

(2000) 09 MP CK 0062
In the Madhya Pradesh High Court
Case No : Civil Revision No. 500/ 2000

V.K. Munshi

APPELLANT

Vs

Raipur Co-operative Housing Society Limited and another

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2001) 1 MPHT 514

Hon'ble Judges : Mr. Dipak Misra, J

Bench : Single Bench

Advocate : Shri K.P. Munshi, for the Appellant; Shri Alok Aradhe, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Invoking the revisional jurisdiction of this Court u/s 115 of the CPC (in short "the Code") the petitioner/defendant No. 2 has called in question the justifiability of the order dated 7-4-1999 passed by the learned IIIrd Additional District Judge, Raipur in Misc. Civil Appeal No. 41/98.

2. The facts as have unfolded are that the non-applicant No. 2 as plaintiff initiated civil action being Civil Suit No. 70-A/91 for the following reliefs :--

^^?v? ;g fd oknh dks okn xzLr Hkw[k.M ?ekad 38 ?vM+rhl? "kkyk ekxZ jk;iqj lgdkjh x`g fuekZ.k laLFkk lfefr jk;iqj dk iath?r fc?h i= fnukad 16&9&81 ?lksyg flracj bD;klh? ds vuqlkj HkwLokhe ds :i esa vkf/kiR;/kkjh ?kksf"kr fd;k tkosA

?c? ;g fd i= fnukad 417 ?pkj lks l=g? fnukad 4&8&87 ?pkj vxLr lR;klh? voS/kkfud nqHkkZouk iw.kZ vf/kdkj {ks= ls ckgj ,oa fof/k foijhr gksus ds dkj.k rFkk oknh dks ca/kudkj ugha gksus ls "kwU; ?kksf"kr fd;k tkosA

?l? ;g fd oknh ds }kjk okn xzLr Hkw[k.M ij Hkw&Lokhe ds :i es miHkksx djus esa izfrokn rFkk muds }kjk vU; O;fDr ds glr{ksi djus ls LFkbbZ fu"ks/kkKk }kjk LFkbbZ :i ls jksdk tkosA

?d? ;g fd oknh dks izfroknh }kjk vdkj.k ijs"kku ds ifj.kkeLo:i 1000@& ?,d gtkj :i;s? fnyk;k tkosA

?[k? ;g fd oknh dks izfroknh ls ;g okn dk laiw.kZ okn O;; fnyk;k tk;s ,oa vU; dksbZ lgk;rk tks ekuuh; U;k;ky; mfpr le>s oknh dks fnykbZ tkosA**

It is worth-noting here that after cancellation of the sale-deed of the non-applicant No. 2/plaintiff the land in question was allotted to the present petitioner. During the pendency of the suit the petitioner was impleaded as a defendant to the suit.

3. The petitioner, who was the defendant No. 2 entered contest and filed his written statement taking various pleas. On the pleadings of the parties the learned Trial Judge framed certain issues and took up the issue No. 5 as a preliminary issue. The said issue reads as under :--

^^5- D;k e-iz- lgdkjh laLFkk vf/kfu;e dh /kkjk 82] lgifBr /kkjk 64] ds izko/kkuksa ds vk/khu bl U;k;ky; esa okn Jo.k vf/kdkj ugha gS**

The learned Trial Judge by his order dated 14-10-1996 came to hold that the controversy was not cognizable in the Civil Court as the same is barred u/s 82 of M.P. Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") and accordingly directed for return of the plaint for presentation before the competent forum. Feeling dissatisfied the plaintiff preferred Misc.

Appeal No. 41/98 whereby the learned Appellate Judge allowed the appeal and remanded the matter for disposal of the suit in accordance with law.

4. Assailing the aforesaid order it is contended by Mr. K.P. Munshi, learned counsel for the petitioner that the learned Appellate Judge has fallen into error inasmuch as the controversy in question comes within the ambit and sweep of a dispute as defined u/s 64 of the Act and, therefore, not entertainable in the Civil Court. It is urged by him that the plaintiff is a member of the Raipur Co-operative Housing Society Limited and the cancellation of the sale-deed relates to the business of the society and, therefore, a dispute would have been raised before the Registrar. It is put forth by him that as a dispute lies the Civil Court has no jurisdiction to entertain the lis. The learned counsel in support of his submissions has placed reliance on the decisions rendered in the cases of Keshava Narayan Vs. Mandal Co-operative Marketing Society and others, 1970 MPLJ 770 (SC); Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, ; Madhavrao Kulkarni Vs. 9th Additional District Judge, Indore and others, 1991 RN 81; and Baldeo Kumar Agrawal Vs. Managing Director, M.P. Rajya Van Upaj Sahkari Sangh Maryadit and other 1997 (2) MPLJ 253.

