

BOMBAY HIGH COURT

Malabar Hill Co-Operative Housing Society Ltd.

Vs.

K.L. Gauba

Misc. Civil Appln. No. 34 of 1962

(Tambe and Palekar, JJ.)

11.01.1963

JUDGMENT

Tambe, J.

1. This is an application wherein the petitioner, ins Malbar Hill Co-operative Housing Society, prays that action against opponent No. 1 be taken under Sub-Section (1) of Section 3 of the Contempt of Courts Act, 1952 (Act 32 of 1952), for the alleged contempt committed by him or the third opponent a Nominee of the Registrar, appointed under Section 54 of the Bombay Co-operative Societies Act, 1925 (Act 7 of 1925).

2. The facts, in brief, are that the petitioner is a Co-operative Housing Society. Opponent Nos. 1 and 2, who are husband and wife, are members of the petitioner Co-operative Housing Society, and at the material time were residing in two flats in the society's premises called "Darshan Apartments" situated at Malbar Hill, Bombay. We are only concerned with the flat allotted to opponent No. 2, wife of opponent No. 1. The terms and conditions on which the flat, namely, Flat No. B-21, was allotted to her were the initial payment of Rs. 6,001 towards the qualifying shares of the Society and membership fees, and, there-after a payment of Rs. 580 per month. The allotment of the flat to second opponent was in 1954, Opponent No. 2 made the initial payment of Rs. 6,001 to the Society but thereafter altogether failed to make the monthly payment of Rs. 580 per month. The petitioner, therefore, made an application on 6th April 1955 under Section 54 of the Bombay Co-operative Societies Act, 1925, to the Registrar, Co-operative Societies, relating to the dispute arising on account of opponent No. 2's failure to make the monthly payments. The petitioner therein prayed for recovery of the arrears due by the opponent No. 2. This dispute was referred by the Registrar to his Nominee, and on 8th July 1961, he made an award, where under he directed the opponent No. 2 to pay a sum of Rs. 49,492.15 to the petitioner. It, however, appears that the petitioner was not able to recover any amount from the opponent No. 2. on 24th October 1961, the petitioner made another application to the Registrar

under Section 54 of the Bombay Co-operative Societies Act, 1925, wherein it claimed that in the circumstances, opponent No. 2 was directed to be evicted from the flat then in her occupation, on 18th November 1961, in exercise of his powers under Section 54, the Registrar referred this dispute to his Nominee, Mr. C.P. Patel, the third opponent to this petition. This case was numbered as Arbitration Case No. 367-B/80-(2) of 1961. In this Arbitration Case, opponent No. 1 appeared on behalf of opponent No. 2 as her agent. Opponent No. 3, the Registrar's Nominee, entered upon the arbitration on 23rd Nov. 1961. It appears that the opponent No. 2 could not be served till 20th December 1961, and, therefore, the case had to be adjourned on two occasions. On 20th December 1961, the opponent No. 1 appeared on behalf of opponent No. 2. Ex. A, the Roznama, to the petition shows that opponent No. 1 appeared under protest and prayed for time to file a written-statement. The case was adjourned to 6th January 1962. On 6th January 1962, no statement was filed but further time was taken till 10th January 1962. On 10th January 1962, opponent No. 1 filed a written-statement and also a letter of authority for appearance on behalf of opponent No. 2. The case was adjourned to 13th January 1962. On 13th January 1962, Opponent No. 1 stated that an injunction was issued by the Small Causes Court restraining proceedings before the Registrar's Nominee. The case was, therefore, adjourned sine die. The case, however, was called out on 10th February 1962 in the presence of the parties, Opponent No. 1 appearing for opponent No.

2. Opponent No. 1 then stated that the injunction had been vacated, that Opponent No. 1 wanted to file a counter-claim, and, therefore, time be given, the case was adjourned to 15th February 1962. On that day Opponent No. 1 stated that he had not made the counterclaim, but, on the other hand, had appealed against the order of the Registrar to the Maharashtra Co-operative Tribunal. Issues were then settled by the opponent No. 3. At this stage, as the order-sheet of the Opponent No. 3 shows opponent No. 1 began to abuse the third opponent, it would be convenient to reproduce these abuses in the words as noted in the order sheet :

"Mr. Gauba at this stage begins to abuse me, calls me cheat, 420 and dishonest at the top of his voice, he says, he does not go on with the matter before me. Mr. Gauba was, therefore, asked by me to withdraw his words and tender an apology or to withdraw from my room, the language used by him was filthy and extremely abusive. His conduct was unprofessional and ungentlemanly. He refused to tender an apology and walked out."

