
(2000) 12 GUJ CK 0085

In the Gujarat High Court

Case No : Civil Revision Application No. 299 of 2000

Vidhyavihar Co-operative Housing Society Ltd. and Others

APPELLANT

Vs

Sureshchandra Balvantrai Desai

RESPONDENT

Date of Decision : 29-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Gujarat Co-operative Societies Act, 1961 — Section 155, 166 , 23(1), 23(2) , 30
Industrial Disputes Act, 1947 — Section 2A

Citation : (2001) 2 GLR 1409

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Ketty A. Mehta, for the Appellant; S.N. Shelat, for R.N. Shah, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Mehta, J.—Vidhyavihar Co-operative Housing Society Limited and others, the petitioners (original-plaintiffs) have filed this revision application challenging the Order dated 15-3-2000 passed by the learned 3rd Joint District Judge, Surat, in Misc. Civil Appeal No. 223 of 1999 wherein the learned Judge was pleased to allow the said appeal and was pleased to set aside the Order passed on 16-8-1999 below Exh. 5 in Regular Civil Suit No. 639 of 1997 wherein the trial Court confirmed the order of status quo till final disposal of the suit.

Facts :

2. Petitioner No. 1 is a Co-operative Housing Society Limited (hereinafter referred to as "the petitioner-society, registered under the provisions of the Gujarat Co-operative Societies Act. Petitioner Nos. 2 and 3 are President and Secretary of the petitioner-society. The petitioner-society is the owner of the lands of Regular Survey No. 134/1 (644, 648 to 658, 658(B)) of T. P. Scheme No. 9, Final Plot No. 75/P. The petitioner-society was registered on 5-5-1967. The petitioner-society purchased the said land on 23-10-1967, and thereafter,

subplots were made. In that sub-plot No. 10 was an open plot. The petitioners stated that somewhere in July, 1969, Town Planning Scheme was declared and Survey No. 9/3 was admeasured at 475.2 sq. yds.

2.1 The learned Counsel for the petitioners stated that the petitioner-society has made a resolution on 11-9-1970 regarding allotment of plots to those who paid full amount to the petitioner-society. The learned Counsel has invited my attention to the bye-laws of the petitioner-society, particularly, bye-laws Nos. 7 and 8 which provide that only the following members can be made members of the petitioner-society :

(i) that person residing at Surat

(ii) he is not having any premises in his name or in his family's name

(iii) he is a shareholder and member

(iv) construction only after plans sanctioned by Surat Municipal Corporation and approved by the society. There is a discretion with the petitioner-society to accept the membership.

2.2 The petitioner stated that one Smt. Pratibhaben Prakashbhai Shah on January 25, 1968 had applied for membership of the petitioner-society and had declared on oath that she was resident of Sagrapara Desai Sheri, Surat and that no member of her family was holding any land or building in the city of Surat. She tried to get allotment of sub-plot No. 10 from revenue Survey No. 134/1 of T.P. Scheme No. 9 Final Plot No. 75 paik. At that time, no plot was allotted to her. The learned Counsel for the petitioner-society farther stated that thereafter the Town Planning Scheme became final and the notice was issued regarding final plots. On 10-4-1968 there was a letter addressed to Smt. Pratibhaben P. Shah for taking possession. On 11-8-1987 the petitioner-society also addressed a letter to Smt. Pratibhaben P. Shah for filling in the form and undertaking to be given. On 18-9-1987 Smt. Pratibhaben P. Shah filed her objection regarding the area of the said land and did not take possession. She also addressed another letter dated 27-11-1987. On 21-3-1988 the petitioner-society addressed a letter to Smt. Pratibhaben Prakashbhai Shah for not sending the form and for not taking the possession. The petitioner-society also addressed a letter dated 29-8-1988 to Smt. Pratibhaben P. Shah for non-payment to the petitioner-society. The learned Counsel for the petitioner further contended that the said declaration made on oath by Smt. Pratibhaben P. Shah was found to be incorrect on personal verification by the petitioner-society. It was found that she was neither a resident of Surat nor was she residing in any premises as shown by her in Sagrapara Desai Sheri, Surat. She was a resident of Mumbai. The petitioners say that her name was never entered in the City Survey Office or in any property card and she was never put in actual physical possession of the said sub-plot No. 10. The said land of sub-plot No. 10 was always owned and possessed by the petitioner-society and from time to time, it was given on lease and the income was also received by the society. Municipal tax was also paid by