5. Combatting the aforesaid submissions, Mr. Alok Aradhe, learned counsel for the non-applicant No. 2 has contended that the plaintiff has called in question the action taken by the society as the said action is totally null and void and violative of the principle of natural justice and, therefore, the suit is maintainable

in the Civil Court. The learned counsel has further contended that as the suit is framed challenging the order to be nullity, the Civil Court has jurisdiction to examine to the limited extent whether the order passed is a nullity or not. In support of his submissions he has placed reliance on the decision rendered in the case of Rao Bhupendra Singh Vs. Smt. Gopal Kunwar Umath and another 1970 MPLJ 16. Mr. Aradhe has also drawn inspiration from an unreported judgment rendered in the case of The Raipur Co-operative Housing Society and others Vs. Smt. Sushiladevi and others (Civil Revision No. 100/77) disposed of on 30th November, 1978.

6. To appreciate the rival submissions raised at the Bar, it is apposite to refer to Sections 64 and 82 of the Act. They read as under :--

64. Dispute.--(1) Notwithstanding anything contained in any other law for the time being in force, [any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar] by any of the parties to the dispute if the parties there to are among the following :--

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

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

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purposes of sub-section (1), a dispute shall include-

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arises in connection with the election of any officer of the society or representative of the society or of composite society :

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

82. Bar of jurisdiction of Courts.-- (1) Save as provided in this, Act, no Civil or Revenue Court shall have any jurisdiction in respect of-

(a) the registration of a society or of bye-laws or an amendment of a bye-law;

(b) the removal of a committee and the management of the society after such removal;

(c) any dispute, required to be referred to the Registrar or his nominee or board of nominees;

(d) any matter concerning the winding up and the dissolution of a society,.

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

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

The controversy in question has to be tested keeping the aforesaid provisions in view. Mr. Munshi has laid immense emphasis on the language "touching the business" and has commented that the language used in the said provision is of wide import and would engulf in its ambit and sweep a case of present nature. To appreciate the aforesaid submission of the learned counsel for the petitioner, I have perused the decisions relied on by Mr. Munshi. In all those decisions it has been held that if the dispute in question relates to "touching business of the society" the Civil Court's jurisdiction to entertain the suit is barred. Submission of Mr. Munshi is that the dispute in the present case is cognizable by the Registrar of the Co-operative Societies as it touches the business of the society as the non- applicant No. 2 and the petitioner are the members of the same

society.

7. The fact stipulation has to be appreciated on reading of the plaint in entirety. Mr. Aradhe has placed heavy reliance on Paragraphs 11-A and 11-B of the plaint to highlight the prayer in the suit. The learned counsel has given English translation of the pleadings. Paragraph Nos. 11 (a) and 11 (b) read as under :--

"11 (a) : That the defendant society has no right to annul the sale in respect of the plot in dispute sold to the plaintiff, as mentioned above, of 16-9-1981. The defendant society has hatched a conspiracy of usurp of land belonging to the plaintiff which is in his possession, by sending a notice dated 4-8-1987 illegally because the present office bearers of the defendant society nurture ill will against the plaintiff as Election Petition was filed against the present office bearers. Neither the office bearers of defendant society nor any person as any right to cancel the sale-deed dated 16-9-1981 by which the plot was sold to the plaintiff. The letter bearing No. 417 dated 4-8-1987 sent by the defendant society cancelling the sale-deed mentioned above, is unauthorised, incorrect and illegal and is not binding on the plaintiff. On the basis of letter dated 4-8-1987 of the defendant, plaintiffs ownership and possession cannot be put to an end illegally. Either the defendant society or any of its office bearers has no authority to act against the plaintiff in accordance with letter bearing No. 417 dated 4- 8-1987. Despite letter dated 4-8-1987 of the defendant, the plaintiff is the owner of the plot in dispute.

11 (b) : That the allegations made in Paras 14 and 16 of the written statement are denied as not correct. The defendant society sent a show-cause notice dated 4-8-1987 to the effect that since as per the bye-laws, the construction work was not carried out, therefore, why the allotment should not be cancelled. In the show-cause notice, no other ground was mentioned for cancellation of allotment. Besides this, without giving any hearing to the plaintiff on 4-8-1987 itself, the permission was obtained from the Deputy Registrar, Co-operative Societies, Raipur to cancel the allotment. The aforesaid action of the defendant society cannot be said to be bona fide. The show-cause notice dated 4-8-1987, being illegal is liable to be cancelled. Besides this, the allotment made by the defendant society in respect of the plot in dispute in favour of V.K. Munshi (Vimal Kumar Munshi) is malafide because on the date of allotment, he was not the valid member of the society. For the aforesaid reasons, the transfer made by the society in respect of the plot in dispute in favour of V.K. Munshi being illegal is liable to be cancelled. The society should be restrained from executing the letter bearing No. 417 dated 4-8-1987. The letter dated 4-8-1987 sent by the defendant society to the plaintiff, being illegal, beyond jurisdiction and incorrect, is liable to be declared null void. The action taken by the defendant society against the plaintiff is contrary to the conditions on the basis of which plot in question was sold to the plaintiff on 16-9-1981. Thus, letter bearing No. 417 dated 4-8-1987 cannot be executed against the plaintiff by the defendant society under the bye-laws or under the legal provisions. The action which is being taken

