that while providing for revisional jurisdiction to be exercised by the authorities identified in the said provisions, it is specifically stipulated that the State Government 'and' the Registrar, insofar as Section 128 of the Rajasthan Act is concerned; and the State Government 'and' any revenue or survey officer insofar as Section 257 of the MLR Code is concerned, shall exercise such power. This is a crucial factor to be taken into consideration. The Supreme Court, while delivering the judgement in the case of Ishwar Singh Vs. State of Rajasthan (supra) was considering Section 128 of the Rajasthan Act and in the case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra), it considered Section 257 of the MLR Code. Hence, the Supreme Court was dealing with provisions that can be said to be materially different from Section 154 of the MCS Act, post its amendment, which was considered by the Full Bench of this Court in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra).

25. In fact, as noted hereinabove, prior to amendment of Section 154 of the MCS Act, the words used in the said provision were "the State Government and the Registrar may call for ...". But, post-amendment, the language changed and it now provides that the revisionary powers may be exercised by the State Government or the Registrar. Thus, even if the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) did not notice the judgement of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra), it cannot be said that the reasoning adopted in the Full Bench judgement was in any manner incorrect or that a different view would have been taken if the said judgement was brought to the notice of the Full Bench. This is because the Full Bench specifically took into consideration the change in language of Section 154 of the MCS Act post amendment.

26. This applies in equal measure to the judgement of the Supreme Court in the case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra) as it concerns Section 257 of the MLR Code, which uses language identical to the unamended Section 154 of the MCS Act and hence, materially different from the amended Section 154 of the MCS Act.

27. Thus, we are of the opinion that the view taken by the Full Bench in the case of Shireen Sami Gadiali and another Vs. Spenta Co-operative Housing Society Limited and others (supra) was indeed the correct view and does not require to be revisited, even upon taking into consideration judgements of the Supreme Court in the case of Ishwar Singh Vs. State of Rajasthan (supra) and Gurudassing Nawoosing Panjwani Vs. State of Maharashtra (supra).

28. Accordingly, the question framed in paragraph 1 hereinabove is answered in the affirmative.

29. The writ petition shall now be placed before the regular Bench for disposal in

accordance with law.