In the affidavit in reply filed by the opponent No. 1, he has substantially admitted that he uttered the words as noted in the aforesaid order-sheet of the opponent No. 1 and has also given reason which provoked him to do so. It is the case of the petitioner society that in abusing the third opponent in the aforesaid manner, the opponent No. 1 is guilty of contempt of the third opponent and he is, therefore, liable to be punished at the hands of this court under Section 3 of the Contempt of Courts Act.

3. Now, the arguments advanced by Mr. Naik, who appeared on behalf of the petitioner, are three fold. Firstly, he contends that the abuses uttered by the opponent No. 1 prima facie, amount to

contempt of the Court. He next contends that the third opponent is a court within the meaning of the Contempt of Courts Act, and lastly he contends that that court is subordinate to this Court within the meaning of the Contempt of Courts Act. Opponent No. 1, who argued his case personally, on the other hand, did not at the stage of arguments dispute before us that the abuses uttered by him may amount to contempt. He also did not dispute before us that in the event it is held by us that the third opponent is a Court, it would be a court subordinate to this Court. His contention, however, is that on 15th February 1962, the date on which the opponent No. 1 is said to have uttered these abuses, the third opponent had in law ceased to function as a Nominee of the Registrar, and, therefore, even if, it is held that he is a court, and a court subordinate to this court, no contempt had been committed by him. It is next contended by him that the proceedings before the third opponent were in the nature of arbitration proceedings the third opponent acting as an arbitrator. His next contention is that the third opponent is not a Court within the meaning of the Contempt of Courts Act. Lastly, he contends that even assuming that the third opponent is a Court, and a Court subordinate to this Court, Sub-Section (2) of Section 3 of the Contempt of Courts Act comes in the way of the applicant in claiming that this court should punish the opponent No. 1 under the Contempt of Courts Act, the alleged contempt being an ex facie contempt amounting to an offence under Section 228 of the Indian penal Code.

4. It would be convenient to deal with the first contention raised by the Opponent No. 1. The argument advanced by Mr. Gauba, the first opponent before us, in support of his first contention, in brief, is that the order of reference made by the Registrar appointing opponent No. 3 as nominee shows that the opponent No. 3 was directed that the arbitration case should be decided within, two months from the date of receipt of the papers by him. Admittedly the papers were received by him on 33rd November 1961. The said period of two months came to an end on 22nd January 1962, and, therefore, as and from 23rd January 1962, the third opponent became functus officio, and in the eye of law had ceased to be the nominee of the Registrar. Under the Maharashtra Co-operative societies Act, 1960 (Act No. XXIV of 1961), by which the Bombay Co-operative Societies Act, 1925 (Act VII of 1925) was repealed, the Registrar had not made any fresh appointment appointing the third opponent as his nominee, and, therefore, the petitioner would not be entitled to claim any benefit under the provisions of the new Act and claim, that the third opponent was a Nominee of the Registrar at the material time, viz., on 15th February 1962. It is indeed true that the Registrar had directed the third opponent to complete the arbitration case within the period of two months, and the said period expired on 22nd January 1962. It is not in dispute that at that time the Act in operation was the Act of 1925. It has to be seen whether under the provisions of that Act, it could be said that merely by reason of the failure on the part of the Nominee to complete the arbitration case within the time the Registrar requires him to complete the case, the nominee becomes functus officio. Mr. Gauba had not been able to show any provisions in the 1925 Act which would bring about such a result. On the other hand, in our view, having regard to the provisions of Sub-Section (2) of Section 54 of the 1925 Act, the position is otherwise. Sub-Section (1) of Section 54 of the Bombay Co-operative Societies Act, 1925, deals with decision of certain disputes mentioned in that section and empowers the

Registrar either to decide himself or to send a dispute for the decision of his nominee. The material part of Sub-Section (2) of Section 54 is in the following terms :

"Where any dispute is referred under Sub-Section (1) for decision by the Registrars nominee, the Registrar may, at any time, for reasons to be recorded in writing withdraw such dispute from his nominee and may decide the dispute himself or refer it again to any other nominee appointed by him for decision :

Provided that no such dispute shall be withdrawn except on any of the following grounds :-

(i) The Registrar's nominee has failed to decide the dispute within two months or such further period as may be allowed by the Registrar;

(ii) x x x x x x x x"