the petitioner-society. The petitioners submitted that as per bye-laws of the Society, member of the petitioner-society must be a resident of Surat City or its suburbs. The petitioners further stated that as the said Smt. Pratibhaben P. Shah had made a false declaration and it was duly verified by personal visit by the office-bearers of the petitioner society at the address of Surat given by Smt. Pratibhaben P. Shah, the petitioner-society took action against her in accordance with the bye-laws to delete her name as member of the society in accordance with the direction give by the District Registrar of the Co-operative Societies. The society took the said decision somewhere on 23-1-1989.

2.3 The petitioners thereafter published a notice dated 4-8-1990 in Gujarat Mitra newspaper stating therein that sub-plot No. 10 of the petitioner-society is owned and possessed by petitioner-society and nobody should purchase the same from any one. It was the contention of the learned Counsel for the petitioners that Smt. Pratibhaben P. Shah also made an application to the petitioner-society to sell the sub-plot No. 10 to the present respondent and for obtaining objection from the petitioner-society. The petitioner-society had rejected the said application and notice was also sent to Smt. Pratibhaben P. Shah at her actual address at Huges Road, Pan Gali, Tejpal Building, Block No. 26, Mumbai. She was also given a notice that she had no right, title or interest on the said sub-plot No. 10 and that she is not a member of the petitioner-society.

2.4 It is the contention of the learned Counsel for the petitioners that in spite of the fact that Smt. Pratibhaben P. Shah was not a member of the petitioner-society, she entered into a sale deed in favour of Sureshchandra Balvantrai Desai, respondent (original-defendant) on 21-3-1996. It was contended by the learned Counsel for the petitioners that the respondent is neither holding shares of the petitioner-society nor any shares are issued in his name by the petitioner-society and that he has received no right, title or interest in the land as Smt. Pratibhaben P. Shah had no right, title or interest in the said sub-plot on the date on which the sale was effected and that the said Smt. Pratibhaben P. Shah could not have transferred the shares of the petitioner-society to the respondent without permission of the petitioner-society. The learned Counsel for the petitioners further submitted that the respondent illegally entered in the said sub-plot No. 10 on the basis of the said illegal and void sale and threatened that he is going to make construction on the said land. The petitioners thereafter, addressed a legal notice to the respondent on 7-10-1997. It was contended that the respondent is neither shareholder of the petitioner-society nor is he having any right, title or interest in sub-plot No. 10 owned and possessed by the petitioner-society. It was contended that the respondent is having a flat in the estate called Vishal Apartment in Surat, and therefore, he could not have become a member of the petitioner-society as the bye-laws of the petitioner-society provide that a person who holds any other residential premises in his name or in the name of his family members in Surat, is not eligible to become member of the petitioner-society. It was contended that neither Smt. Pratibhaben P. Shah nor the present respondent were eligible to become member of the petitioner-

society in accordance with the bye-laws of the petitioner-society.

2.5 It was further contended that as the respondent illegally entered into the land of sub-plot No. 10 of revenue Survey No. 134/1 of land of final plot No. 75 paikees of T. P. Scheme No. 9 belonging to the petitioner-society and threatened to start construction thereon, the petitioner-society preferred a Regular Civil Suit No. 639 of 1997 before the learned Civil Judge (Senior Division), Surat, for declaration that the suit land was of the ownership and possession of the petitioner-society and that the respondent be restrained from interfering with the possession of the said land and be further restrained from putting up any construction or from dealing with the said land in any manner and from doing any act which will affect the right of the petitioner-society and its ownership and possession thereof. Along with the suit the petitioner-society filed voluminous documentary evidences (sic) in support of its contention. The petitioners also preferred an application Exh. 5 for interim relief restraining the present respondent from entering upon and/or interfering with the possession of the suit land and further restraining him from making any construction, from doing any act so as to affect the right of the petitioners of ownership and possession of the suit land and further restraining him from dealing with the said land.

