Everest Apartments Co-Operative Housing Society Ltd.

Vs

State of Maharashtra & Ors.

Civil Appeal No. 1 of 1966

(K. Subha Rao, M. Hidayatullah, R. S. Bachawat JJ)

18.01.1966

JUDGMENT

HIDAYATULLAH, J. -

In this appeal by special leave we are not concerned with the merits of the controversy between the appellant and the forth respondent, who are the contesting parties, because only two short questions of law arise for our decision. The appellant is a registered co-operative Housing Society, registered under the Maharashtra Co-operative Societies Act, 1960 (XXIV of 1961). The Society was promoted by two individuals for the construction of a block flats in Bombay. Shivdasani (respondent 4) claims to have paid the entrance fee, share money and other demands and the complaints that his membership was wrongly rejected by the Society. The Society denies these statements and the claim. We are not concerned with the details of this dispute. What we concerned with this: On being informed of the rejection of his application for membership, Shivdasani filed an appeal under s. 23(2) of the above Act, which was heard and decide in his favour by the District Deputy Registrar, Co-operative Society, Bombay. The Society filed an application before the State Government for revision purporting to be under s. 154 of the Act. This application was rejected. The Society was initiated this result by Under Secretary to the Government of Maharashtra (Agriculture and Co-operative Department) and the communication (CAR/1064/426590/C-42, 17th May, 1965) was as follows :

> "Sir,
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> I am directed to state that following the hearing to you by the Deputy Secretary of this Department on 10th March, 1965, in connection with the subject noted above, a note was received in this Department from Shri M. G. Mani, Advocate wherein it was claimed that though an order was final under Section 23(3) of the Maharashtra Cooperative Societies Act, 1960, Government had inherent revisionary power under the Section 154 of the said Act to the entertain in such representations against such an order. I am to inform you that the matter has been examined by Government and to state that in such cases order given under Section 23(3) are final and Government has no revisional jurisdiction in such a matter.
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> # Yours faithfully, Sd/- (D. A. EKBOTE) Under Secretary to Government."##

The Society filed a petition under Arts. 226 and 227 of the Constitution in the High Court of Bombay which was also rejected (S.C. A. 1027/65, 30 June, 1965). The High Court passed a short and laconic order which reads :

"Government right in declaring no jurisdiction. It is wrong to say that respondent had withdrawn the applications voluntarily. Attitude of the Society unjust. Admittedly the promoters were members of the Everest Co. and thy wanted Rs. 3,000 from each one for themselves.

Societies are not meant for self aggrandizement.

No grounds to interfere.

REJECTED."

It is against the last order the present appeal has been brought and the first question is whether the Government is right in law in declining to interfere because it has "no revisional jurisdiction in such a matter." The answer to this questions depends upon the construction of s. 154 of the Act but before we attempt it, we shall say something about the act and the provisions applicable to this case.

The Maharashtra Co-operative Societies Act, which replaced the Bombay Co-operative Societies Act, 1925 was passed to provide for the orderly development of the co-operative movement in the State of Maharashtra. It deals, among the others, with housing societies, the object of which is to provide their members with the dwelling houses. Every society having as its objects promotion of the economic interest or general welfare of its members, or of the public, in accordance with co-operative principles and which is economically sound may register under Act. This entitles the societies to obtain certain benefits. The State Government appoints a Registrar of Co-operative Societies, who has numerous powers under the Act, and may be appoint one or more persons to assist him and may confer all or any of the powers of the Registrar upon them. Chapter II of the Act then deals with registration of societies and all matter connected therewith. Chapter III next deals with members and their right and liabilities. Section 22 in that Chapter lays down who may become a member of society and it by its second sub-section provides :

"22 Person who may become member.

#(1) . . .##

(2) Where a person is refused admission as a member of society, the decision (with the reason therefor) shall be communicated to that person within the fifteen days of the date of the decision, or within three months from the date of the application for admission, - whichever is the earlier."

Section 23 then gives the right of appeal to a member who has been refused admission. It provides :

"23. Open membership.

(1) No society shall, without sufficient cause, refuse admission to membership to any person duty qualified there for under the provision of this Act and its by-laws.

(2) Any person aggrieved by the decision of the society, refusing him admission to its membership, may appeal to the Registrar.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within the fifteen days from the date

thereof."

The appeal of Shivdasani was made under the above section. After the order in appeal was passed by the Registrar, the Society moved the State Government under s. 154 to exercise the its powers under that section. It reads :

> "154. Power of State Government and Registrar to call for proceedings of subordinate officer and to pass orders thereon.
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> The State Government and the Registrar may call for and examine the record of any inquiry of 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 the of satisfying themselves as to the legality or property 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 the heard pass such order thereon as to it or him may seem just."

The State Government held that it had no jurisdiction as orders given under s. 23(3) were final. Two questions arise here : (i) Is the finality under s. 23(3) subject to s. 154, and (ii) Has a party a right to move the State Government under s. 154 ?