Now, these provisions clearly show that a failure on the part of the nominee to decide the dispute within the time leaves only two options before the Registrar - either he may in his discretion extend the time, or the case from the nominee and deal with it as he deems proper. It necessarily follows that a failure on the part of the nominee to decide the case within the given time does not render him functus officio, but, on the other hand, he becomes functus officio only when the case is withdrawn by the Registrar in exercise of his powers under the proviso to Sub-Section (2) of Section 54 of the Act. It is not shown that the case was withdrawn from the file of the opponent No. 3 by the Registrar at any time, much less prior to 15th February 1962. In our judgment, therefore, opponent No. 3 continued to be a validity appointed nominee of the Registrar and was the nominee of the Registrar at the material time. It is true that the 1925 Act was repealed by Sub-Section (1) of Section 165 of the 1961 Act. However, certain action taken or deemed to have been done or taken including any appointment or delegation made under that Act has been saved under the proviso to Sub-Section (1) or Section 166, which, inter alia, provides that anything done or action taken or deemed to have been done or taken by or under the Act of 1925, shall, in so far as it is not inconsistent with the provisions of the 1961 Act, be deemed to have been done or taken under the corresponding provisions of the 1961 Act, and shall continue in force unless and until superseded by anything done or any action taken under this Act. Thus the third opponent, who as we have shown above, continued to be a validly appointed nominee of the Registrar up to the date of repeal of the 1925 Act, must, by reason of the proviso to Sub-Section (1) of Section 166 of the 1961 Act, be deemed to be a validly appointed nominee under the provisions of the 1925 Act. It has not been disputed that this Act came into force on 26th January 1962. It has not been, shown that the appointment of the third opponent had been cancelled at any material time. The first contention raised by the opponent No. 1, therefore, should fail.

5. and this brings us to the second question, viz., whether the nominee of the Registrar is a Court within the meaning of the Contempt of Courts Act. It is not in dispute that for the purpose of determining this issue, the provisions that will have to be considered are provisions of 1961 Act and the rules framed thereunder; inasmuch as, that was the Act in force on the date the alleged contempt is said to have been made. The arguments advanced by the parties are founded on these

provisions, and it would, therefore, be convenient first to consider the relevant provisions. The Maharashtra Co-operative societies Act, 1960, has been enacted with a view to provide for orderly development of the co-operative movement in the State of Maharashtra in accordance with the relevant directive principles of the State Policy enunciated in the Constitution of India, and to amend the law relating to the Co-operative Societies in this State. We will, therefore, now refer to this Act as the Act hereafter. Section 4 shows that the Society which has as its objects the promotion of the economic interests or general welfare of its members, or of the public, in accordance with the Co-operative principles or a society with the object of facilitating the operations of any such society, is registered under this Act. Section 3 empowers the Government to appoint a person to be the Registrar of the Co-operative Societies for the State, and to appoint one or more persons to assist such Registrar and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under the Act. It is not necessary to go into details of all the provisions of the Act. Suffice it to say that the registrar is enjoined with various duties which are administrative in nature as well as the duties relating to the decision of certain disputes. We are here concerned with the provisions in the Act relating to certain decisions in dispute. The relevant provisions are contained in Chapter IX of the Act and the relevant rules relating thereto. The title of the Chapter is "Disputes and Arbitration." The preamble of this Chapter given in Sub-Section (1) of Section 91 reads :

"Notwithstanding anything containing in any other law for the time being in force, any dispute touching the Constitution, elections of the office bearers, conduct of general meetings, management or business of a society, shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the following : -
(a) to (e) x x x x x."

It is not necessary to reproduce clause (a) to (e) of Sub-Section (1) of Section 81. Suffice it to say that the reading of these clauses shows that if any of the parties to the dispute mentioned in Section 91 is a society, its committee, any past committee, its members, its officers, past or present, servants or nominees, heirs or legal representatives, etc., the dispute has to be decided in accordance with the provisions of the Act, Sub-Section (2) of Section 91 provides that when any question arises whether for the purposes of the foregoing Sub-Section, a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final. Sub-Section (3) provides that save as otherwise provided in Sub-Section (3) of Section 93, no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in Sub-Section (1). There are various explanations. Explanations Nos. 1 and 2 of clause (3) of Section 91 indicate the various disputes which are disputes within the meaning of Sub-Section (1) of Section 91. Sub-Section (3) of Section 93 empowers the Registrar in certain circumstances mentioned in that Section, viz, to suspend proceedings in regard to any dispute, and direct either of the parties to get a complicated question of law and fact decided by a regular Civil Suit instituted by any party or by a society. Section 92 deals with the period of

limitation relating to enforcement of claims arising out of the disputes mentioned in Section 91. Sub-Section (1) of Section 93 provides that if, the Registrar is satisfied that in a matter referred to him or brought to his notice is a dispute within the meaning of Section 91. The Registrar shall, subject to the rules, decide the dispute himself or refer it for disposal to a nominee or a board of nominees, appointed by the Registrar. Sub-Section (2) of Section 93 empowers the Registrar to withdraw any dispute referred by him to his nominee or the board of nominees after recording reasons therefore in writing. Sub-Section (1) of Section 94 provides that a Registrar or his nominee or board of nominees, hearing the dispute under the last preceding section shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them, and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil procedure, 1908. Sub-Section (2) of Section 94 provides that no party shall be represented by a legal practitioner save and except with the permission of the Registrar or his nominee. Sub-Section (3) of Section 94 deals with the powers of the Registrar to add parties to the dispute as well as to amend the description of parties, Section 95 empowers the Registrar or his nominee or a board of his nominees to effect attachment before award in certain circumstances mentioned in that section. Section 96 is in the following terms :

"When a dispute is referred to arbitration the Registrar or his nominee or board of nominees may after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or as the case may be, board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar, and shall, subject to appeal or review or revision, be binding on the parties to the dispute."