3. The learned Civil Judge (Senior Division), Surat, passed ad-interim status quo and issued notice to the respondent on 16-10-1997. Thereafter, the respondent appeared and ultimately, the 3rd Joint Civil Judge (S.D.), Surat by his judgment and Order at Exh. 5 was pleased to confirm the status quo Order dated 16-10-1997 which was extended from lime to time, till final disposal of the suit. The said order was passed on 16-8-1999.

4. Being aggrieved and dissatisfied with the said judgment and order, the respondent (original-defendant) filed an appeal being Misc. Civil Appeal No. 223 of 1999 before the learned 3rd Joint District Judge, Surat. The learned Joint District Judge, Surat, by his judgment and order dated 15-3-2000 allowed the said appeal and set aside the Order passed below Exh. 5 in Regular Civil Suit No. 639 of 1997 by the learned Civil Judge (S.D.), Surat. The learned District Judge held that the dispute about the procedure followed for exclusion and the procedure followed for expulsion of Smt. Pratibhaben P. Shah as a member of the petitioner-society is in dispute, and therefore, the Civil Court has no jurisdiction to decide said dispute in the suit and that only Board of Nominee has jurisdiction to decide the same. He further held that as the Civil Court had no jurisdiction to decide the dispute between the society and Smt. Pratibhaben P. Shah, the question of interim relief prayed cannot be decided by the Court. He further held that the possession of the defendant cannot be held to be illegal and that he is a bona fide purchaser with consideration. He also held that the lower Court had not gone into the question of jurisdiction of the Civil Court and the Order passed by the lower Court was illegal and bad in law. He, therefore, allowed the appeal and set aside the Order of the lower Court.

5. Being aggrieved and dissatisfied with the aforesaid judgment and Order dated

15-3-2000 passed by the learned 3rd Joint District Judge, Surat, the petitioners preferred Revision Application u/s 115 of the C.P.C. somewhere, in April 3, 2000 and this Court (Coram: D. P, Buch, J) by his Order dated 19-4-2000 was pleased to adjourn the matter till 1-5-2000 and was further pleased to order that the "present status quo be continued". From that day onwards, the status quo is still continued.

6. Mrs. Ketty A. Mehta, learned Counsel for the petitioners, has invited my attention to Section 23 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act") which provides for removal from membership in certain circumstances. Section 30 of the Act provides for restriction on transfer of share or interest. Section 36 provides for expulsion of members. She has also invited my attention to the bye-laws of the Society and particularly bye-laws 7, which provides condition to become member of the society, bye-laws 7(c), 8, 10(b), 13 and 14.

7. The learned Counsel for the petitioners contended that in this case Smt. Pratibhaben P. Shah was held to be disqualified as member of the society, and therefore, her name was already removed and she had no right, title or interest in the land in question i.e., sub-plot No. 10, and therefore, she cannot validly transfer the said land in favour of the respondent (original-defendant).

7.1 Mrs. Ketty A. Mehta, learned Counsel for the petitioners, in her rejoinder, has relied on the affidavit of the petitioner-society dated 26-9-2000 and also produced order of the Revision Application No. 82 of 2000 dated 6-9-2000 and stated that the lower Court has relied on the letter dated 1-9-1999 of the District Registrar which has been set aside by the authority. She also stated that this is a case of not touching jurisdiction of the Co-operative Societies Act.

