

# **BOMBAY HIGH COURT**

Dr. Manohar Ramchandra Sarfare

Vs.

Konkan Co-operative Housing Society Ltd

Special Civil Appln. No. 3600 of 1958

(Chainani, C.J., Mody and Tarkunde, JJ)

18.08.1961

## **JUDGMENT**

### **Chainani, C.J.**

1. Respondent No.1 is the Konkan Co-operative Housing Society Ltd. Respondent No.2 is an ordinary member of the Society. She was allotted block No.71 in the buildings of the Society. On 25th September 1952, respondent No.2 leased her tenement to the petitioner for a period of 12 months. At that time the petitioner was not required to be a member of the Society under the by-laws of the Society as they then existed. On 27-9-1953, the Society amended its by-laws, two of which were by-laws Nos.7A and 67. Under by-law No.67 as amended, a vacant tenement could be offered to a person, who was not a shareholder, i to be a member of the Society under the by-laws of the Society as they then existed. On 27-9-1953, the Society amended its by-laws, two of which were by-laws Nos.7A and 67. Under by-law No.67 as amended, a vacant tenement could be offered to a person, who was not a shareholder, i to be a member of the Society under the by-laws of the Society as they then existed. On 27-9-1953, the Society amended its by-laws, two of which were by-laws Nos.7A and 67. Under by-law No.67 as amended, a vacant tenement could be offered to a person, who was not a shareholder, if he became a nominal member of the Society. By-law No.7A as amended provided that a person may be admitted as a nominal member ordinary member or for the purpose of taking lease under by-law No.67. These by-laws were approved by the Registrar on 27th August 1954. On 24th March 1954 respondent No.2 made an application to the Society, in which she stated that she did not require block No.71 allotted to her for her personal use and occupation "for the present" and that she therefore proposed to permit the petitioner to occupy the same during that period. She asked for the Society's permission to this being done. The application was endorsed by the petitioner and the made a declaration on the application that the information given therein by respondent No.2 was true and that he would abide by the Societys' rules and regulations. On 19th August 1954 the petitioner applied for becoming a nominal member of the Society. This application was granted

on 21st August 1954. The petitioner was required to deposit Rs. 500/- as security for due compliance with the rules and by-laws of the Society. This deposit was made by him and the petitioner became a nominal member of the Society in November 1954. In 1955 disputes arose between the petitioner and respondent No.2. According to respondent No.2, the petitioner stopped payment of rent or compensation to her from October 1955. I may here mention that the rent fixed under the agreement of 1952, was Rs. 100/-. This had been increased to Rs. 120/- and subsequently to Rs. 130/-. Respondent No.2 (? petitioner) objected to this increase in rent, as according to him it was in excess of standard rent. As respondent No.2 was not able either to obtain possession of her tenement from the petitioner or the rent payable by him she approached the Society. On 27th September 1956, she made an application, in which she stated that as the Society was the owner of the block, the Society should take further steps in the matter. After unsuccessful attempts at settlement of the dispute with the petitioner, a notice to quit was given to him in April 1957 on behalf of both the respondents. Respondent No.2 (? petitioner) did not vacate the tenement but offered to pay arrears of rent at the rate of Rs. 100/-per month. Thereafter the two respondents made an application to the Registrar under Section 54 of the Bombay Co-Operative Societies Act. They prayed for possession of block No.71 and also for an order directing the petitioner to pay to them Rs. 1690/- for use and occupation of the premises and a further amount at the rate of Rs. 130 per month from the date of the application to the date of delivery of possession. This dispute was referred by the Registrar to his nominee. It was contended by the petitioner before the Registrar's nominee that he was a tenant of the premises and that consequently the Small Causes Court alone was competent to decide the dispute and that the nominee had no jurisdiction in the matter. This contention was accepted by the nominee, who accordingly dismissed the application made by the respondents. Against his decision the respondents appealed to the Bombay Co-operative Tribunal. The Tribunal following its previous decisions, held that Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, hereinafter referred to as the Rent Act was not a bar to proceedings being taken under Section 54 of the Bombay Co-operative Societies Act. The Tribunal, therefore, set aside the order made by the nominee and remanded the matter to the Assistant Registrar for deciding the case himself or referring it to his nominee for final disposal on merits. Thereafter the petitioner filed a special civil application in this Court, in which he challenged the correctness of the order made by the Co-operative Tribunal. The Division Bench, before which the special civil application came up for hearing, referred the following question for decision to a Full Bench of this Court:

"Whether a dispute between a Co-operative Housing Society and its members, or between two members of the Society, relating to the recovery of rent or possession of any premises, which have been leased by the Society or one of its members to another member of the Society, in accordance with the rules and by-laws of the Society, can be decided by the Registrar or his Nominee under Section 54 of the Bombay Co-operative Societies Act, or whether such a dispute can only be decided by the Courts referred to in sub-section (1) of Section 28 of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947?"