Section 97 confers right on a party aggrieved to the an appeal before the Co-operative Tribunal against the decision or the Registrar or his nominee or his board of nominees. Section 98 deals with recovery of the money ordered by the Registrar or his nominee or board of nominees in certain matters, in short, on a certificate granted by the Registrar, the amount is recoverable through a civil court on a certificate granted by the Registrar as if, it was a decree of a civil court, or through the collector in accordance with the law and rules in force relating to the recovery of the land revenue. Besides Section 98, Section 156 also empowers the Registrar or any officer subordinate to him empowered by him to recover certain sums including the sum due under a decision, award or order of the Registrar, arbitrator or Liquidator or Tribunal by attachment and sale of the property of the person against whom the order has been made. and Sub-Section (2) of Section 156 provides that the Registrar or the officer empowered by him shall be deemed, when exercising the powers under the foregoing sub-section, or when passing any orders or any application made to him for such recovery, to be a civil court for the purposes of Article 182 of the First Schedule to the Indian Limitation Act, 1908. Section 99 provides that any private

transfer or delivery or, or encumbrance or charge on, property made or created after the issue of the aforesaid certificate shall be null and void as against the society. Provisions of Sections 100 and 101 are not very material. Clause (b) of Sub-Section (1) or Section 163 provides that save as expressly provided in this Act, no civil or revenue court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar or his nominee or board of nominees for decision.

6. The relevant rules in this respect relating to disputes and arbitration are rules 75 to 80. Rule 75 requires a party desirous of making a reference regarding a dispute to a Registrar under Section 91 to make it in writing in Form 'P' prescribed by the rules. Form 'P' shows that a person initiating the proceeding is described as disputant and the person against whom the relief is sought is described as opponent, it requires the disputant to mention particulars of his claims and facts constituting cause of action and the nature of relief sought against the disputant. The form has to be verified by the disputant in the manner proscribed in case of money claims, the disputant is required to state either the precise amount claimed, or where it is not possible, to state the approximate amount claimed. Rule 76 relates to the procedure which the Registrar has to follow in appointing his nominee or board of nominees for deciding disputes arising under the Act. In short, We procedure is that by general or special order notified in the Official Gazette, the appointment is made, and in case the Registrar appoints a board of nominees, he has to appoint one of them as its president. sub-rule (1) of rule 77 empowers the Registrar to withdraw a dispute referred by him to a nominee or board of nominees in the event the nominee or the board of nominees fall to decide the dispute within the period of two months or such further period as is extended by the Registrar, sub-rules (2) to (5) of Section 77 are in the following terms :-

(2) The Registrar or his nominee or the board of nominees shall record in English or in Marathi or Hindi the evidence of the parties to the dispute and witnesses who attend; and upon the evidence so recorded, and upon consideration of any documentary evidence produced by either party, a decision in writing shall be given. Such decision shall be pronounced either at once or on some future date of which due notice shall be given to the parties.

(3) Where any party duly summoned to attend the proceedings fails to appear the dispute may be decided ex parte.

(4) In deciding the disputes, where there is no unanimous decision, the opinion of the majority of the board of nominees shall prevail. Where the opinion of the nominees on the board is equally divided, the opinion of the Chairman of the board shall prevail.

(5) Any award made decision given or order passed by the Registrar's nominee or Board of Nominees or a person authorized under Section 88, shall be sent by him or by the Chairman of the Board with an the papers and proceedings of the dispute to the Registrar within 15 days from the date on which it is made, given or passed.

Sub-rule (1) of rule 78 provides for giving at least 15 days notice of the date fixed for hearing of

that dispute to the parties to the dispute, requiring the parties to attend the hearing and secure the attendance of the witnesses it, the party wants to examine any witnesses and to have ready all the books and documents relating to the matter in dispute. Sub-rules (2) to (5) of rule 78 relate to the machinery through which and the manner in which the notices are to be served. Rule 79 empowers the Registrar or his nominee to investigate into the claims and objections against any attachment and dispose them of on merits if, they are not frivolous. Rule 80 relates to the procedure to be followed for the custody of the property attached, and empowers the Registrar or his nominee to appoint a receiver of the property attached.

