
(2003) 08 BOM CK 0074
In the Bombay High Court
Case No : Writ Petition No. 517 of 2001

Virendra Bhanji Rathod and Others	Vs	APPELLANT
Anand Vihar Co-operative Housing Society Ltd. and Others		RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Citation : (2003) 4 ALLMR 843 : (2004) 3 BomCR 401 : (2004) 1 MhLj 656

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : P.K. Samdani, C.S. Kapadia and G.V. Shinde, instructed by Vinod Mistry and Co, for the Appellant; Rajiv Narula, instructed by Jhangiani Narula and Associates, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties.

2. The petitioners challenge the judgment and order dated 13-11-2000. passed by the revisional authority, namely the Secretary (Co-operation) as well as the judgment and order dated 2-5-1997, passed by the Divisional Joint Registrar, Co-operative Societies in Revision Application No. 217 of 1996. The contention of the petitioners is that in view of the order dated 10-10-2000 in Writ Petition No. 4 of 2000, passed by the Division Bench of this Court, the revisional authority, namely the Secretary (Co-operation) was entitled to entertain the revision application at the instance of the petitioners and having not done so, has illegally refused to exercise his jurisdiction. On merits, it is the contention of the petitioners that in view of the fact that the respondent-society had not followed the prescribed procedure to terminate the rights of the heirs or the legal representatives of the original member, namely, late B.N. Rathod, and the only objection which was raised against the application filed by the petitioners was non-availability of the plot, there was no justification for the revisional authority to interfere in the order passed by the Deputy Registrar on 11-4-1996.

3. On the other hand, the impugned orders are sought to be justified by placing reliance upon the decisions in the matters of Shri Ramesh T. Gopalani Vs. The Janata Sahakari Bank Ltd. and Another, and Madhukar Baburao Deshmukh Vs. Jalgaon Jilla Maratha Vidya Prasarak Co-op. Samaj Ltd., Jalgaon and Others, while contending that the revisional jurisdiction having been once exercised by one authority under the Section 154 of the Maharashtra Co-operative Societies Act, 1960, hereinafter called as "the said Act" cannot be exercised again by any authority under the Section 154 of the said Act. Further it is sought to be contended that the allotment of the plot in favour of the late B.N. Rathod was already cancelled on account of non-payment of the consideration for the plot and further the application by the mother of the petitioners was also rejected in 1980 for want of availability of the plot and the situation has not changed since then and in the absence of any availability of the plot, there is no question of allowing any of the petitioners to be enrolled as member of the respondent-society and in that regard reliance is sought to be placed in the decision of the learned single Judge of this Court in The Atomica Co-operative Housing Society Ltd. v. Shri B.R. Ballal and Ors., reported in 1988 (2) BCR. 104. Besides, it is sought to be contended that considering the provision of the Article 137 of the Limitation Act, 1963, the petitioners having not filed the application within three years from the date of rejection of the application of the mother of the petitioners, the claim is barred by the law of limitation and in that regard attention is drawn to the decision of the Apex Court in the matter of State of Punjab and Ors. v. Gurdev Singh and Ashok Kumar, reported in .

4. Few facts relevant for the decision are that, in 1954 the predecessor of the petitioners, namely B.N. Rathod was enrolled as the member of the respondent No. 1 - society and was allotted with ten shares for the consideration paid by him. The society was essentially formed for the purpose of construction of premises for its members and initially plot bearing No. 29/B was allotted to the said B.N. Rathod. Subsequently, under the resolution dated 7-12-1969 the plot of the society was sought to be divided whereunder the plot No. 20/B came to be earmarked for the said B.N. Rathod. The said B.N. Rathod expired on 26-7-1966. By the letters dated 1-11-1978 and 841-1979 the widow of B.N. Rathod approached the respondent-society, claiming right of heir-ship in relation to the snares of B.N. Rathod to which it was informed to her under the letter dated 3-11-1980 that in the absence of availability of the plot, there was no Question of entertaining her application and she may receive back the amount paid by her to the society. The widow of B.N. Rathod and who was the mother of the petitioner Nos. 1 to 3 and the mother-in-law of the petitioner No. 4 herein, expired on 24-8-1993. The petitioner No. 1 on behalf of all the heirs of B.N. Rathod by the letter dated 25-6-1995 applied for transfer of the membership as the lawful heir of B.N. Rathod. He also submitted the necessary consent from the other heirs of B.N. Rathod to facilitate the respondent-society to do the needful in the matter. The respondent-society, however, by the letter dated 6-8-1995 rejected the application on the ground that no plot was available with the society

