

Jai Mahavir Co-Operative Housing Society Ltd.

Vs

Panchal Keshavlal Narbheram and Others

Civil Appeal No. 1583(N) of 1973

(G. L. Oza, V. Khalid JJ)

10.04.1987

JUDGMENT

OZA, J. -

1. This appeal is by certificate granted by the High Court of Gujarat under Article 133 of the Constitution of India by its order dated April 6, 1973. The High Court by its order dated April 6, 1973 dismissed the petition filed by the appellant questioning the correctness of the order of the Gujarat Co-operative Tribunal.
2. The facts necessary for disposal of this appeal are that appellant is a co-operative housing society registered with the Registrar of Co-operative Societies Gujarat under the provisions of the Act. It is alleged that this Society was formed on May 2, 1961 with the object of providing housing facilities to its members. Respondent 1 Panchal Keshavlal Narbheram was a founder member of this Society along with 11 others. It is alleged that the conduct of respondent 1 was found to be detrimental to the interest of the Society and its working and the Society therefore invoked the provisions of Section 36 of the Act, passed a resolution dated June 19, 1965 to expel respondent 1 from the membership of the Society. A further opportunity to show cause was given to the respondent and on November 28, 1965 the appellant society passed a resolution expelling respondent 1 from the membership of the Society.
3. This resolution of the Society was duly approved by the Registrar of Societies as required under Section 36 of the said Act on April 13, 1966.
4. On February 17, 1966 respondent 1 instituted another proceedings under Section 96(1) with the Registrar of Co-operative Societies seeking relief of setting aside of the resolution passed by the Society against respondent 1. The Registrar entertaining the dispute and exercising powers conferred under Section 98 (1) referred the dispute for decision to his nominee and out of these proceedings ultimately the present appeal arises.
5. On July 16, 1966 the Registrar's nominee dismissed respondent 1's claim by his order dated July 16, 1966. Thereafter respondent 1 carried the matter to the Tribunal by way of an appeal i.e. Appeal No. 119 of 1966.
6. That on August 25, 1967 the Tribunal allowed the appeal of the respondent and remanded the matter to the Registrar's nominee for a fresh decision in accordance with law.
7. After remand the parties proceeded with the trial and adduced oral evidence before the Registrar's

nominee but during the trial on February 16, 1970 the appellant-Society made an application under sub-section (2) of Section 96 to the District Registrar that the question relating to the explosion of respondent 1 had already been decided in the sense that in the collateral proceedings the Registrar had recorded his approval under Section 36 of the Act to the action taken by the Society and therefore the dispute did not survive. On this application the District Registrar heard the parties and came to the conclusion that respondent 1 was precluded from contending that the impugned resolution expelling him from the membership of the society was illegal inasmuch as he had not preferred any appeal against the decision of the Registrar according his approval to the action taken by the Society under Section 36.

8. The District Registrar was of the opinion that doctrine of res judicata was attracted and therefore there was no dispute in existence between the parties. This order passed by the District Registrar on June 19, 1970 was taken up in revision under Section 150 sub-section (9) of the Act to the Tribunal. The Tribunal came to the conclusion that the District Registrar had no jurisdiction to reopen the question as to whether or not the matter referred by respondent 1 was a dispute within the meaning of sub-section (1) of Section 96 at this subsequent stage. The view taken was that having already decided that the matter constituted a dispute under Section 96(1) at an early stage before he made a reference to the Registrar's nominee in exercise of powers under Section 97, the powers under sub-section (2) of Section 96 were exhausted and it was not competent for him to review his earlier decision. Accordingly the Tribunal by its order dated February 6, 1971 allowed the revision petition, set aside the order passed by the District Registrar on June 25, 1970 and directed the Registrar's nominee to proceed with the decision of the matter expeditiously having regard to the fact that the dispute is an old one having its origin in a resolution passed by the appellant Society on November 28, 1965.

9. The appellant-Society feeling aggrieved by the aforesaid decision invoked the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. In this petition the appellant raised mainly two contentions : (i) that the Tribunal was in error in holding that Registrar was not competent to review his earlier decision that the matter referred to by the respondent 1 was a 'dispute' within the meaning of sub-section (1) of Section 96 of the Act; (ii) that the Tribunal had no revisional jurisdiction against an order passed under Section 96(2) of the Act.