When the matter came up before the Full Bench, it was urged by the Government Pleader, who had been requested to assist the Court in the matter, that having regard to the constitution of a Co-operative Housing Society and the special relationship, which exists between such a Society and its members and which is regulated by the Bombay Co-operative Societies Act and the rules and by-laws made under this Act, there cannot in law exist a relationship of landlord and tenant between a Co-operative Housing Society and its members or between two members of such Society. The Full Bench decided to remand the matter to the Co-operative Tribunal for decision on this question, as well as on another question whether the relationship between the petitioner and respondent No.2 was that of tenant and landlord. The Co-operative Tribunal answered these questions as follows:

"1. The legal relationship between the appellant Mr. Sarfare and respondent No.2 Mrs. Shitole was not that of a tenant and landlord or sub-tenant and tenant under the ordinary law, i.e. Transfer of Property Act or Rent Act.

2. The relationship between a member and a tenant co-partnership co-operative housing society is not that of a tenant and landlord under the ordinary law but that of tenant member or tenant co-partner of the society, a special type of relationship different from ordinary law but springing from rules, regulations and by-laws deriving sanction from a special legislation namely the Bombay Co-operative Societies Act enacted with the special object of furthering the co-operative movement. Therefore as between a member and member also of such a society there can exist no relationship of a landlord and tenant as understood or defined in the Transfer of Property Act or Rent Act in relation to the Society's premises." It has been urged before us that these findings of the Co-operative Tribunal are incorrect.

2. The first question, which arises for consideration is about the nature of relationship between a Co-operative Housing Society like respondent No.1 and a member of the Society to whom a tenement has been allotted in accordance with the rules and by-laws of the Society. This relationship is governed by the Bombay Co-operative Societies Act, 1925, and the rules, by-laws and regulations made there under. The object of the Act, as stated in the preamble is to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production. Clause (4) in Section 3 of the Act defines a "Housing Society" as meaning a society formed with the object of providing its members with dwelling houses on conditions to be determined by its by-laws. Section 5 provides for the registration of co-operative societies. The object of a co-operative housing society is therefore to provide its members with dwelling houses by joint efforts of members in accordance with the rules and by-laws. Sub-section (3) of Section 9 states that every application for registration shall be accompanied by a copy of the proposed by-laws of the society. Section 10

states that if the Registrar is satisfied that a society has complied with the provisions of the Act and the rules and that its proposed by-laws are not contrary to this Act or to the rules, he may register the society and its by-laws. Under Section 16, no amendment of the by-laws of a society shall be valid until it is registered by the Registrar. Sub-section (2) of Section 19 provides that a member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless the transfer or charge is made to the society or to a member of the society or to a person whose application for membership has been accepted by the society, and the committee of the society has approved such transfer. Section 23 states that the registration of the society shall render it a body corporate with perpetual succession under a common seal. There are several other provisions in the Act, which confer various privileges on co-operative societies and the members of such societies. It is not necessary to refer to them. Rules have been made by Government under the Act. The only material rule to which it is necessary to make a reference, is Rule 35, which states that the Registrar or his nominee shall give a decision in accordance with justice, equity and good conscience.

3. The Co-operative Department has framed model by-laws for the guidance of co-operative Housing societies and all societies frame their by-laws on the lines of the model by-laws with some minor variations. These model by-laws are contained in Leaflet "U" issued by the Co-operative Department. According to this Leaflet there are two types of co-operative societies. One type is known as the co-partnership tenancy society. Respondents No.1 is a society of this type. In such a society,

"the property in the whole estate remains absolutely with the society as a whole. The member contributes in the first instance by shares and then pays rent so calculated as to cover not only the economic rent of his tenant or house, but also an amortization or sinking fund payment, which at the end of 25 years or 40 years, as the case may be, repays the whole value of the building. At the end of that period, he is credited with further shares in the society equivalent to the value that he has paid up and the normal interest on these shares is equal to the economic rent which he has to pay. At the end of the period he is therefore in the position of occupying the building free of rent or merely so as a tenant of the society of which he is himself a member and therefore a controlling authority."