for allotment and therefore the desirability of the petitioner No. 1 of becoming the member of the society is of no significance. The petitioners thereupon filed appeal and the same was adjudicated by the Deputy Registrar (Co-operative) and by its order dated 11-4-1996, in exercise of power vested under the Section 23(2) of the said Act, the application filed by the petitioners was allowed and the petitioner No. 1 was directed to be admitted as member of the respondent-society. The same was challenged by the respondent-society in revision application on 2-7-1996 before the Divisional Joint Registrar, who, by the order dated 2-5-1997 set aside the order of the Deputy Registrar while agreeing with the contention raised by the respondent-society that since there was no plot or flat available for allotment to the petitioners, they are not entitled to be the members of the society and that B.N. Rathod on his death in 1966 ceased to be the member of the society in terms of the Section 25 of the said Act. The revision application filed by the petitioners against the said order was dismissed by the Secretary (Co-operation) on 13-11-2000 relying upon the decision of this Court in the matter of Shri Ramesh T. Gopalani v. The Janata Sahakari Bank Ltd. and Anr. (supra).

5. The first point which arises for consideration in the matter is as to whether the revisional authority, namely the Secretary for Co-operation could have exercised his revisional jurisdiction under the Section 154 of the said Act, as is sought to be contended by the learned Advocate for the petitioners. In Ramesh Gopalani's case, the learned single Judge, after referring to the earlier decisions of this Court, namely in Writ Petition No. 4168 of 1998 as well as in Writ Petition No. 2084 of 1999 and referring to the decisions of the Apex Court in Vishesh Kumar Vs. Shanti Prasad, and Aundal Ammal Vs. Sadasivan Pillai, held that the Section 154 does not contemplate two revision applications in the same matter. Further, in Madhukar Baburao Deshmukh v. Jalgaon Jilha Maratha Vidya Prasarak Co-op. Samaj Ltd. and Ors. (supra), I had occasion to deal with the same issue and after taking into consideration the decisions in the matters of Bhupendra Villa Premises Co-operative Society Ltd. and another Vs. Chandrakant G. Shah and others, , Shri Ramesh T. Gopalani v. The Janata Sahakari Bank Ltd., (supra), Syed Afzal Hussain Hussaini Vs. Hon'ble Minister, Revenue and Forest Department and Others, as well as the decisions of the Apex Court in Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others, and Bukulabai v. Gangaram 1988 Mh.L.J. 330, it was held that the revisional jurisdiction having once exercised by one authority under the Section 154, merely because a person was not a party to the said proceedings, it cannot be said that the State Government can exercise the revisional jurisdiction under the Section 154 of the said Act in relation to the order passed by an authority in its revisional jurisdiction even at the instance of such a person. In other words, by number of decisions delivered by various Benches of this Court, it has been well-settled that once the revisional authority in exercise of power under the Section 154 of the said Act deals with a matter, there cannot be a second revision against such order passed by the revisional authority under the Section

154 of the said Act. It is to be noted that this view has been taken after considering the decision of the Apex Court in the case of Everest Apartments Co-operative Housing Society Ltd., Bombay v. State of Maharashtra (supra) r/w the decision of the learned single Judge of this Court in the matter of Bhupendra Villa Premises Cooperative Society Ltd, v. Chandrakant G. Shah (supra). It was clearly observed in Madhukar Baburao Deshmukh's case thus :--

"..... The learned single Judge has transcribed a very important observation of the Apex Court in the said judgment, which reads thus: This power can be exercised in all cases except in a case in which similar powers have already been exercised.

Indeed, while dealing with the revisional powers of State Government u/s 154 as it stood then, the Apex Court had observed that the said powers can be exercised in all cases in which similar powers have already been exercised by the Tribunal u/s 149(9) of the said Act. Section 149(9) of the said Act provides that, the Co-operative Appellate Court may call for and examine the record of any proceedings in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case, it appears to the Co-operative Appellate Court that any such decision or order should be modified, annulled or reversed, the Cooperative Appellate Court may pass such order thereon, as it may deem just. The observations of the Apex Court in Everest Apartments" case to the effect that the powers u/s 154 can be exercised in all case except in cases in which similar powers have already been exercised by the Tribunal u/s 149(9) is an elaboration of the intention of the legislature regarding the exercise of revisional jurisdiction u/s 154 by the Revisional Authority. Apparently, therefore, the judicial pronouncement by the Apex Court in that regard disclose that Section 154 of the said Act contemplates exercise of revisional jurisdiction against an order or decision passed in any proceedings other than in revisional jurisdiction.

The law being well-settled consequent to the decision of the Apex Court, the observations of the Division Bench in the Writ Petition No. 4 of 2000 will have to be considered as having been made in the facts of that peculiar case. In any case, it is apparent that the attention of the Division Bench was not drawn to the decision of the Apex Court in Everest Apartments" case while delivering the order dated 10-10-2000. The law being well-settled, therefore, there is no substance in the grievance of the petitioners that the Secretary (Co-operation) erred in dismissing the revision application by the order dated 13-11-2000. The challenge on the said ground is to be rejected.

