

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 930 OF 2006

SKYLARK COOP. HOUSING SOCIETY LTD. ...APPELLANT(S)

VERSUS

S.S. MOKASHIM AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 929 OF 2006

O R D E R

Heard learned counsels for all the contesting parties.

All interlocutory applications are allowed.

Both the appeals arise out of common orders and were heard together.

The present litigation that has continued over a quarter century with parties making repeated forays to the different hierarchical forums provided by law is bound to and has given rise to a multitude of facts which has the potential of clouding if not delaying the judicial quest for the ultimate truth. Fortunately, in this case, we have a very precise and cogent expression

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of the relevant facts made by the High Court of Bombay in

Madhu Bala
Date: 2014.07.23
17:06:02 IST
Reason:

the Order under challenge. It will, therefore, not be

necessary to traverse the same except to notice only what would be essential for the purpose of the present adjudication.

In accordance with the Government Policy published

vide G.R. dated 12.05.1983, the State of Maharashtra issued a Letter of Intent dated 26.09.1988 to the Appellant-Society allotting a plot of land admeasuring 9186 sq. mtrs. While the LOI had made it clear that the land is being allotted for accommodation of the members by construction of flats on the land, certain conditions were required to be fulfilled by the Society which, inter-alia, stipulated that the members should be confirmed in service and a certificate of each member's monthly income from the concerned office of Air India should also be furnished. The aforesaid clauses/ conditions are relevant, in view of the principal issue that has arisen for determination in the present proceedings i.e. whether membership of the Society is exclusively for Air India employees or not. On 24.02.1989, the appellant-Society was registered under the Maharashtra Co-operative Societies Act, 1960 and the Model Bye-laws prescribed were adopted by the Society.

At this stage Bye-Law 17(c), which made enrollment of new members subject to the approval of the Collector must be specifically taken note of.

Thereafter, on 28.03.1989, an undertaking/agreement was signed by the Office bearers

2

of the Society in favour of/and the Additional Collector, Bombay Suburban District (BSD). Clause 8 thereof contained a stipulation that the Society shall not enroll any new member or substitute an existing member without the prior written permission of the Collector and/or the Commissioner. On 07.04.1989, the names of 73 Air India

employees were approved by the Collector as members of the Society and the land was allotted.

It appears that

the Bye-laws of the Society were amended on 30.05.1989 restricting the membership of the Society only to Air

India employees. This is claimed to be on account of the fact that the same was insisted upon by Air India for

providing a loan to raise the construction. What happened thereafter need not concern us except that on 19.07.1992, the Bye-laws were again amended and open membership was restored. The said amendment of the Bye-laws was approved by the Deputy Registrar of Cooperative Societies on 30.7.1992. Respondents 4 to 29

in Civil Appeal No. 930 of 2006 (hereinafter referred to as the respondents-contesting respondents) were admitted to the membership of the Society by a Resolution of the General Body on 19.7.1992 confirmed on 13.8.1992. It

appears that there were some complaints with regard to the bona fides, legitimacy and legality of the induction of the aforesaid members which led the Collector to pass an order for resumption of the land. The said order was

3
appealed against before the Commissioner who passed orders in reversal of the order of the Collector. Thereafter, it appears that the matter reached the Minister by way of a Statutory Appeal which was disposed of on 10.03.1995 with certain directions.

Before we proceed further it would be necessary to take note of the fact that with the introduction of the Development Control Regulations 1991, the appellant-society claimed an additional FSI of a little over 3000 sq. meters. From the order dated 10.03.1995 of

the learned Minister, it appears that an effective order granting the additional FSI was passed on 11.08.1992 and the directions of the Minister which were in favour of

Respondent Nos. 4 to 29, insofar as membership is concerned, were also to the effect that additional FSI should be granted and the same should be made available to the said respondents for the purposes of construction of accommodation/houses to them. In fact, the Resolution of the Society dated 19.7.1992 admitting the Respondents 4 to 29 to the Society was subject to allotment of the

additional FSI.