10. On the first question the High Court came to the conclusion that the Tribunal was right in holding that Registrar had no jurisdiction to revise or review his earlier decision wherein the Registrar came to the conclusion that the dispute raised by respondent 1 fell within the ambit of the description of dispute [within the meaning of sub-section (1) of Section 96]. On the second question the High Court took the view that the Tribunal had revisional jurisdiction.

11. The High Court considered the question of leave to appeal to this Court and granted leave and framed the following question for decision :

Is an order passed by the Registrar in exercise of the powers under sub-section (2) of Section 96 of Gujarat Co-operative Societies Act, 1961 subject to revision by the Tribunal in exercise of the powers under Section 150(9) of the Act ?

In pursuance of the certificate granted by the High Court the present appeal has been filed by the appellant.

12. Learned counsel appearing for the appellant contended that although when a dispute is referred

to the Register and he ultimately gives decision on merits that is no doubt appealable but when the Register entertains the dispute and send it to his nominee that is not an order against which a revision can lie to the Tribunal. Learned counsel placed reliance on the decision in *Krishnarao Bakaramji Hadge v. State of Maharashtra* (1969 Bom LR 150 : 1966 Mah LJ 1145) and contended that the Tribunal had no revisional jurisdiction.

13. The High Court in the impugned judgment after considering this decision and the provisions contained in Section 97 came to the conclusion that when a dispute is referred to the Register under Section 96 and the Register entertains the dispute under Section 96 and ultimately finally disposes it of against the decision on the merits there is an appeal to the Tribunal according to Section 97 which is similar to Section 101 of the present Gujarat Co-operative Societies Act, 1961 and in view of this the learned Judges of the High Court came to the conclusion that under sub-section (9) of Section 150 the Tribunal has revisional jurisdiction in a matter an appeal lies to it. Sub-section (9) of Section 150 reads :

(9) The Tribunal may call for an examine 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. If in any case, it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem just.

This confers jurisdiction on the Tribunal to call for and examine the record of any proceeding. The word 'proceeding' here is qualified by the phrase in which an appeal lies to it. It is not disputed that after final disposal of these proceedings i.e. decision of the dispute by the Register or by his nominee an appeal will lie to the Tribunal and therefore in the impugned judgment the Division Bench of the Gujarat High Court took the view that the Tribunal has jurisdiction to call for and examine the record of such proceedings. The judgment of the Bombay High Court on which reliance is placed refers to Section 149 sub-section (9) of the Maharashtra Co-operative Societies Act, 1960. It is no doubt true that the phrase 'any proceedings in which an appeal lies to it' is identical in the two statutes i.e. Section 150 sub-section (9) of the Gujarat Co-operative Societies Act and sub-section (9) of Section 149 of the Maharashtra Co-operative Societies Act, 1960. This language makes it clear that if the proceedings where the final order is appealable then it could not be said that these are the proceedings where an appeal lies to the Tribunal (sic) and it is in these proceedings that the jurisdiction has been conferred on the Tribunal to call for the record and examine the matter. In this view of the matter, in our opinion, the view taken by the Division Bench of the Gujarat High Court in the present case appears to be correct and the High Court was right in coming to the conclusion that the Tribunal had jurisdiction to call for and examine the record i.e. exercise revisional jurisdiction. Although this was the only question which was stated in the certificate issued by the High Court, learned counsel also attempted to contend that the view taken by the High Court on the first question as to whether the Register is not competent to review his earlier decision but in our opinion even on that ground the view taken by the High Court appears to be correct.

14. When the respondent submitted his dispute to the Register and the Register after examining the matter came to the conclusion that it was a dispute which could be entertained within the scope of Section 96 and therefore referred it to his nominee for decision, it could not be doubted that the Register exercised jurisdiction under Section 96 and came to the conclusion and therefore the High Court was right in coming to the conclusion that once the Register takes this decision he has no power to review his order. In this view of the matter we see no reason to entertain this appeal. The

appeal is therefore dismissed. In the circumstance of the case parties are directed to bear their own costs.

</html