6. The second point which arises for consideration is that whether the revisional authority could have interfered in the order passed by the Deputy Registrar (Co-operative) and could have denied the statutory right to the petitioners solely on the basis that no plot or flat was available to the petitioners or on the ground that there was cessation of membership of B.N. Rathod on his death.

7. Bare reading of the impugned judgment apparently discloses that the revisional authority has set aside the order of the Deputy Registrar (Co-operative) allowing the claim of membership of the petitioner No. 1 on two grounds, namely, that on the death of B.N. Rathod, he ceased to be a member of the society in terms of the Section 25 of the said Act, and secondly that there was no plot or flat available with the respondent-society.

8. The Section 25 of the said Act provides that a person shall cease to be a member of a society on his resignation from the membership thereof being accepted, or on the transfer of the whole of his share or interest in the society to another member, or on his death, or removal or expulsion from the society, or where a firm, company, any other corporate body, society or trust is a member on its dissolution or ceasing to exist. The Section 25 does not speak about the rights of the heirs or legal representatives of a deceased member. It merely deals with the extinguishment of the right of a member who is no more alive. That by itself cannot be construed to affect the statutory rights of the heirs or legal representatives of such a deceased member.

9. The Section 30 of the said Act relates to the subject of transfer of interest on death of a member. The Sub-section (1) thereof provides that on the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules, or, if no person has been so nominated, then to such person as may appear to the committee to be the heir or legal representative of the deceased member, provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society, and provided further that, nothing in the said sub-section or in the Section 22, shall prevent a minor or person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society. The Sub-section (2) thereof provides that notwithstanding anything contained in the Sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value of the share or interest of the deceased member, ascertained in accordance with the rules. The Sub-section (4) thereof provides that all transfers and payments duly made by a society in accordance with the provisions of the said section, shall be valid and effectual against any demand made upon the society by any other person.

10. The Rule 24 of the Maharashtra Co-operative Societies Rules, 1961, hereinafter called as "the said Rules", deals with the procedure for transfer of shares and the Sub-rule (1) thereof provides that no transfer of share shall be effective unless the procedure prescribed thereunder is complied with. Further, the Rule 25 of the said Rules deals with the nomination of persons and the Clause (i) of the Sub-rule (3) thereof provides that where a member of a society has not made any nomination, the society shall on the member's death, by a public notice exhibited at the office of the society, invite claims or objections for the proposed transfer of the share or interest of the deceased within the time

specified in the notice, and the Clause (ii) thereof provides that after taking into consideration the claim or objections received in reply to the notice or otherwise, and after making such inquiries as the committee considers proper in the circumstances prevailing, the committee shall decide as to the person who in its opinion is the heir or the legal representative of the deceased member and proceed to take action under the Section 30 of the said Act.

11. The law on the point of transfer of share or interest of the deceased member being clearly laid down in the Section 30 and the procedure thereof being clearly provided under the Rules 24 and 25 of the said Rules, it is apparent that in the absence of the said procedure being followed, the right of the heir or the legal representative of the deceased either to claim membership of the society or the value of the share or interest of the deceased member, at the option of such heir or the legal representative, subsists and the society is not entitled to deny such right otherwise than in accordance with the provisions of law. It was sought to be argued on behalf of the respondent No. 1 that the Section 30 the said Act deals only with the transfer of interest share but not relating to claim of membership as such. This contention cannot be accepted. The first proviso to the Section 30 clearly provides for membership to the heir or the legal representative on being applied for, undoubtedly the other requirements of becoming the member of the society being satisfied and the procedure as laid down under the Rule 24 is complied, of course, simultaneously, an option is given to such heir or the legal representative to claim the value of the share or interest. The Section 23, to which attention was sought to be drawn by the learned Advocate for the respondent No. 1, speaks of open membership and the Sub-section (1) thereof provides that no society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of the said Act and its bye-laws. Apparently, if under the Section 30 a person is entitled to be enrolled as a member having acquired such right by way of inheritance unless such right can be curtailed under any provision of law or under the bye-laws of the society or for valid and lawful reason, no society would be entitled to refuse such right to the heir or the legal representative. Being so, merely because the member has expired, the right of the heir or the Legal representative to claim membership or the value of the share or the interest in terms of the Section 30 of the said Act is not taken away and therefore the finding of the revisional authority that on the expiry of B.N. Rathod he ceased to be a member and therefore the petitioner No. 1 is not entitled to claim membership, is devoid of substance and needs to be set aside.