4. I will now refer to some of the by-laws framed by respondent No.1. As I have stated, these are generally on the lines of the model by-laws. By law No.7 states that all persons, who have signed the application for registration, are original members and that other members shall be allotted by the committee. By-law No.7A as amended is as follows:

"A person may be admitted as a nominal member on payment of Re.1/- only as entrance fee. A nominal member is one who is admitted as such for the purpose of joint holding of shares along with an ordinary member or for the purpose of taking lease under by-law

No.67. A nominal member shall have no right to vote or to participate in the management of the society and in distribution of its profits or liability in the case of its liquidation."

By-law No.11 states that every member must hold at least five shares in the Society. By-law No.14 provides that a member may be expelled from the Society by a resolution passed at the general meeting of the Society, if in the opinion, of the meeting such member has been a persistent defaulter, has been bankrupt or legally disabled, has been criminally convicted, or has done one or the other of the acts referred to in this by-law. By-law No.21 states that any share held by a member of the Society may be sold to any other member with the previous sanction of the committee, who shall have full discretion in granting or withholding such sanction. Clause (i) in by-law No.55 empowers the managing committee of the society to make regulations, terms and conditions relating to the tenants of the Society and the property of the Society and the letting (including restrictions as to sub-letting) and sale thereof. By-law No.66 states that no member shall be a tenant of the Society unless he holds at least five shares. By-law No.67 as amended provides:

"When a tenement is vacant and no shareholder is available or willing to take it, the same may be offered to a person who is not a share-holder of the Society, on such terms and conditions as the committee may determine, provided such person becomes a nominal member of the Society and agrees to abide by the by-laws and tenancy rules of the Society in force from time to time provided also that such a person is eligible to become a share-holder of the Society."

5. Under the powers conferred on it by by-law No.53 the managing committee of respondent No.1 Society has framed regulations. Regulation No.1 states that a member making an application for a tenement shall hold not less than five fully paid up shares in the Society. Regulation No.3 provides that each tenancy shall continue as long as the tenant in all respects observes and performs such regulations. Regulation No.4 provides for the fixation of rent. This regulation states that the rent shall be calculated as follows:

"(a) A rent of 6½ per cent per annum on the costs including the building, land, roads and other items. .... (b) a further rent during the term of 35 years of 6½ per cent per annum on the said cost such rent to be applied to the share account of the tenants ..... (c) a further rent equal to the proportion (applicable to the tenement) of the expense incurred from time to time in insurance against fire, tempest or flood or violence by an army or mob or other irresistible force and in the management of the Society and the maintenance and repair of the Society's estate ..... (d) a further rent equal to the proportion applicable to the tenement of the sum or sums from time to time paid by the Society in respect of the assessments rates."

Regulation 5 states that no tenant shall assign, underlet, vacate or part with the possession of the

tenement or any part thereof, without the previous consent in writing of the Society. Regulation No.21 states that if the said rents or any part thereof shall be unpaid for 14 days after becoming payable or if any of the agreements on the tenant's part contained in these regulations shall not be performed or observed or if at any time the tenement or any part thereof or any interest therein becomes occupied by or vested in any person who is not a member of the Society, the Society may be giving to the tenant one calendar month's notice in writing to that effect determine the tenancy and on the expiration of such notice the tenancy shall forthwith determine.

6. Mr. Desai, who appears for the petitioner, has laid stress on the facts that a Society is a separate legal entity, that the ownership in the entire estate vests in the Society and that in the by-laws and regulations the terms "tenant" and "tenancy" are used, He has therefore contended that the relationship between the Society and a member, to whom a tenement has been given by the society, is that of landlord and tenant. This argument overlooks the basis on which co-operative societies are formed and worked and other bylaws and regulations to which I have referred above. The use of the words "tenants" and "tenant" in the by-laws and regulations would not by themselves be sufficient to indicate that they are used in these by-laws and regulations in the same sense in which they are used in the Transfer of Property Act or in the Rent Act.

