

Mr. Gavnekar submitted that Section 23 of the said Act is a complete Code in matters of all disputes relating to enrollment of members and therefore by implication, the remedy, if any, under Section 91 of the said Act was ousted. Mr. Gavnekar submitted that since this jurisdictional aspect has not been considered by the two authorities in its proper perspective, the impugned orders are in excess of jurisdiction, null and void. Mr. Gavnekar placed reliance upon the decision in the case of *K. V. Sundaram and another Versus Raj Rajeshwari co-op. Housing Society Ltd. and others*¹, a decision in the context of Section 35 of the said Act involving expulsion of member of a cooperative society.

3. In order to examine Mr. Gavnekar's submissions, it is necessary to make reference to the provisions contained in Sections 23 and 91 of the said Act.

4. Section 23 of the said Act reads thus :-

“23. Open membership.- (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.

[(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society

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concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society]. [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.]

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar, [within a period of sixty days from the date of the decision of the society]. [Every such appeal, as far, as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay].

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation]."

5. Section 23 of the said Act statutorily introduces the concept of 'open membership'. This is made clear by the provisions

contained in sub-section (1) which provides that no society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws. Sub-sections (1A), (2) and (3) of Section 23 provide for the means to ensure that membership is not refused to duly qualified person without any sufficient cause.

6. Sub-section (1A) of Section 23 provides for the remedy to an applicant, where the society has refused to accept his application form or payment made by him in respect of membership. This sub-section also provides for deemed membership and if any question arises whether a person has become a deemed member or otherwise, the Registrar is the authority to decide such question after giving reasonable opportunity of being heard to all concerned parties.

7. Sub-section (2) of Section 23 which is relevant for the purposes of the issue raised in this petition, provides that any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar, within a period of sixty days from the date of the decision of the society. The Registrar is enjoined, as far as possible, to dispose of such appeal within a period of three months from the date of its receipt. The proviso to this sub-section, further enjoins upon the Registrar to record reasons for the delay, in case the appeal is not disposed of within a period of three months. Sub-section (3) of Section 23, accords a statutory finality to the decision of the Registrar and further enjoins upon the Registrar to

communicate his decision to the parties within a period of fifteen days thereof.

8. From the aforesaid, it is clear that the remedy of appeal under Section 23 (2) of the said Act is available to any person aggrieved by the decision of the society, *'refusing him admission to its membership'*. The remedy of appeal under Section 23 (2) of the said Act is not available to any person who is aggrieved with the decision of the society, admitting some other person as the member of the society. To extent therefore, it cannot be said that the provisions contained in Section 23 of the said Act are a complete Code for all questions relating to issues of membership to a society.

9. Section 91 of the said act reads thus :-

“91. Disputes.- (1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [elections of the committee or its officers, 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 co-operative Court] if both the parties thereto are one or other of the following :-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the Official Assignee of a de-registered society];

b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society [or a person who claims to be a member of the society];

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;]

(e) any other society, or the Liquidator of such a society [or de-registered society or the official Assignee of such a de-registered society].

[Provided that, an industrial dispute as denned in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society or refusal of admission to membership by a society to any person qualified therefore or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub -section (1) or (2) of section 101 or sub -section (1) of section 137 or the recovery proceeding of the Registrar or any officer sub ordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub -section (1) of section 156, [or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152 A and revision under section 154 of the Act have been provided] shall not be deemed to be a dispute for the purposes of this section].

(3) Save as other wise provided under [sub-section (2) to 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).

Explanation 1.-A dispute between the Liquidator of a society [or an official Assignee of a de-registered society] and [the members (including past members, or nominees, heirs or legal representative or deceased members)] of the same society shall not be referred [to the co-operative Court] under the provisions of sub-section (1).

Explanation 2.-For the purposes of this sub-section, a dispute shall include-

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment.”

10. Section 91 of the said Act provides that any dispute touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute in adjudication to the co-operative Court, if both the parties to the dispute are, *inter alia*, members of such society, one is a member and the other is a society or in general, if both the parties to the dispute are ones specified under sub-clauses (a) to (e) of Section 91 (1) of the said Act.

11. Section 91 of the said Act, is no doubt, of wider application and would obviously include a dispute arising out of enrollment of a person or persons as member of the society, particularly when it is alleged that such enrollment was by means of a resolution, which was itself either fabricated or not in accordance to the law. The legislature, however, has deemed it appropriate to provide a special remedy of appeal to a person who has been refused admission to the membership of the societies possibly because such person will perhaps not be one of the persons as contemplated by clauses (a) to (e) of sub-section 91 (1) of the said Act and consequently be disentitled to maintain a dispute under Section 91 of the said Act. However, once a person is admitted to the membership of the society, then the dispute with regard to his admission, will squarely be a dispute covered under Section 91 of the said Act. To this extent, the provisions contained in Sections 23 and 91 of the said Act operate in separate fields. In matters of disputes as to whether or not a person has been rightly admitted as a member of the society,

remedy under Section 23 (2) of the said Act is not the appropriate remedy. Accordingly, such a dispute will be squarely maintainable under Section 91 of the said Act. There is no jurisdictional error, if, such a dispute is entertained under Section 91 of the said Act.

12. In the present case, the dispute was in the context of the resolution of the society dated 27/11/2004 by which the Petitioners were enrolled as members of the society. The dispute as to whether or not such resolution was at all passed or in any case validly passed, is certainly a dispute which touches the conduct of the general meeting, management or the business of the society. Further, such dispute is one between two persons or two sets of members of the society or in any case, a dispute between the members of the society itself. Such dispute was within the jurisdictional bounds of Section 91 of the said Act. As noted earlier, remedy of appeal under Section 23 (2) of the said Act is not available to any persons aggrieved by the decision of the society, admitting some other persons as members of the society. Accordingly, it is not possible to accept Mr. Gavnekar's contention that the dispute as raised, was not maintainable under Section 91 of the said Act.

13. The decision of the Division Bench of this Court in the case of *K. V. Sundaram and another* (*supra*), is clearly distinguishable. In the said case, the members who were expelled from the membership, raised a dispute under Section 91 of the said Act. The provisions of Section 35 of the said Act read with Rule 29 of the said Rules, had

provided a clear remedy to such expelled members and it is in this context that the dispute under Section 91 was held to be not maintainable. The Division Bench, in the said decision, was not concerned with the issue as to whether expulsion declined by the society, could be questioned under Section 35 of the said Act read with Rule 29 of the said Rules.

14. No submissions were made on the merits, particularly as the Petitioners had failed to even lead any evidence in the course of dispute before the Cooperative Court.

15. Accordingly, there is no reason to hold that the two Courts have exceeded their jurisdiction in making the impugned orders. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.