12. As regards the second ground on which the claim is sought to be interfered with pertains to non-availability of the plot or the flat. Undisputedly, the point as regards the availability or non-availability of the plot or the flat is being adjudicated upon by the authority and it is still pending before the Competent Authority. Being so, it was too premature for the revisional authority to arrive at the conclusion that no plot or flat was available and on that ground the right to inherit the share or interest of the deceased B.N. Rathod could have been

rejected. Besides, the right assured under the Section 30 of the said Act is not subjected to the availability of the flat.

13. The learned Advocate for the respondent No. 1, referring to the decision of the learned single Judge of this Court in *The Atomica Co-operative Housing Society Ltd. v. Shri B.R. Ballal and Ors.* (supra) has sought to contend that the right of membership is directly linked with the availability of the plot or the flat as the society was essentially a housing society. The learned single Judge in *The Atomica Co-operative Housing Society's* case was dealing with a matter wherein the disputants had failed to pay the charges and the Managing Committee of the society of which the disputants were the members, in its meeting held on 13-9-1980 had decided to cancel the shares of the disputants as also the allotment of the flats to the disputants. Thereupon dispute was raised and when the matter came up before the High Court, while dealing with the question as to "whether the cancellation of the shares and allotment of the flats to the disputants is valid", the learned single Judge had observed that "It is, thus clear that upon forfeiture or cancellation of shares, a member ceases to be a member. Thus, if the disputants are deprived of their shares, either by transfer, forfeiture or cancellation, their membership comes to an end and with it ends their right to participate in the affairs of the Society. The nexus between the membership and the allotment of flats is clearly established in the bye-laws 6(2) which enjoins the General Body not to admit members exceeding the number of tenements or flats. Every member has only one connection with the Society, viz., the house or the flat. For the purpose of fulfilling this objective, the members enter into an association of corporate life which goes by the name Co-operative Society. Therefore, membership and the right to seek a house as a member are inseparable incidents of a Co-operative Housing Society. One does not become a member without the intention to acquire a house. Therefore, when a person ceases to be a member, his right to live in the house comes to an end.". Referring to this ruling, it was sought to be contended that in the absence of availability of the plot or the flat, the question of enrolling the petitioners as members of the respondent-society cannot arise and therefore the findings in that regard by the revisional authority cannot be found fault with.

14. As already observed above, the decision in *The Atomica Co-operative Housing Society's* case was in relation to cancellation of shares and allotment of flats to the disputants-members of the society. That was not a decision on the point of right of heir or the legal representative to claim membership of the society consequent to the death of their predecessor. The learned single Judge in *The Atomica Co-operative Housing Society's* case was not dealing with a matter where a person had claimed right of inheritance in terms of the Section 30 of the said Act nor had occasion to deal with the provision of the Section 30 of the said Act r/w the provisions of the Rules 24 and 25 of the said Rules. Being so, the decision can be of no help to justify the findings arrived at by the revisional authority in the case in hand. It is apparent that the revisional authority has arrived at the said findings ignoring the said provision of the Section 30 of the

said Act as well as the provisions of the Rules 24 and 25 of the said Rules. Once the statute ensures the right to the heir or the legal representative to claim membership and/or the value of the share or interest of the deceased member, at the option of such heir or legal representative, the transfer of the membership or the share is not permissible otherwise than as provided under the provisions of law and in accordance with the procedure prescribed under the Rule 24 of the said Rules. The respondent cannot be heard to deny such a statutory right ensured to the petitioners.

15. There is absolutely no substance in the contention of the learned Advocate for the respondent No. 1 in relation to the objection on the ground of limitation by taking shelter of the Article 137 of the Limitation Act, 1963. The said provision has no application at all to the claim put forth by the petitioners in relation to the right of inheritance under the Section 30 of the said Act. For the same reason, the decision of the Apex Court in *State of Punjab and Ors. v. Gurdev Singh and Ashok Kumar* (supra) is also of no help in any manner in the case in hand.

16. It is made clear that though the petitioners are entitled to claim membership of the respondent-society in terms of the provisions of law referred to above, this Court has not expressed any opinion as regards the availability or non-availability of the plot or the flat as the said issue is vide open for adjudication before the Competent Authority.

17. In the result, therefore, the petition partly succeeds, and the same is allowed as against the judgment and order dated 2-5-1997 and the said judgment and order are hereby set aside and the judgment and order dated 11-4-1996 is hereby restored. The petition as far as it challenges the impugned judgment and order dated 13-11-2000 is hereby dismissed. The rule is made absolute in the above terms with no order as to costs.

18. At this stage, the learned Advocate for the respondent No. 1 prays for stay of the order passed today, which is opposed by the learned Advocate for the petitioners. However, I am inclined to grant stay for a period of four weeks from today, subject to that the respondent-society shall not cause any changes in relation to the shares or interest of the deceased B.N. Rathod.