The order of the learned Minister dated 10.03.1995 was reversed in exercise of the suo motu power of revision by the succeeding Minister on 16.12.1995. The Bombay High Court by an order dated 27.11.1998, however, set aside both the aforesaid orders and directed

that the matter be decided ⁴ by the incumbent Revenue Minister. It was so done by an order dated 17.07.1999.

As the original order passed in appeal was set aside by the Bombay High Court, the order dated 17.07.1999 passed by the Minister must be understood to be a de novo order passed in the exercise of the appellate jurisdiction under the Act. The order dated 17.07.1999 which was in favour of the Appellant-Society i.e. holding that membership of the Society was only for Air India employees was once again reviewed on 05.10.2000 by the successor Minister of Revenue in exercise of his review power. Thereafter, writ proceedings culminating in Appeal No. 750 of 2001 was instituted before the Bombay High Court. It would appear from the order passed by the Bombay High Court that while the appeal was kept pending, directions were issued for disposal of the parallel proceedings under the Co-operative Act pending before the Co-operative Court. The aforesaid proceedings before the Co-operative Court were initiated by some of the existing members of the Bombay Society questioning the legitimacy as well as the authenticity of the Resolutions by which Respondent Nos. 4 to 29 were inducted as members contending inter alia, that the said Resolutions were forged and fabricated. The aforesaid proceedings under the Co-operative Societies Act ended with an order passed by the Co-operative Appellate Court dated 7.5.2004 in

⁵
favour of Respondent Nos. 4 to 29 with the following operative directions:

- "1. Appeals partly allowed.
2. Cross objection partly allowed.
3. Declaration given by Trial Court as to certain Resolutions, set aside.
4. Finding of the Trial Court that Opponent Nos. 8 to 40 can exercise membership right only after approval to their names by Collector is set aside.
5. Finding as to First A.G.M. dated 12.03.1989 set aside.
6. No order as to costs."

Writ petition No. 1663 of 2004 was filed against the aforesaid order dated 07.05.2004 of the Co-operative Appellate Court. Both the appeal and the writ petition were heard together. It is against the common order of dismissal that the present civil appeals have been filed.

Certain additional facts may be taken note of at this stage. There are at least three affidavits filed by the State at different stages of the various proceedings before the Bombay High Court wherein the State appears to have taken the stand that membership of the Appellant Housing Society was confined to Air India

6

Employees alone. It is also evident that on the basis of the stand taken by the rival parties with regard to availability of the additional FSI for the benefit of Respondent Nos. 4 to 29 contentions have been advanced whether the same amount to concessions/admissions or not. However, we do not propose to burden this order with a detailed narration and examination of the aforesaid issues as, in our considered view, the matter is capable of being decided dehors the aforesaid stand(s) taken by either of the parties. Notice must also be had of the

fact that some time in the year 1994 i.e. on 23.8.1994 in an Annual General Meeting Resolutions are claimed to have been taken by the Society restoring the pre 19.7.1992 position with regard to Membership, namely, restricted membership to Air India employees only. However, it is significant that no corresponding amendment of the Bye-laws was effected. It would be equally significant to note that prior to the aforesaid resolution dated 23.8.1994 Respondents 4 to 29 were already inducted as members on 19.7.1992 which decision of the General Body stood confirmed by the Management Committee on 13.8.1992.

In the aforesaid facts, Shri Raju Ramachandaran, learned senior counsel for the appellant, has urged that the membership of the Society was exclusively for Air India employees. This, according to the learned counsel, is evident from the Letter of Intent

dated 26.09.1988. The introduction⁷ of the specific clause in the Bye-laws on 30.05.1989 conferring exclusivity of membership has been sought to be explained by contending that the same was only clarificatory. It

is further contended that the entry of Respondent Nos. 4 to 29 is at the instance of a truant office bearer who has been taken to task by expulsion from the society. The induction of Respondent Nos. 4 to 29 is claimed to be in violation of the rights of the existing members of the appellant-society under Article 19(1)(c) of the Constitution. Reading Bye-laws 17(c) and clause 8 of the Agreement dated 28.03.1989, it is contended that the membership of the society is contingent on the prior approval of the Collector, and in the present case, there being no prior approval and in fact the Collector having resumed the land for violation of the aforesaid condition precedent for admission of new members, Respondents Nos. 4 to 29 have no legal right to claim membership of the