7. The scheme relating to certain disputes, mentioned in Section 91 thus appears to be that certain disputes, which are between a society and its members, or its agents, past and present, society and its servant, past or present, or their representatives or the transferees, etc., are to be decided by the Registrar or his nominees. The jurisdiction of the civil court in this respect is excluded save and except where the Registrar directs the parties to institute a suit in a civil court on the ground that a dispute involves complicated questions of law or fact. A person desirous of initiating the dispute has to approach the Registrar by an application in form 'P'. On perusal of the application, if, the Registrar is of the opinion that a dispute of the nature contemplated in Section 91 exists, he either proceeds to decide it himself or sends it to his nominee or the board of nominees appointed by him in the manner prescribed. When the dispute comes before the nominee, he has to decide that dispute within a period of two months or such further time as the Registrar may allow. In the event of his failure to so decide, the Registrar is empowered to withdraw the disputes from him. The procedure followed by either the Registrar or his nominee in the matter of deciding the dispute, in short, is that he has to issue fifteen days' notice to the parties calling upon them to appear and produce their witnesses and the documents relating to the subject matter of the dispute. Evidence of the witnesses has to be recorded in writing either in Hindi, Marathi or English, and the Registrar or his nominee or the board or nominees after hearing the evidence tendered and the documents produced has to decide the dispute on the evidence tendered before him and the documents produced before him. The Registrar or his nominee is empowered to summon and enforce attendance of witnesses and to compel production of documents. They are also empowered to compel a party to give evidence, and in doing so, Section 94 directs them to act as far as possible in the same manner as is provided in the case of a civil court by the Code of Civil Procedure. The order can be made by the Registrar or his nominee that the amount directed to be recovered by the Registrar or his nominee by his order is recoverable on the certificate being issued by him either through the civil court as if, the order was a decree or by collector in the same manner as arrears of land revenue. Besides this the amount directed to be recovered by the Registrar can be recovered by the Registrar direct by effecting sale of the property. The decision given by the Registrar or his nominee is final and binding on the parties subject to the result of the appeal, if preferred, by any of the parties to the Co-operative Tribunal.

8. It is the contention of Mr. Naik, that the aforesaid provisions show that the Registrar or his

nominee is a court within the meaning of the Contempt of Courts Act, inasmuch as, neither the Registrar nor his nominees are appointed by the parties to decide the dispute but a statute confers a power on them. Proceedings can be initiated before them by any party by filing a plaint in Form 'P'. The nomenclature "disputant" and "opponent" mentioned in the Form 'P' is not material, inasmuch as, the words "Plaintiff" and "Defendant" are used in Clause (c) or Sub-Section, (3) of Section 94 of the Act. The procedure, which is followed by the Registrar or his nominee, is the procedure which is normally followed by a court. They are given powers to add parties, summon and compel attendance of witnesses, compel production of documents, compel persons to give evidence on oath, allow legal practitioners with the permission of the Registrar to appear, and the decision has to be given on the evidence adduced and documents produced. The decision is further made binding on the parties. The orders made by the Registrar or his nominee are executable as a court. The Registrar and his nominee possess all the attributes of a court, and the case falls within the test laid down by the Supreme Court in. *V.K. Satyawadi v. State of Punjab*¹, and *Brajnandan Sinha v. Jyoti Narain*², to which reference has been made by a Division Bench of this court in Misc. Civil Appln. No. 25 of 1962 D/-4th-5th December 1962 (Bom). In (1956) SCJ 138 : AIR 1956 Supreme Court 153, Mr. Naik has drawn our attention to the following observations at p. 141 : (of SCJ) . There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from a Tribunal exercising quasi-judicial functions It is unnecessary to traverse the same ground once again. It may be stated broadly that what distinguishes a court from a quasi-judicial Tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights or parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. and it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial' Tribunal, what has to be decided is whether having

¹(1956) S. C. J. 138 AIR 1956 SC 153

²(1955) 2 SCR 955 : AIR 1956 SC 68

regard to the provision of the Act, it possesses all the attributes of a Court."

The passage in (1955) 2 SCR 955 : ((S). AIR 1955 Supreme Court 66) to which our attention was drawn by Mr. Naik is at p. 963 (of SCR) and is in the following terms :

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites : (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) It, the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance or argument by or on behalf of the parties on the evidence; (3) it, the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision, which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon, any disputed question of law.