7. Section 105 of the Transfer of Property Act defines lease of a property as being a transfer of a right to enjoy such property made for a certain time or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service or any other things of value to be rendered to the transferor by the transferee. The section also states that the money, share, service or other thing to be rendered is called the rent. The consideration for a lease, therefore, is the money or share of crops which the transferee agrees to pay or service or other thing which he agrees to render to the transferor. A tenement in a co-operative housing society is allotted to a member, not because he agrees to pay any money or to render any service, but because he is a member of the society and holds a certain number of shares. In fact a co-operative housing society is formed with the express object of providing its members with houses. By-law No.66 also provides that no member shall be a tenant of the Society unless he holds at least five shares. No tenement can therefore be given to anyone who is not a member or a share-holder of the Society. The consideration for which a tenement is allotted, is, therefore, the fact that the allottee is a member, to whom the Society is required by its constitution to provide with a house. This by itself is sufficient to show that the transaction between the Society and the member, who is given a tenement is not a lease.

8. The nature of the periodical payment which a member is required to make for the tenement given to him, is also quite different. The Rent Act defines "landlord" to mean any person who is for the time being receiving or entitled to receive rent in respect of any premises. The term "tenant" is defined to mean any person by whom or on whose account rent is payable for any premises. The word "rent" is not defined. It will, therefore, have the same meaning as is given to it in the Transfer of Property Act, that is, any money which the transferee agrees to pay or a share

of crops, service or any other thing of value, which the transferee agrees to render to the transferor in consideration for the transfer of a right to enjoy any property. The so called rent, which a member of a co-operative society is required to pay under regulation No.4 includes not only the rent as defined in section 105 of the Transfer of Property Act, which may be called the economic rent and taxes, but also a portion of the cost of the buildings, lands, roads, etc. and the amount due from the member for his share of the expenses incurred in the management of the Society and in the maintenance and repair and insurance of the whole estate. Also, after a certain number of years, which in the case of respondent No.1 is 35, a member ceases to pay not only his share in the cost of buildings, roads, etc., but even the economic rent. Thereafter he pays only his contribution towards the upkeep and maintenance of the estate and the costs of the amenities provided by the Society. The fixation of rent under the regulations is, therefore, governed by considerations materially different from those under which an ordinary landlord charges rent to his tenants.

9. The right to occupy the tenement is also dependent upon the occupant's continuing to be a member of the Society. This is clear from by-law No.66, under which no member can be a tenant of the Society unless he holds at least five shares. By-law No.14 provides for a member being expelled for reasons, which may have no relation to his tenement or his conduct in connection with it. If he is expelled and ceases to be a member, his so called tenancy may be terminated under regulation No.21.

10. The allotment of a tenement is also subject to the rules, by-laws and regulations of the Society. These by-laws and regulations may be changed from time to time by the Society. In an ordinary contract of tenancy the terms cannot, however, be altered except by mutual consent.

11. The mutual rights and obligations of a co-operative housing society and its members are, therefore quite different from those of a landlord and a tenant. The relationship is of a special type, which is governed by special laws made for this purpose viz. the Co-operative Societies Act and the rules, by-laws and regulations made thereunder. Even though therefore, a member to whom a tenement is given for occupation is described in the by-laws and the regulations as a tenant, he is not a tenant in the sense in which this term is used in the Transfer of Property Act or in the Rent Act, nor is the Society his landlord.

12. Any other view would make it difficult for a co-operative housing society to function in the manner prescribed by the rules and by-laws. If a member to whom a tenement has been given is held to be a tenant, the Society will only be entitled to receive standard rent from him. It cannot then recover from him, as provided in regulation No.4, the cost of buildings etc. and the charges for maintenance and management of the estate as part of rent. It will also not be able to determine the tenancy under regulation No.21 owing to failure on the part of the member to pay the amounts due from him. A person will also be able to continue in occupation, even if he has ceased to a member or has been expelled from the Society. This will not be in accordance with the object of a co-operative housing society, which is to provide houses to its members by joint

efforts and contributions of all the members.