by the defendant society against the plaintiff as per letter bearing No. 417 dated 4-8-1987 does not fall within the purview of expression of dispute as defined by Sections 64 and 94 of the M.P. Co-operative Societies Act, 1960. The action taken under the letter bearing No. 417 dated 4-8-1987 does not relate to constitutional management or the business of the defendant society and the defendant society has no right under any bye-laws or Act to take action against the plaintiff in accordance with the letter. For the aforesaid reasons it is not necessary to serve any notice to the Registrar, Co-operative Society u/s 94 of the M.P. Cooperative Societies Act, before filing the present suit. In case, the notice is given as aforesaid, the suit filed by the plaintiff shall fail in view of the facts and circumstances of the case, and the defendant-society shall dispossess the plaintiff from the plot in dispute and shall transfer it to somebody else. In view of the aforesaid circumstances, the plaintiff be permitted to institute the suit against the defendant society without serving the notice as contemplated u/s 94 of the M.P. Co-operative Societies Act. However, besides the aforesaid legal position, the plaintiff is sending a notice u/s 94 of the M.P. Co-operative Societies Act today and prays to the Court that he be allowed to institute the suit prior to expiration of the period of notice."

In the case of Rao Bhupendra Singh (*supra*) it has been held as under :--

"(i) An Exclusionary clause using the formula "an order of the Tribunal under this Act shall not be called in question in any Court" is ineffective to prevent the calling in question of an order of the Tribunal if the order is really not an order under the Act but a nullity.

(ii) Cases of nullity may arise when there is lack of jurisdiction at the stage of commencement of inquiry e.g., when (a) authority is assumed under an ultra vires statute, (b) the Tribunal is not properly constituted, or is disqualified to act, (c) the subject-matter or the parties are such over which the Tribunal has no authority to inquire, and (d) there is want of essential preliminaries prescribed by the law for commencement of the inquiry.

(iii) Cases of nullity may also arise during the course or at the conclusion of the inquiry. These cases are also cases of want of jurisdiction if the word "jurisdiction" is understood in a wide sense. Some examples of these cases are : (a) when the Tribunal has wrongly determined a jurisdictional question of fact or law, (b) when it has failed to follow the fundamental principles of judicial procedure, e.g., has passed the order without giving an opportunity of hearing to the party affected, (c) when it has violated the fundamental provisions of the Act e.g., when it fails to take into account matters which it is required to take into account or when it takes into account extraneous and irrelevant matters, (d) when it has acted in bad faith, and (e) when it grants a relief or makes an order which it has no authority to grant or make."

(quoted from the placitum)

In the case of Smt. Sushiladevi (*supra*), J.S. Verma, J., (as His Lordship then

was) placing reliance on the case of Rao Bhupendra Singh (supra) held as under :--

"It has been pointed out in that decision that clause, excluding the jurisdiction of the Civil Court in a matter required to be decided by a special Tribunal under the Act, does not have the effect of excluding the jurisdiction of the Civil Court, and where the order is made without jurisdiction is a nullity and that it is open to the Civil Court to examine the matter to this limited extent. In that case, some illustrations have been given on the defects which would render an order defective on ground of nullity. Some of the grounds pleaded in Paras 13 and 14 of the plaint, in the present case fall within that category. The result, therefore, is that the statements made in the plaint are such that if they are proved by the plaintiff, a case of nullity may be made out, permitting interference by the Civil Court. That being so, the Bar of jurisdiction of the Civil Court, contained in Section 82(i)(c) of the Co-operative Societies Act, does not have the result of excluding the Civil Court's jurisdiction, even in such a case where the suit is based on the ground that the impugned order is a nullity. It will be however, for the Civil Court to confine itself in the suit only to the ground of nullity because it is only to that extent that the Civil Court has jurisdiction in the matter."

At this juncture I feel to indicate here that in the case of Smt. Sushiladevi (supra) the plaint was for declaration of cancellation of an allotment as a nullity on the ground of arbitrariness and violation of principle of natural justice. Similar is the prayer in the present plaint with almost similar averments. In view of this I am of the considered opinion that the law laid down in the case of Smt. Sushila Devi (supra) coverse the present factual matrix. Hence, I do not find any illegality in the order passed by the learned Additional District Judge.

8. Consequently, the civil revision, being sans merit, stands dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

9. Civil Revision dismissed.