7.2 Mrs. Ketty A. Mehta, learned Counsel for the petitioners, has also invited my attention to the decision of this Court in the case of Mahavir Cotton Co. v. Saurashtra Co-operative Spinning Mills Ltd. reported in AIR 1995 Guj. 160 wherein the Court held that when the dispute between non-members of the society and society and forum of Bar u/s 46 and Section 96(1)(c) are not attracted and suit filed by plaintiffs non-members before the Civil Court and in that Civil Court and the Registrar has no jurisdiction. She has also invited my attention to the decision in the case of Sardarkunj Co-operative Housing Society Ltd., Ahmedabad & Ors. v. Ramabhai Jethabhai Patel & Ors., reported in 1984 (2) GLR 1213 in which at para 7 on page 1217 the Court observed as follows ;

"The only distinguishing feature between the facts of Jitendra's case (1978 GLR 92) and the facts of the present case is that the dispute is not regarding expulsion of members but removal of the members on the ground of disqualifications. Former type of dispute would fall u/s 36 while the dispute of the latter type with which I am concerned in the present proceedings, would fall u/s 23 as seen above. Registrar is the authority which resolves both types of disputes. His decision u/s 36 is appealable u/s 153 while his decision u/s 23 is

revisable u/s 155. Save and except this difference, the schemes for resolution of such disputes are almost parallel. Consequently, the reasoning of D. P. Desai, J for coming to the conclusion that such dispute for which specific provision has been made by legislature gets excluded from the general operation of Section 96 would squarely apply to the facts of the present case. I respectfully concur with the aforesaid reasoning of D. P. Desai, J. Consequently, it must be held that the dispute pertaining to the alleged illegal admission given to petitioner Nos. 5 and 6 as members of the society on account of their false declaration that they were entitled to be enrolled as members can be resolved only u/s 23(2) and consequently. Section 96 of the Act would get excluded for resolution of such a dispute".

8. The learned Counsel for the petitioners also invited my attention to the decision in the case of Vikrambhai Dhirajibhai Patel Vs. A.S. Jog and Another, . In para 6 at page 695 the Court observed as follows :-

"As discussed above, the District Registrar has passed order in exercise of power under sub-section (2) of Section 23 of the Act on the allegation that the petitioner had made false declaration that he was permanent resident of Khorsam village. Under the bye-laws permanent residence was not necessary qualification, and therefore, such declaration was not required to be made and, therefore, the respondent No. 2, Khorsam Khedut Seva Sahakari Mandali Ltd. would not have proceeded on admitting the petitioner to the membership of the said Society on the basis of such declaration. The disqualification to continue as member of the Society under sub-section (1) of Section 23 and the occasion to exercise the power of removal under sub-section (2) of Section 23 arises only in case the member has acquired the membership of the Society on his making a declaration as required by the bye-laws of the Society or otherwise and such declaration is found to be false."

9. Mr. S. N. Shelat, learned Senior Counsel, instructed by Shri R. N. Shah, learned Advocate for the respondent, appeared on behalf of the respondent and he has invited my attention to the affidavit-in-reply filed on behalf of the respondent dated 19-4-2000. He has also invited my attention to the certificate dated. 25-1-1968 in which Smt. Pratibhaben P. Shah has enrolled as member after payment of Rs. 50/-. The Society has also issued Rajachiti (permission granted by the Corporation) by the Corporation in favour of Smt. Pratibhaben P. Shah dated 7-8-1995 as a member of the Society. He has also invited my attention to the Sale Deed executed on 23-2-1996 between Smt. Pratibhaben P. Shah and the respondent (original-defendant) Sureshchandra B. Desai in this behalf by which the present respondent has become owner of the said plot after paying consideration of Rs. 7,10,000/-. He stated that on that day Smt. Pratibhaben P. Shah was member of the society and she has conferred the right, title and interest in favour of the present respondent and the respondent is claiming the right through the member of the society. He has also invited my attention to the letter dated 27-10-1972 addressed by the petitioner-society to

Smt. Pratibhaben P. Shah where Smt. Pratibhaben P. Shah was required to pay remaining arrrtount of Rs. 5,833/- to become member of the society and also by earlier notice dated" 20-7-1972 addressed by the society to Smt. Pratibhaben P. Shah, and thereafter, on 22-11-1972 Smt. Pratibhaben P. Shah has paid the said amount. He therefore submitted that Smt. Pratibhaben P. Shah has become owner (sic. member) of the Society.