13. The next question which arises for our determination, is about the relationship created, when the tenement is given for occupation by a member of a Co-operative Housing Society to another member or a nominal member of such Society. Under regulation No.5, a tenement cannot be given to any other member without the consent of the Society. The person to whom a tenement is given must also become a member of the Society, if he is not already a member. The Society is, however, not a direct party to the transaction. It only gives its consent to the transaction and grants the application of the proposed occupant for his becoming a nominal member. The payment for use and occupation of the tenement is also made to the member and not to the Society. The Cooperative Tribunal has taken the view that since a member, who has taken the tenement from the Society cannot be regarded as a tenant, the person who claims through him cannot also claim the status of a tenant. In law, however, it is possible for a person with a possessory title to create a tenancy. Such a transaction will be binding between him and his tenant, though it may be defensible at the hands of the person with a superior title. Consequently, we cannot say that the relationship of a landlord and a tenant cannot exist between two members of a Co-operative Housing Society or between a member and a nominal member of such Society. The question whether the transaction is a lease and whether the relationship created is that of land-lord and tenant, must be decided in each case, having regard to the facts and circumstances of that case. It is hardly necessary to add that the tenancy, if any, will be between the occupant and the member who has given it for occupation. The latter not being a tenant of the Society, the occupant or the nominal member cannot claim the benefit of Section 14 of the Rent Act as against the Society. No question of tenancy can however normally arise when the member, in whose name the tenement stands, and the member, who is actually occupying it are both joint holders of the same shares of this Society.

14. The next question, which arises for our consideration, is whether in cases, in which the relationship of landlord and tenant exists between two members of a co-operative housing society or between a member and a nominal member of such society, the Registrar or his nominee is competent to decide the dispute relating to possession of the tenement or the recovery of the amount due for the use and occupation of such tenement, or whether only the Court specified in Section 28 will have jurisdiction to decide it. Both the Co-operative Societies Act and the Rent Act are beneficial measures, though the duration for which the Rent Act will remain in force is limited. As observed by the Supreme Court in *Shri Ram Narain v. Simla Banking and Industrial Co. Ltd*<sup>1</sup> the overriding effect of one or the other of the relevant provisions in these two Acts should be determined on broad considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein. Section 54 of the Co-operative Societies Act provides inter alia that if any dispute touching the business of a society arises between members of the society, it shall be referred to the Registrar for decision by himself or his nominee. Section 57 states that the award of the Registrar or his nominee under Section 54 shall not be liable to be called in question in any civil or revenue Court. An appeal

against the decision of the Registrar or his nominee lies to the Bombay Co-operative Tribunal constituted under Section 63A of the Act. Sub-section (7) of this section states that an order passed by the Tribunal shall be final and conclusive and shall not be liable to be called in question in any civil or revenue Court. It has been held by this Court in several cases that the jurisdiction conferred by Section 54 is exclusive. A dispute regarding possession of a house belonging to a co-operative housing society can be said to touch the business of the society. Under Section 54, therefore, such dispute must be referred to the Registrar for decision by him or his nominee. Sub-section (1) of Section 28 of the Rent Act provides as follows:

"(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not but for this provision, be within its jurisdiction,  
(a) in Greater Bombay, the Court of Small Causes, Bombay.  
(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and  
(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim of question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2) no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

The words "notwithstanding anything contained in any law" show that this section is to have effect, even if there is anything to the contrary in any other law.

15. It has been urged by Mr. Vaidya that an essential feature of the law of co-operation

<sup>1</sup>1956 SCR 603 at p.615 : ( AIR 1956 SC 614 at p.622)

not only in this country but in the United Kingdom also, is that co-operative societies should not be dragged to civil Courts and that disputes between co-operative societies and their members or between member of such societies should be decided cheaply and expeditiously by arbitration. He referred us to a passage in Calvert's Law and Principles of Co-operation, 1959 Edition, where at p.301 it has been observed:

"The English Courts have taken a very sensible view of these arbitration proceedings as the following quotation from a ruling will show: The Legislature intended carefully to provide that these societies should not be dragged before Courts of Law or Equity, if it could possibly be avoided, and has taken care to enact that the whole discussion of their affairs shall be disposed of in cheap and summary manner by the decision of an

arbitration (or justice) ..... the power of the justice or the arbitrator is complete and is not subject to revision by any Court of Law or Equity."