9. Now, we find it difficult to accept the contention of Mr. Naik that the tests laid down by Their Lordships are satisfied in the instant case. It can easily be conceded that in the case of a Registrar's nominee, he possesses certain trappings of a Court. It is, however, to be noted that proceedings do not start on presentation of a case by a party before the nominee. The case is presented before the Registrar. Every case presented to the Registrar also does not necessarily go to the nominee. The Registrar has a wide discretion in this matter. He may either decide a case himself or send it to a civil Court, or refer it to his nominee for his arbitration. It is also open to the registrar to withdraw such disputes from his nominees after recording his reasons therefore, which indicates that the nominee has no independent seizin over the case. Further, the power exercised by the nominee in deciding the dispute is the power of an arbitrator and the decision given by him is an award. Section 96 leaves no doubt in the matter, and in clear terms expresses that when a dispute is referred to arbitration, the Registrar or his nominee or his board of nominees may after giving a reasonable opportunity to the parties to the dispute to be heard make an award on the dispute. Now, the expression "arbitration and award" have well recognized legal connotation and it has to be assumed that when Legislature uses these expressions, it means them in the legal connotation. It is well settled that the powers exercised by the arbitrator are not the powers of a Court, and the award given by the arbitrator cannot be equated with a judgment or decision given by the Court. Mr. Naik, however, argues that it may be that Section 96 says that a dispute is referred to the arbitration of the nominees and it refers to the decision given by the nominee as an award, but having regard to the fact that the nominee is empowered to summon and secure attendance of the witnesses and compel production of documents, and that is enjoined with a duty to decide the case on the evidence after hearing the parties, and that the finality is given to his decision subject to the result of the appeal, not much importance could be given to the use of the expressions 'arbitration' and "award", and it must be held that the nominee is a court. We find it difficult to accept this contention, now, even in a case of an arbitration, the arbitrator is not free to give a decision as he likes. He has to give his decision on the material produced before him by the parties after giving them an opportunity to appear before him and tender their evidence they desire to tender. If he fails to do so, it would amount to a legal misconduct on his part. To the decision of the arbitrator also, a finality is attached subject to certain conditions mentioned in the Arbitration Act. Therefore, the provisions relating to the power of a nominee to secure attendance of the witnesses, founding its decision on the evidence recorded, and the finality given to it by the nominees cannot be said to be a conclusive test to hold that a nominee is a Court. All that can be said is that the Legislature in its wisdom has thought it proper to prescribe a procedure to be followed by the nominee in the matter relating to disputes to whose arbitration the disputes are referred, the difference being that the arbitration provided in Section 95 is not an arbitration by agreement of the parties but is a statutory arbitration, in our opinion further the power conferred on Registrar to withdraw the dispute from his nominee, the duty cast on a nominee to decide the dispute within two months and the denial to the parties as of right to be represented by lawyers, might indicate that the proceedings before the nominee are the proceedings in arbitration and not a proceeding before a Court, in this

connection we may also usefully refer to the observations of the Supreme Court in the case of (1955) 2 SCR 955 at p. 962 AIR 1956 Supreme Court 66 at p. 70 appearing at a stage earlier than the observations on which reliance is placed by Mr. Naik. The discussion starts at p. 961 (of SCR) . after referring to the definition of "Court" occurring in certain authorities. Their Lordships referred to Stephen, and reproduced the definition given at p. 961 (of SCR) . According to Stephen, "in every Court, there must be at least three constituent parts - the actor, reus and judex; the actor or Plaintiff, who complains of an injury done; the reus, or Defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and it, any injury appears to have been done, to ascertain, and by its officers to apply, the remedy." It is thus clear that one of the necessary essential attributes of a court is that it gives a decision in exercise of its judicial power proceeding further. Their Lordships referred to a Privy Council decision in the case of *Shell Co. of Australia v. Federal Commr. of Taxation*³, and reproduced the following two passages from the said decision, one occurring at p. 295 and the other at p. 297 :

"Is this right ? What is judicial power ? Their Lordships are of opinion that one of best definitions is that given by Griffith, C.J. in *Huddart, Parker and Co. v. Moorehead*⁴, at p. 357 where he says : "I am of opinion that the words "judicial power" as used in Section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

We have already said that the essential attributes of a Court are that it exercises a judicial power, and the passage just reproduced above clearly shows that it is the persons, who are appointed by the State to exercise their judicial power, who possess them. The further observations in the Privy Council case reproduced in the Supreme Court judgment in (1955) 2 SCR 955 : AIR 1955 Supreme Court 66 clearly indicate that the mere fact that the authority performs a judicial function is not sufficient to constitute it into a Court. Their Lordships of the Privy Council further enumerated at p. 297, certain negative propositions in relation to the subject. They say :

"1. A tribunal is not necessarily a Court in this strict sense because it gives a final

³1931 A. C. 275

⁴(1909) 8 C. L. R. 330

decision :

2. Nor because it hears witnesses on oath;
3. Nor because two or more contending parties appear before it between whom it has to decide;
4. Nor because it gives decisions which affect the rights of subjects;
5. Nor because there is an appeal to a court;

6. Nor because it is a body to which a matter is referred by another body." See *Rex v. Electricity Commrs*⁵, and observed at p. 298 :

"An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of Judicial power".

