(1970) 06 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 2676 of 1969

Shivnarayan Motilal Darak APPELLANT

Vs

R.A. Zubairy RESPONDENT

Date of Decision : 26-06-1970

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 109(1), 154

Citation : (1971) 73 BOMLR 479 : (1971) MhLj 742

Hon'ble Judges : Nathwani, J;Chitale, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chitale, J.—By this petition the petitioners seek direction to the Registrar, Cooperative Societies, Maharashtra State, Poona, asking him to cancel the registration of respondent No. 2, the Rahuri Station Cooperative Housing Society Ltd. u/s 21 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the Act). The circumstances in which this petition is filed, briefly stated, are as follows: In 1049 there were heavy floods in the town of Rahuri and as the result thereof a substantial part of the township was washed away. Subsequently at the instance of the State Government, respondent No. 2, Rahuri Station Cooperative Housing Society Ltd. was formed. It received loan from the State Government. The Society was registered under the old Act (Bombay Act VII of 1925). Petitioners Nos. 1 to 9 and 11 to 13 are members of the said Society. Petitioners Nos. 10 and 14 are heirs of deceased members of the said Society. In spite of the laudable objects with which the Society was floated, the Society did not run properly and could not achieve its objects and ultimately winding up order was passed in 1952. That order was challenged and was ultimately set aside. Subsequently in 1953 the Society voluntarily went into liquidation. Unfortunately for reasons, which are not clear to us, the liquidation proceedings dragged on right upto January 26, 1962, when the present Act, viz. the Maharashtra Cooperative Societies Act, 1960, came into force. During the liquidation proceedings, misfeasance proceedings were started against the petitioners. During these proceedings, on August 23, 1969 the petitioners submitted application stating that in view of the provisions of Section 109 read with Section 21 of the Act of 1960, the Society must be held to be defunct and the misfeasance proceedings could not proceed further against them. This application was rejected. The petitioners, therefore, filed the present petition seeking direction, as mentioned above.

2. Mr. S.N. Naik, who appears for respondents Nos. 1 and 3, i.e. the Registrar, Cooperative Societies and the District Deputy Registrar, Cooperative Societies, points out that the petitioners have not adopted the remedy provided by Section 154 of the Act of 1960. Even according to the petitioners the cause of action for this petition took place on January 26,1965, and the present petition is filed on November 18,1969. Mr. S. N. Naik, therefore, submits that this petition should be rejected on these two grounds. It is doubtful whether the remedy of revision provided by Section 154 can be said to be an efficacious remedy so as to justify our rejecting this petition only on that ground. The ground of delay, however, appears to be a strong one and the petition deserves to be rejected only on that ground, although we propose to express our opinion on merits also.

3. There is another ground also on which the present petition deserves to be rejected on merits. Dr. Naik for the petitioners contends that u/s 109 of the Act of 1960, if the Registrar does not grant any extension, as contemplated by that section, the proceedings shall be closed within three years. Relying on the expression "shall be closed," Dr. Naik contends that in the present case the liquidation proceedings must be taken to have been terminated on January 26, 1963, when three years expired since the date of the winding up order. According to Dr. Naik, the proviso to Section 109 does not come into operation unless the Registrar grants extension, as contemplated by the said section. In para. 5 of the petition it is alleged that in the present case the Registrar, Cooperative Societies, Poona, has not granted any extension. This is denied in para. 10 of the affidavit-in-reply. We must mention here that Dr. Naik conceded that it is not his contention that the liquidation proceedings came to an and even before the Act of 1960 came into force. He fairly conceded that under the old Act of 1925 there was no period prescribed during which the liquidation proceedings ought to come to an end. We are unable to accept the above contention of Dr. Naik. That overlooks the proviso to Sub-section (1) of Section 109 and the Explanation thereto. Section 109(1) no doubt uses the expression "shall be closed", but it is important to note that there is no "deeming provision" in Sub-section (1) of Section 109, as one finds in the proviso to that section. The wording of the proviso to Section 109(1) is in this respect quite in contrast to the wording of Sub-section (1). Under the Explanation to Section 109(1) it is clear that in the case of a Society, which is under liquidation on the date the Act of 1960 came into force, the date of the order for winding up of the society shall be deemed, for the purpose of Section 109, to be January 26,1962, the date on which the Act of 1960 came into force. Thus it is clear that in the present case in view of the

said Explanation, the date of the winding up order, though factually of 1953, must be deemed to be dated January 26, 1962. We must mention here that Section 109 was amended first by the Ordinance dated January 22, 1969 and the provisions of that Ordinance were subsequently incorporated in the amending Act, which came into force on April 14, 1969. Thus the said amendment came into force before seven years expired from January 26, 1962, the date on which the Act of 1960 came into force. By the amendment, the period of seven years originally mentioned in the proviso to Section 109, was extended to ten years. Thus according to the law, as it stands at present, the liquidation proceedings shall be deemed to have been terminated on January 26 1972, when ten years expire from the date of the winding up order which, under the Explanation to Section 109, must be deemed to be January 26, 1962. Wording of Section 109(1) indicates that if the Liquidator finds that the liquidation proceedings are not likely to be over within the time-limit mentioned in Sub-section (1) of Section 109, he has to get extension from the Registrar and the liquidation proceedings shall be closed only if extension is refused. Considering Section 109(1) along with the proviso it is impossible to hold that liquidation proceedings stand terminated merely because of the inaction of the Registrar in extending the time. If the Registrar fails to exercise his power to grant extension, as required by the proviso to Section 109(1), it would be failure to discharge his duty, but in the absence of any express provision in this respect, such failure would not result into termination of liquidation proceedings. Section 109(1) considered with the proviso thereto makes it abundantly clear that in the eyes of law the liquidation proceedings shall be deemed to be terminated only on the expiry of ten years from the date of the winding up order. Thus we are unable to accept Dr. Naik''s contention that since the Registrar did not grant extension before the expiry of three years from the deemed date of the winding up order i.e. within three years from January 26, 1962, the liquidation proceedings should be deemed to have come to an end on January 26, 1965,

4. Before we part with this petition, we must invite the attention of the State Government to the laxity of the Cooperative Department due to which these liquidation proceedings have dragged on for years. Ascertaining the exact liability of the defaulters and the chances of recovery of the amount found due from them depend upon the diligence with which the liquidation proceedings are carried on. We hope the State Government will issue necessary instructions to the Officers concerned to sec that the misfeasance proceedings in this case are brought to an end as early as possible, so as to leave sufficient period to recover the amounts found due from the defaulters.

5. The petition fails and is dismissed. The petitioners shall pay the costs of respondents Nos. 1 and 3 in one set and in a separate set to respondent No. 2.