9.1 Mr. S. N. Shelat, learned Senior Counsel, relied on the affidavit filed by the respondent dated 24-7-2000, He has further stated that the order dated 6-9-2000 has been carried in revisional authority by Smt. Pratibhaben P. Shah and the Government has stayed the said order by its decision dated 18-10-2000.

9.2 The learned Counsel for the respondent has invited my attention to Section 96 of the Co-operative Societies Act which reads as follows :-

"Section 96 - Disputes - (1) Notwithstanding anything contained in any other law for the lime-being in force, any dispute touching the constitution, management or business of a society shall be referred in the prescribed form either 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 the Registrar, if the parties thereto are from amongst the following :

(a) xxxxxxxx

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society

(c) to (e) xxxxxxxx"

9.3 He has also further contended mat in this case the respondent is claiming right through a member, and therefore, in any view of the matter u/s 96(1)(b) when a person is claiming a right through a member then also the Registrar has power to resolve the dispute. He has also referred to the word "any dispute touching the constitution, management or business of a society" and in this case inclusion or disqualification of the member is clearly business of the society, and therefore, also the Civil Court has no jurisdiction in this behalf.

9.4 He has also invited my attention to the decision of this Court in the case of Navjivan Paper Mart v. Rajkol Vibhagiya Nagrik Sahkari Bank Ltd., reported in 1975 GLR 80 wherein it was held that a person was claiming right through the member can be made a party to the dispute, and therefore, provisions of Section 96 were attracted. The Court in para 6 at page 86 has observed as follows :-

"The dispute in the present case is as regards the enforcement of the hypothecation in regard to the machine purchased by respondent No. 2 with the aid of the funds of the Bank. The present petitioner is a person claiming through respondent No. 2; and therefore, he can be made a party to the dispute u/s 96(1) (b) of the Act; and the Nominee of the Registrar had jurisdiction to proceed

against him. The present case is squarely covered by the emphasised portion of the observations of the Supreme Court reproduced above. Therefore, the first contention of Mr. Mehta must fail."

9.5 The learned Counsel, has further relied on the decision of the Hon''ble Supreme Court in the case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . In para 25 at pages 1326-1327, the Hon''ble Supreme Court observed as under :-

"..... It seems to us that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member, but as a stranger, then he must be covered, if at all, by the provisions of Section 91(1) (a) or (c). But once it is held that the original transaction was entered into by the member with the society as a member, then any person who claims rights or title through that member must come within the provisions of Section 96(1)(b)."

9.6(a) The learned Counsel for the respondent has thereafter invited my attention to the following provisions of the Gujarat Co-operative Societies Act, 1961.

"Section 23 - Removal from membership in certain circumstances : (1) Where a person becomes a member of any society on his making a declaration as required by the bye-laws of the society or otherwise and such declaration is found to be false, then such person shall be disqualified to continue as a member of the society.

(2) Where a person continues as a member of the society notwithstanding the disqualification incurred by him (under sub-section (3) of Section 22 or under sub-section (1)) he shall be removed from the society by the Registrar.

Provided that the Registrar shall, before making an order of removal give the person an opportunity of being heard."

"Section 155 - Power of State Government and Registrar to call for proceedings of subordinate officers 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 150, 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 it or he may deem just."

"Section 166 - 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) xxxxxx

(b) any dispute required to be referred to the Registrar, or his Nominee, or Board of Nominees, for decision.

(c) xxxxx"

9.6(b) After referring to the said provisions, the learned Counsel for the respondent contended that in this case there is a dispute regarding removal from membership in certain circumstances wherein under clause (2) of Section 23 of the Gujarat Co-operative Societies Act, the Registrar has power to resolve the dispute. The said action can be revisable u/s 155 of the Act in view of the judgment of this Court in Sardarkunj Co-op. Housing Society Ltd. (supra). The learned Counsel for the respondent thereafter referred to Section 166(1)(b) of the Act and contended that if the dispute which required to be referred to the Registrar then there is clearly bar of jurisdiction of this Court.