It is after considering these principles, that Their Lordships have made observations on which reliance has been by Mr. Naik. It is thus clear that the ratio which from the decision of Their Lordships is that merely because a tribunal is enjoined with a duty to act in a judicial manner or hear parties and record evidence, and that its decision is made binding on the parties is not sufficient to hold that that tribunal is a Court, unless it is further established that in doing so, the tribunal is exercising an inherent judicial power of the State as a result of it being appointed by the State to exercise that power. Thus apart from the fact that the states refers to the decision of a nominee as an award in express terms, and a reference to him is a reference for his arbitration, the provision of the Act relating to the appointment of a Nominee itself indicates that the power, which a nominee derives for deeming the dispute, is not a power derived by him from the State. It is, therefore, difficult to hold that in deciding the dispute, an award given by the Nominee is in exercise of any judicial power derived by him from the State.

10. (11th January 1963). It has been pointed out by Mr. Justice Mahajan as he then was in *Bharat Bank Ltd. V. Employees of Bharat Bank Ltd*⁶,

"It appears to me that before a person or persons can be said to constitute a Court it must be held that they derive their powers from the State and are exercising the judicial powers of the State".

For the reasons stated above, in our opinion, a nominee of the Registrar is not a Court within the meaning of the Contempt of Courts Act.

11. We find support for the view taken by us in two decisions of this Court, one decided by Mr. Justice Gajendragadkar and the other by a Full Bench of this Court. The facts in Civil Revn. Appln. No. 894 of 1949, decided by Mr. Justice Gajendragadkar on 1-3-1950 in brief, were that a member of a Co-operative Housing Society, who had been allotted a tenement by the Co-operative Housing Society, had sublet that tenement to another. The member asked his sub-tenant to vacate the flat. On his failure to do so, he filed an

⁵(1924) 1 KB 171,

⁶(1950) SCR 459, at p. 475 : (AIR 1950 SC 188 at p. 195)

application under Section 54 of the Co-operative Societies Act before the Registrar, and the Registrar referred the dispute to a nominee. The nominee by his award directed that the sub-tenant should put the member in possession of the tenement. The award was sent for execution to

Small Causes Court and ultimately the matter came to the High Court, and an argument was advanced on behalf of the sub-tenant before this Court that the Registrar had no jurisdiction to entertain the application of the member inasmuch as, Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, excludes the jurisdiction of a Court other than the Court of Small Causes to entertain a dispute between a landlord and a tenant. In other words, the contention was that the Registrar or his nominee was a Court, and, therefore, the jurisdiction of that authority was excluded under Section 28 of the Act. This contention was repelled by Mr. Justice Gajendragadkar, and in the course of his judgment, he observed :

"In my opinion, it is clear that the Registrar and his nominee acting under the Co-operative Societies Act is not a Court, and the provisions of Section 28 cannot, therefore, apply to the proceedings pending before such Registrar."

It is the contention of Mr. Naik that this decision is no more a good law and has been overruled by a Full Bench decision in the case of *Dr. Manohar Ramchandra Sarfare v. Konkan Co-operative Housing Society, Ltd*⁷. It is true that the Full Bench of this Court has taken a view that where it is established that the relationship is of a landlord and a tenant, then the disputes between them are within the exclusive jurisdiction of the Courts referred to in Section 28 of the 'Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. But the Full Bench has not overruled the view taken by Gajendragadhar, J. that the nominee of the Registrar is not a Court. On the other hand, another Full Bench decision reported in *Farkhundali Nannhay v. V.B. Potdar*⁸, in clear terms states that the nominee of the Registrar is not a Court. The facts in that case, in brief, were that an employee of the Co-operative Society made an application before the Authority appointed under the Payment of Wages Act in respect of his claim for wages. This application was contested by the "Society inter alia on the ground that the Payment of wages Authority had no Jurisdiction to entertain this application, inasmuch as, under Section 54 of the Co-operative Societies Act, exclusive jurisdiction is conferred on the Registrar or his nominee. This contention was accepted by the Authority under the Payment of Wages Act and the employee's application was dismissed. One of the arguments advanced on behalf of the employee was that in view of Section 22 of the Payment of Wages Act, the jurisdiction of the Registrar was excluded. The argument has been founded on the phraseology of Section 22. The material part of that section is in the following terms :

"No court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed -
(d) could have been recovered by an application under Section 15" of the Payment of Wages Act.

This contention was repelled by the Full Bench of this court. The learned Chief Justice, who delivered the judgment, observed :

⁷63 Bom. LR 1001

⁸63 Bom. LR 985

"We are also not inclined to accept Mr. Singhvi's argument that the word 'suit' in Section 22 of the payment of Wages Act includes any legal proceeding. The word 'suit' is a term of art and ordinarily means a proceeding instituted in a civil court by the presentation of a plaint. A proceeding under Section 54 of the Co-operative societies Act is not a suit and consequently Section 22 of the payment or Wages Act cannot operate as a bar to such a proceeding being taken."