Mr. Vaidya also referred us to the decision of this Court in *Shripad v. Tuljaramrao*<sup>2</sup>, in which it was held that where there is a conflict between a special statute dealing with a special kind of property and a general statute enacted subsequently and dealing with all kinds of property, it is by the former that the rights of the parties must be governed with regard to the special kind of property. Relying on this decision Mr. Vaidya contended that as Section 54 of the Co-operative Societies Act contains a special provision for the determination of disputes of the kind referred to therein, this section necessarily excludes the operation of Section 28 of the Rent Act in regard to those disputes. We might have been inclined to accept this argument, if only these two sections had to be considered.

16. The question is, however, not merely one of forum. The Rent Act confers several rights on tenants, which in the absence of an agreement can only be availed of through the intervention of a Court. The question, Which we have to consider, therefore, is whether these rights have also been given to tenants occupying premises of co-operative societies. In this connection it is necessary to mention some relevant provisions of the Rent Act. Clause (10) in Section 5 defines the expression "standard rent". Sub-clause (b)(iv) of this clause defines standard rent as being in any of the cases specified in Section 11, the rent fixed by the Court. Section 7 provides that it shall not be lawful to claim or receive on account of rent for any premises any increases above the standard rent, except in certain cases referred to in this section. Section 11 provides for the determination of standard rent by the Court on an application made to it for that purpose. Sub-section (1) of Section 12 provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Act. The Explanation to this section provides:

"In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in subsection (2), he makes an application to the Court under sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

<sup>2</sup>40 Bom LR 461 : (AIR 1938 Bom 372)

Section 13 specifies the grounds on which a landlord may be awarded possession of his premises, if the Court is satisfied in regard to those grounds. Sub-section (2) of Section 24 states that a tenant in occupation of the premises may make an application to the Court for a direction to restore any essential supply or service enjoyed by the tenant, which has been cut off without just or sufficient cause. These and other provisions in the Act confer several substantive rights on tenants. In order to secure these rights, the tenant must apply to a Court because the necessary

powers to make orders in respect of such rights have been vested only in a Court. The Court, which can exercise these powers, must be one of the Courts specified in Section 28. The Registrar or his nominee is not such a Court. He cannot, therefore exercise the powers conferred by these sections or make any orders in regard to the rights mentioned therein. The learned Government Pleader urged that the Registrar or his nominee may exercise these powers while deciding disputes under Section 54 of the Co-operative Societies Act. This argument cannot be accepted, because only the Courts mentioned in Section 28 have been empowered to make orders under this Act. As pointed out above, standard rent in some cases, by its very definition means rent fixed by the Court.

17. If, therefore, we were to hold that Section 54 of the Co-operative Societies Act overrides Section 28 of the Rent Act the members or nominal members, who are tenants of members of Co-operative Societies would not be able to enjoy the rights conferred by the Rent Act. We have not been able to find any provisions either in the Co-operative Societies Act or the rules, by-laws and regulations made there under, which give similar rights to tenants of co-operative societies or of members of such societies. We do not think that it was the intention of the Legislature that such rights should not be available to persons occupying premises belonging to co-operative societies. Section 4 of the Rent Act exempts certain premises from the operation of this Act. Premises belonging to co-operative societies have not been exempted by this section. The necessary inference, therefore, is that the Rent Act was intended to apply to such premises also. The right given to tenants by this Act can be claimed in proceedings for recovering possession of the lease premises or the rent thereof. As only the Courts specified in Section 28 can enforce or make orders in respect of such rights, it follows that only these Courts are competent to determine disputes of the kind mentioned therein.

18. The learned Government Pleader invited our attention to Rule 35 of the Bombay Co-operative Societies Rules, which states inter alia that the decision of the Registrar or his nominee shall be given in accordance with justice, equity and good conscience. He urged that the Registrar or his nominee can, therefore, give to the tenants the same, if not higher rights than those conferred by the Rent Act. The Registrar or his nominee must, however, decide the matter referred to him in accordance with law. The principles of justice, equity and good conscience will apply only when there is no provision of law applicable to the matter. It is not open to the Registrar or his nominee to modify or alter the terms of contract between the parties or to make out a new contract for them.