9.7 The learned Counsel therefore contended that in this case as per the provisions of the Gujarat Co-operative Societies Act, a Civil Suit is said to be expressly barred. He further submitted that in view of the Co-operative Societies Act, Civil Court's jurisdiction to the extent the dispute involved regarding Cooperative Societies Act are excluded by express provision of law. He has referred to the scheme of the Act in question and adequacy and sufficiency of remedies provided by it which are relevant in this behalf. In this regard, he has relied on the decision in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, in which at paras 32(1) and 31(2) on page 89 the Hon"ble Supreme Court has observed as follows :-

"Para 32(1) - Where the Statute 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.

Para 32(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."

9.8 He has also relied on the decision of the Hon"ble Supreme Court in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, . He has further relied on the decision in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, . The Hon"ble Supreme Court at paras 32(1) and 32(2) on page No. 1725 has observed as under :

"Para 32(1) - Where the dispute arises from general law of contract, i.e. where relief are claimed on the basis of the general law of contract, a suit filed in civil

Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

Para 32(2) - Where however, the dispute involves recognition, observance or enforcement of any of the rights or obligation created by the Industrial Disputes Act, the only remedy is to approach to the forums created by the said Act.

9.9 The learned Counsel for the petitioner contended that in this case as per the copy of the plaint the plaintiffs have claimed two reliefs : (1) that the Court should declare the society as owner of the said property and (2) restrain the defendant from interfering with the ownership and possession of the property in question. The learned Counsel for the petitioner has contended that first type of relief cannot be granted by the Registrar under the provisions of the Cooperative Societies Act. The learned Counsel for the petitioners further contended that in this case there is a real question of jurisdiction as to whether the Civil Court has jurisdiction or whether the Registrar under the provisions of the Cooperative Societies Act has jurisdiction or not.

9.10 He has also contended that this Court should not interfere with the appellate Court's order as there is no jurisdictional error and in this connection he also relied on the decision of the Hon'ble Supreme Court in the case of The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, .

10. The learned Counsel for the respondent has stated that in this case the defendant has purchased the property through a member after paying handsome amount and he is bona fide purchaser of property without any notice. Therefore, the Court should not injunct it from constructing the property in question. He further submitted that the appellate Court has given reasoning in this behalf, and therefore, this Court should not interfere with the same in Section 115 of C.P.C.

11. I have given my anxious consideration to the rival contentions and also considered the submissions made by the learned Counsel for the petitioners, the authorities cited by her and also the contention raised by the learned Counsel for the respondent and authorities cited by him, provisions of the Co-operative Societies Act and the record of the case. In my view, the dispute raised in the suit arises from General Law of Contract and the first relief that the Court should declare that the society is owner of the suit property is also a claim on the basis of the General Law of Contract and that relief the Registrar cannot grant under the provisions of the Co-operative Societies Act. In my view, there are no provisions of the Co-operative Societies Act by which first type of relief claimed in the suit can be granted. In any view of the matter, the issue raised by the petitioner goes to the jurisdiction of the Court. To that extent, the petitioners have made out a prima facie case, and therefore, the present revision application requires to be admitted at this stage.

11.1 As far as the balance of convenience is concerned, it is no doubt true that

the original defendant-respondent herein has purchased the property through a member and has paid large amount as consideration and if the injunction is granted against the defendant not to construct the same, the defendant-respondent will suffer irreparable loss, injury and hardship which cannot be compensated in terms of money as the price of raw material and cost of construction are going up day-by-day, and therefore, if he is injuncted from constructing on the suit land, the defendant will be put to irreparable loss in this behalf. Therefore, in my view the defendant-respondent is allowed to construct on the land in question. However, on account of this construction, the defendant will not claim any equity in this behalf.

12. Therefore, I order rule returnable on 20-2-2001. Interim relief is refused.

* * *

After pronouncement of judgment, Mrs. Ketty A. Mehta, learned Advocate for the petitioners prayed that status quo which has been granted earlier to be continued for four weeks. In view of the same, status quo which has been continued till today will continue upto 31st January, 2001.

13. Rule issued : interim relief refused.