The Full Bench held that both the Registrar and his nominee as well as the Authority under the payment of wages Act would have jurisdiction to entertain the application in respect of a claim made by an employee for payment of his wages. The Allahabad High Court also in *Raja Himanshu Dhar Singh v. B.P. Singh*⁹, has taken the view that the Registrar deciding a dispute under the Co-operative Societies Act is not a court within the meaning of the Contempt of Courts Act.

12. Mr. Naik and Mr. Deshpande, the Assistant, Government Pleader, Counsel for the State of Maharashtra, who also has supported the arguments of Mr. Naik, have referred us to some decisions reported in *Velayuda Mudali v. Co-operative Rural Credit Society, Giakottai*¹⁰, *Thadi Subbi Reddi, in re*¹¹, *Nirbhayadas v. Rameshwar*¹², *Chunilal Ken v. Shyamlal Sukhram*¹³, and lastly, *Satdeo Pandey v. Baba Raghav Das*¹⁴, These decisions are distinguishable or facts. Only the last three decisions, viz., AIR 1960 Madhya Pradesh 115; AIR 1959 Madhya Pradesh 50 and AIR 1953 Allahabad 419 are under the Contempt of Courts Act. But these cases relate to contempts of the Election Tribunal and the contempt of Revenue Courts, and, therefore, are not relevant to the issue which we have to decide, in as Mad LJ 229 the matter arose as to whether a complaint by a Registrar was necessary for prosecuting a party who had filed a forged document before him during the course of an enquiry held by him in respect of a dispute, and it was held that it was a court within the meaning of Section 195 of the Code of Criminal procedure. It would be seen that this is not a decision under the Contempt of Courts Act and turns on the definition of the Court given in Sub-Section (2) of Section 95 of the Act itself. The learned Judge deciding this case has himself made the position clear. It is observed at p. 231 (Of Mad LJ) :

"It has been held that the term 'Court' in this section has a wider meaning than the expression 'Court of Justice in the Penal Code and includes a tribunal entitled to deal with a particular matter and authorised to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question"

We are here not dealing with the question as to whether the Registrar or his nominee is a Court within the meaning of Section 195 of the Act. but is a Court in the wider sense as contemplated in Section 195 of the Criminal procedure Code. Following this decision, it has been observed in ILR 57 Mad 425 that the Registrar is a court within the meaning of Section. 52 of the Transfer of property Act. We may again say that we are not concerned here with that question. Further, it appears from the judgment itself that the decision is not rested on that finding. On the other hand,

it has been held :

"Even if, the Registrar acting under Rule XIV of the rules framed under the Co-
⁹1952 All LJ 57 ¹¹59 Mad LJ 229 ¹³ AIR 1959 Mad Pra 50
¹⁰ ILR 57 Mad 426 ¹² AIR 1960 Mad Pra 115 ¹⁴ AIR 1953 All 419

operative Societies Act (11 of 1912) is not a Court, when the award passed by him directing the mortgagor to pay the amount is placed before a competent Civil Court in execution and that Court directs the sale of the mortgaged property, any purchase during such proceedings is made pendente lite."

In the view taken by us, the contention raised on behalf of the first opponent that a nominee of the Registrar is not a Court within the meaning of the Contempt of Courts Act must succeed.

13. As regards his last contention, it is argument of Mr. Gauba that the abuses uttered by him were in the presence of the Court, and those abuses would amount to insult within the meaning of Section 228 of the I. P. Code. It thus being an offence punishable under Section 228 of the I. P. Code committed in the presence of the Court, this Court will have no jurisdiction to try, and the jurisdiction of this Court is excluded under Sub-Section (2) of Section 3 of the Contempt of Courts Act. It is not possible for us to accept this contention. We have already reproduced the abuses uttered by the first opponent, in our opinion, these abuses do not merely stop at being an insult to the Judge but go further, and attribute dishonesty on the part of the Judge in the conduct of the case. Opponent No. 1 has called the Nominee "a cheat, 420," meaning thereby that he deceives people, and had also called him dishonest. Further, he had stated he would not proceed with the case before the Nominee, thereby implying that the Nominee was not fairly and impartially conducting the proceedings. The utterances, in our opinion, go further than insult and amount to scandalization of the Nominee. We are informed that the opponent No. 1 is an advocate of this Court. It is true that he was not appearing in the proceedings in his capacity as an advocate, but, none the less, his aforesaid conduct is not a conduct which is expected of an advocate of this court in the conduct of the proceedings before the tribunal. The utterances lack the restraint which is expected of a Counsel. Had we not held that the Nominee was not a Court, we would have taken a serious notice of this matter. However, in the view taken on that question, the petition must fail. In the result the rule is discharged. In the circumstances however, of the present case, we make no order as to costs.

Rule discharged.