19. Both the Government Pleader and Mr. Vaidya placed strong reliance on Section 50 of the Rent Act which provides for the transfer of pending suits and proceedings to the Courts referred to in Section 28. No provision had been made in the Act for the transfer of cases pending before the Registrar or his nominees or before the Co-operative Tribunal. It has, therefore, been urged that the intention of the Legislature was that the Registrar or his nominees should continue to have jurisdiction in such cases. This argument is not without any force. But Section 50 must be

considered along with section 4 and other sections of the Act, which clearly indicate that there was no intention to deny the benefits conferred by the Rent Act to tenants occupying houses belonging to co-operative societies. No provision for the transfer of case pending before the Registrar and his nominees was made, probably because the number of such cases was small or probably because the Legislature thought that the parties concerned could get the same relief by instituting fresh proceedings before the Courts specified in Section 28.

20. Reliance was placed on the decision of Mr. justice Gajendragadkar in Civil Revn. Appln. No.894 of 1949, D/-1-3-1950, in which the learned Judge held that a dispute of the kind referred to above can be decided by the Registrar or his nominee under Section 54 of the Co-operative Societies Act. It does not, however, appear from the judgment that the learned judge's attention was invited to the various sections of the Rent Act which confer rights on tenants and which in cases of dispute can only be availed of through the intervention of the Courts referred to in Section 28. If his attention had been drawn to these provisions, it is quite likely that he might have taken a different view.

21. In support of his arguments the Government Pleader cited the case of *Bishop of Gloucester v. Cunniugton*<sup>3</sup>, In that case it was held that a house or residence belonging to an ecclesiastical benefice is not a dwelling house to which the Rent and Mortgage Interest Restrictions Acts 1920, to 1939 apply. In that case the earlier Act, the Pluralities Act, 1838, contained specific provisions with regard to parsonage houses which provided that every spiritual person holding any benefice shall keep residence on his benefice, and in the house of residence (if any) belonging thereto. Having regard to the special provisions contained in the earlier Act, it was held that the protection given by the Rent Restrictions Acts did not extend to such houses. This decision was, therefore, given having regard to special facts in that case and is therefore clearly distinguishable.

22. Our attention was also invited to Section 91 of the Maharashtra Co-operative Societies Act, 1960 which has been recently enacted, but which has not yet come into force. It has been urged that in this section the Legislature has shown a clear intention that all disputes between Co-operative Societies and their members or between members of such societies should be decided only by the Registrar or his nominee. The wording of this section is materially different from that of Section 54 of the Co-operative Societies Act, 1925. It is therefore, very doubtful whether this section can be of much assistance in construing Section 54 of the earlier Act.

23. As, therefore the rights conferred by the Rent Act on tenants can only be determined by the Courts specified in Section 28 of that Act and as it does not appear to have been the intention of the Legislature that members or nominal members, who are tenants of members of co-operative societies should not enjoy those rights, we are of the opinion that the disputes of the kind referred to above can only be decided by the Courts referred to in Section 28 of the Rent Act.

24. Our reply to the question referred to the Full Bench will, therefore, be that a dispute between

a co-operative housing society and a member of such society, to whom a

<sup>3</sup>(1943) 1 KB 101

tenement has been allotted by the society in accordance with the rules, by-laws and regulations of the society, relating to the recovery or possession of such a tenement or the amount payable by the member for the occupation of such tenement can be decided only by the Registrar or his nominee under Section 54 of the Bombay Co-operative Societies Act. Only the Courts referred to in Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, will have jurisdiction to decide a similar dispute between two members of the society or between a member of the society and a nominal member of the society, if the relationship between them is that of landlord and tenant. In other cases, where such a relationship does not exist, the dispute can be decided only by the Registrar or his nominee under Section 54 of the Co-operative Societies Act.

25. The special civil Application will now be sent back to the Division Bench for being further dealt with in accordance with law.

26. We consider it necessary to add that the model by-laws and regulations framed by the Co-operative Department are defective in several respects. The language is in many cases obscure and confusing. We therefore suggest that Government might consider the question of simplifying and revising these model by-laws and regulations. It would perhaps also be desirable to clarify which by-laws and regulations apply to nominal members. Government may also consider whether it would not be desirable to make some provision either in the Act or in the Rules and by-laws, so as to control the rents which may be charged to tenants occupying premises belonging to co-operatives societies.

Answer accordingly.