

# SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Karvanagar Sahakari Griha Rachana Sanstha Maryadit

(B. N. Kirpal and S. S. Quadri JJ.)

03.05.2000

## ORDER

### **B.N. Kirpal, J.**

1. The State of Maharashtra is the appellant in these appeals by Special Leave. Civil Appeal No. 1149 of 1990 is filed against the judgment of the High Court of Bombay in Writ Petition No.4415 of 1987 dated February 27, 1989, which was filed by Respondents 1 and 2 challenging the validity of the directions issued by the first appellant on January 19, 1985 and the consequential circular issued by the third appellant on December 5, 1985. By the impugned judgment, the High Court quashed the impugned circulars. Following the said judgment the High Court allowed the Writ Petition No. 5298 of 1987 by its judgment dated February 27, 1989 in which identical relief was sought by respondents 1 and 2 in Civil Appeal No. 1148 of 1990, filed by the State against the said judgment of the High Court.

2. The purport of the directions issued by the first appellant on January 19, 1985 is that the tenant-ownership type of Cooperative Housing Societies should amend their bye-laws so as (i) to enable the plot holders to construct multi -storied building with more than one residential tenement on their plots and (ii) to form a Society of the owners of the flats of the multi-storeyed buildings which shall be a member of the housing society and be represented by its representative in the Housing Society. When it was brought to the notice of the third appellant that the plot owners were facing difficulties as the housing societies had not carried out amendment of the bye-law pursuant to the directions of the first appellant, he issued the circular on December 5, 1985 threatening to take action under Section 14 of the Maharashtra Co-operative Societies Act, 1960. These directions/circulars were questioned by the Housing Societies, inter alia, on the grounds that they completely destroy the basis of such societies and will encourage commercialisation of housing schemes which is meant for individuals on the basis of the tenant-ownership and that they are without authority of law and violative of Article 19(1)(c). The appellants did not file their return in the High Court. However, the third respondent contested the writ petition. The contention of the Society found favour from the High Courts and the said directions /circulars were quashed.

3. Mr. Naik, learned senior Counsel appearing for the appellants, contends that the directions/circulars are issued having regard to the necessity of making accommodation available in view of the dearth of accommodation in Pune and Bombay and this is in public interest. To justify the exercise of power by the State Government in issuing the impugned directions/circulars, he relied on Sections 4, 14 and 79A of the Maharashtra Cooperative Societies Act, 1960.

4. We have perused the said provisions. Sections 4 deals with the types of Societies and specifies which types of societies can be registered and which cannot be registered. Sections 14 enables the Registrar to call upon any society to amend its bye-laws if it appears to him that the amendment is necessary or desirable in the interest of such society. Section 79A enables the State Government to issue directions for various reasons mentioned therein. The reasons relevant to the issue is the public interest.

5. Rule 10 of the Maharashtra Co-operative Societies Rules, 1961 classifies the housing Societies into three classes, namely, (a) Tenant Ownership Housing Society, (b) Tenant Co-partnership Housing Society and (c) Other Housing Societies examples of which are given in column 3 of the statement as House mortgage Societies and House Construction Societies. The first respondent-Society falls in category (a). The object of this Society is to allot a plot of land to each of its members (it is stated that there are 27 members and each member is allotted one plot). Under the bye-laws, an allottee can construct a house of one tenement for his own use but he cannot transfer or let out the house without the permission of the Society . There is a specific prohibition to make use of the plot for any commercial purpose. Having regard to its objects as contained in the bye-laws of the respondent-Society , it declined to carry out the amendment directed by the impugned circulars. The contention of the society is that if the bye-laws are amended, it will destroy the whole concept of the type of the Society as commercialisation of the use of the plots will set in the residential area which is contrary to the concept of the Society itself. It may also be pertinent to note here that respondent no 5 sought permission of the Society to construct a multi-storeyed building prompted by the impugned circulars but his request was turned down by the Society by majority of votes(16:3).

6. From the above discussion, it is clear that though the power is conferred on the Registrar to direct amendment of the bye-laws of the Society, yet the paramount consideration is the interest of the Society. So also the power of the State Government to issue directions in public interest cannot be exercised so as to be prejudicial to the interest of the Society. In our view, what is in the interest of the society is primarily for the society alone to decide and it is not for an outside agency to say. Where, however, the Government or the Registrar exercises statutory power of issuing directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the Society. In the instant case, having regard to the nature of the Society and its objectives, referred to above, and having also regard to the fact that the Society in the case of 5th respondent has turned down his request for the grant of permission by overwhelming majority, we are unable to say that the amendment directed by Government is in the interest of the Society. The High Court is, therefore, right in quashing the impugned directions/circulars.

7. In this view of the matter, we do not consider it necessary to deal with the other aspects. We find no illegality in the impugned orders of the High Court warranting our interferences. The appeals are accordingly dismissed with costs.