society. Shri Ramachandaran has relied on the decision of this Court in Zoroastrian Cooperative Housing Society Limited & Anr. Vs. District Registrar, Co-operative Societies (Urban) & Ors. 2005 (5) SCC 632 to contend that open membership, acknowledged by the impugned orders, has the effect of infringing the rights of the members of the appellant-society under Article 19(1)(c). Similarly, reliance has also been placed on a recent judgment of

8

this Court in Dipak Babaria & Anr. Vs. State of Gujarat & Ors. 2014 (3) SCC 502 to contend that the powers of the Collector under the Bye-laws read with the Agreement dated 28.3.1989 have been fettered by the action of the higher authority in issuing directions for grant of membership to Respondent Nos. 4 to 29.

The arguments advanced on behalf of the appellant has been sought to be controverted by Shri B.H.Marlapalle, learned senior counsel appearing for the State; Shri V.A.Mohta and Shri Shyam Diwan, learned counsel for Respondent Nos. 4 to 29. Pointing out the

provisions of Sections 22 and 23 of the Cooperative Societies Act and the object of the Co-operative movement in the country it is submitted that in ordinary and normal course, membership has to be understood to be open to all citizens subject to the Bye-laws. In the present

case, the Bye-laws do not specifically confine Membership to any section or class of persons. In fact, the object of the appellant-Society is to provide housing to its members. Insofar as the prior approval of the Collector is concerned, it is argued that Clause 17(c) does not contemplate prior approval; rather the said Bye-Law only mentions about the approval of the Collector.

Clause 8

of the Agreement wherein the stipulation of prior approval is to be found, according to the learned counsels, is an agreement between the society and the

State and not between the Society and its members so as to create a bar/restriction on the admission of new members into the society. The fact that many of the existing members of the appellant-society were admitted to such membership with the subsequent approval of the Collector, a finding reached by the Co-operative Court, has also been laid before the Court on behalf of the Respondents.

Having considered the submissions advanced on behalf of the parties, we take note of the provisions of Sections 22 and 23 of the Act and the absence of any specific provisions in the bye-laws confining membership to any particular class except for the period 30.5.1989 to 17.9.1992. Clause 8 of the Letter of Intent dated

26.09.1988 cannot be stretched to understand as incorporating a condition restricting membership of the society only to Air India Employees. The requirement of

the members being in service and that of an income certificate by the local Air India office cannot be understood to be necessarily consistent with the concept of exclusiveness of the membership of the society. Even though on 7.4.1989 when the list of 73 members was approved by the Collector all such members were Air India employees, the said facts by themselves cannot establish the plea of exclusivity of members as contended on behalf of the appellant society. Such a position must be

reflected in the Bye Laws which contained no such provision. The amendment of the Bye-Laws on 30.05.1989 by which the membership was restricted to the Air India employees and the further amendment on 19.7.1992 introducing the earlier position i.e. open membership clearly show that membership in the society except for the period 30.05.1989 and 19.07.1992 was open to all.

Though contrary Resolutions of the society dated 23.8.1994 have been pointed out it has already been noticed that no corresponding amendment of the Bye-Laws were effected to give effect to any such alleged Resolution(s). Further more, the findings of the statutory authorities and the Courts below are also to the effect that restriction of membership during the aforesaid period was for the specific purpose of the loan from Air India, which did not materialize. If membership

of the society was open to all, as we must hold, it will not be necessary for us to go into the larger issue with regard to infringement of the rights of the members under Article 19(1)(c) and the decision of this Court in Zoroastrian Co-op. Society (supra). The said decision, in any case, relates to a fact situation where membership of the appellant-society was confined only to Parsis.

Insofar as the issue of fettering the exercise of statutory power and discretion of the Collector is concerned, it has already been noted that Bye-law No.