Mr. Niten De defending the order of the State Government as well as that of the High Court, admits that the State Government has been given a power to call for and examine the record of any enquiry or the proceedings of any other matter of any officer subordinate to it, except those referred to in sub-section 9 of s. 149, and that as the present is not a matter under s. 149(9) the power could exercised by Government for the purpose of satisfying itself as to the legality or propriety of the order. In other words, he does not contest that the finality stated by s. 23(3) does not affect the power of the State Government. In making this admission he is clearly right. The Act has provided for appeals in other sections and the decision on appeal is stated to be final. Yet the power of superintendence is given to the State Government in general terms in respect of any inquiry or proceeding with only one exception, namely, the proceedings of the Maharashtra State Tribunal, when the Tribunal calls for and examines the record of any proceeding 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. By mentioning one specific exception to the general power, the Act has indicated in intention to the include every other inquiry or proceeding with in the action by Government as contemplated by s. 154. Mr. De, however, contends, firstly that the action by Government is intended to be on its own motion and not by application, and, secondly, that the power need not be exercised unless Government itself feels that its exercise is necessary. He refers, by way of the contrast, to the opening to words of s. 150 where provision is made for review of orders of the Tribunal in these words :

> "150. Review of orders of Tribunal.
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> (1) The Tribunal may, either on the application of the Registrar, or on the application of any party interested, review its own order in any case, and pass in reference thereto such order as it thinks just :

> Provided that, no such application made by the party interested shall be entertained, unless the Tribunal is satisfied that there has been the discovery of new and the important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason :
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> # . . . . . .##

Mr. De next submits that this power not being coupled with any duty need not be exercised by Government even if moved to take action, unless Government it self feels inclined. He relies upon the Commissioner of Income Tax, West Punjab v. The Tribune Trust, Lahore. ((1948) 16 I.T.R. 214 P.C.) In that case the question was whether s. 33 of the Indian Income Tax Act, 1922 which conferred revisional jurisdiction on the Commissioner established a right to relief on the application of an assessee. It was contended by the assesses in that case that the relief claimed by then under s. 33 was wrongly denied to them. In dealing with this contention Lord Simond (later Viscount) observed, at page 225 of the report, as follows :-

> "The fallacy implicit in this question has been made clear in the discussion of the first two questions. It assumes that Section 33 creates a right in the assessee. In their Lordships' opinion it creates no such right. On behalf of the respondent the well-known principle which was discussed in Julius v. Bishop of Oxford - (1880) 5 App. Cas. 214 - was invoked and it was urged that the section which opens with the words. "The Commissioner may of his own motion" imposed upon him a duty which he was bound to perform upon the application of an assessee is possible that there might be a context in which words so inept for that purpose would create a duty. But in the present case there is no such context. On the contrary Sections 33 follows upon a number of sections which determined the rights of the assessee and is itself, as its languages clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinates and take necessary action upon such review. It appears that as a matter of convenience a practice has grown up under which Commissioner has been invited to act "of his own motion" under the section and where this occurs a certain degree if formality has been adopted. But the languages of the section does not support the contention, which lies at the root of the third question and is vital to the respondent's case, that it affords a claim to relief. As has been already pointed out, appropriate relief is specifically given by other sections : it is not possible to interpret Section 33 as conferring general relief."

Mr. De also relies upon certain passages from Julius v. Bishop of Oxford ((1880) 5 App. Cas. 214.) which show the distinction between power which is discretionary in its exercise and power which must be exercised every time the occasion for its exercise arises. He contends in the words of Talbot J. in Shuffled Corporation v. Luxford ((1929) 2 K.B. 180 at 183.) that the word "may" always means "may" which is a permissive or enabling expression and that there are no circumstances either in the Act or in the facts here, by which it can be said that Government was under a duty to interfere. He submits that the order of Government must be read as indicating the above position and not that it had no jurisdiction.

There is no doubt that s. 154 is potential but not compulsive. Power is reposed in Government to

intervene to do justice when occasion demands it and of the occasion for its exercise, Government is made the sole judge. This power can be exercised in all case 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 been considered once, it would be an act of supererogation to consider the matter twice. It follows, therefore, that Government can exercise its powers under s. 154 in all cases with one exception only and that the finality of the order under s. 23(3) does not restrict the exercise of the power. The word 'final' in this context means that the order is not the subject to an ordinary appeal or revision but it does not touch the special power legislatively conferred on Government. The Government was in error in the considering that it had no jurisdiction in this case for case for it obviously had.

There remains the question whether a party has right to move Government. The Tribune Trust case is distinguishable and cannot help the submission that Government cannot be moved at all. The words of the two enactments are not materially equal. The Income-tax Act used the words suo motu' which do not figure here. It is, of course, true that the words "on an application of a party which occur in s. 150 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of the which, Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not only the not inhibited the making the of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application to has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done, it is for the court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right of relief as in an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err, and that is what Government did in this case.

The order of the High Court in these circumstances overlooked that Government had denied to itself a jurisdiction which it undoubtedly possessed by considering that the finality of the order under s. 23(3) precluded action under s. 154. The High Court ought to have issued a mandamus to Government to deal with the application before it within the its jurisdiction under s. 154. That mandamus shall now issue to Government.

The appeal is thus allowed with costs.

Appeal allowed.

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