11

17(c) only requires the approval and not prior approval of the Collector. Prior approval is mentioned in Clause

8 of the Agreement dated 28.03.1989. The aforesaid Agreement dated 28.03.1989 prescribes conditions that govern the Society and State Government and not the relationship between the Society and its members. In any

case from the facts found by the Co-operative Court in

the present facts, it is established that some of the

members of the appellant-society had been the beneficiaries of the approval of the Collector subsequent to their enrollment. The question of fettering the

discretion of the Collector does not arise in the facts

of the present case inasmuch as from the order of the

Minister dated 05.10.2000 it appears that what was clarified is that membership should not be denied to

Respondent No. 4 to 29 only on account of the fact that they are not employees of Air India. Otherwise the question of membership of the said Respondents was left open for decision of the Collector who had liberty to decide on all other conditions of eligibility of the said respondents. Viewed from the aforesaid perspective the relevance of the decision in Dipak Babaria (supra) to the present case will be in serious doubt. In any event, in the said case this Court was dealing with Section 89A of the Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 which contemplated a specific enquiry followed by recording of satisfaction by the Collector with regard to the bonafides of a proposed transfer of agricultural land for industrial purposes.

This would now bring us to the last limb of the case, namely the tenability of the impugned orders with regard to grant of additional FSI. It has been established that by an order dated 11.8.1992 additional FSI of 3123 sq. mtrs. had been made available to the appellant-society but the same has been kept in abeyance, perhaps, due to the ongoing litigation. It is also on

record that the admission of Respondents No. 4 to 29 was subject to the allotment of additional FSI. The various other equitable and compelling factors that had been taken into account by the Statutory Authorities and the Co-operative Courts while directing the release of additional FSI and the use thereof for the benefit of Respondents No. 4 to 29 commend to us for acceptance. The view of the High Court in this regard can hardly be faulted.

The issue of the Resolutions of the Society being forged and fabricated, as raised before the co-operative court hardly need to detain us in view of the conclusive determination of facts made by the

co-operative court which we are not inclined to reopen.

For the foregoing reasons, we do not find any merit

13

in these appeals. Both the appeals, accordingly, stand dismissed. However, in the fact and circumstances of the case, there will be no order as to cost.

.....J.
(RANJAN GOGOI)

.....J.
(M.Y. EQBAL)

NEW DELHI
JULY 17, 2014

14

ITEM NO.101 COURT NO.10 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 930/2006

M/S. SKYLARK COOP. HOUSING SOCIETY LTD. Appellant(s)

VERSUS

MR.S.S.MOKASHIM AND ORS. Respondent(s)
(With appln. For substitution of L.Rs of the deceased respondent and c/delay in filing substitution appln. And substitution of deceased petitioner and c/delay in filing substitution appln. And transposing respondents as petitioners and prayer for interim relief and office report)

WITH

C.A. No. 929/2006
(With prayer for Prayer for Interim Relief and Office Report)

Date : 17/07/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE M.Y. EQBAL

For Appellant(s) Mr. Raju Ramachandran, Sr. Adv.
Mr. Pradeep Raigopal, Adv.
Mr. Rekha Rajgopal, Adv.
Mr. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Ms. Akanksha Mehra, Adv.
Mr. Shambo, Adv.
M/s. Lawyer S Knit & Co , Adv.

For Respondent(s) Mr. B.H. Marlapalle, Sr. Adv.
Mr. A.P. Mayee, Adv,
Mr. Charudatta Mahindrakar, Adv.
Mr. A. Selvin Raja, Adv.

Mr. V.A. Mohta, Sr. Adv.
Mr. Shyam Diwan, Sr. Adv.
Mr. U.A. Rana, Adv.
Ms. Kashmira S. Bharucha, Adv.
Mr. Levi Ruben, Adv.
Mrs. Mrinal Majumdar, Adv.
For M/s. Gagrath & Co.

15

Mr. V.N. Raghupathy, Adv.

Respondent in Person

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsels for all the contesting parties.

Delay condoned.

All interlocutory applications are allowed.

The appeals are dismissed in terms of the signed order.

(MADHU BALA)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed order is placed on the file)