

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9061 OF 2015

The Indapur Taluka Sahakari
Kharedi Vikri Sangh Mydt.

.. Petitioner.

Vs.

Tatyaram Vitthal Shinde & Anr.

.. Respondents.

Mr. Shrivallabh S. Panchpor i/b SNP Legal for the Petitioner.
Mr. Pratap Patil for the Respondent Nos.1 and 2.

CORAM : A.K. MENON, J.

DATED : 21ST OCTOBER, 2015

P.C. :

1. By the present writ petition, the society challenges the order of the Maharashtra Co-operative Societies Appellate Court, Mumbai Bench, Pune dated 25th August, 2015 whereby the Appellate Court rejected the revision application filed by the society against the order dated 14th August, 2015 passed by the Co-operative Court at Pune.

2. The issue raised in the present petition is whether the Co-operative Court could exercise jurisdiction under section 91 of the Maharashtra Co-operative Societies Act, 1961 to entertain the challenge to meeting where at the byelaw No.38A came to be introduced or whether the

order would be subject to appeal as provided under section 152 of the Act. It is submitted by the learned counsel for the petitioner that in the present case the dispute could not have been filed before the Co-operative Court and the Co-operative Court has no jurisdiction to entertain the dispute at all by virtue of the fact that section 91 proviso clearly states that any order or decision against which an appeal lies under section 152 shall not be deemed to be a dispute for the purpose of this section. Secondly, it is submitted that the scope under section 152 specifically provides that an appeal against the order passed under section 12 would fall within the scope of section 152. It is therefore submitted that in the present case only challenge in the dispute is to the aspect of resolution whereby the amended byelaw 38A came to be approved. It is the case of the petitioner that the challenge to amended byelaw itself under section 13 is subject matter of appeal under section 152 and therefore does not fall within the scope of the Co-operative Court not being a dispute under section 91 of the Act.

3. The learned counsel for the respondent has supported the impugned orders and submitted that the petition does not raise any substantial issue which calls for interference. By virtue of plain reading of section 91 itself reveals that the dispute concerning the conduct of meeting of general body and management of the society shall be treated as dispute falling within section 91 and according to him therefore the proviso cannot over ride the

section. The proviso deals with case where challenge in dispute is restricted only to the amendment to byelaw or contents thereof. In the present case it is the case of the respondent that the challenge is not merely to the byelaw or the resolution approving it but also to the conduct of meetings at which aforesaid byelaw was one of the subjects for discussion. He relied upon contents of dispute application, copy of which is annexed to this petition. Perusal of paragraph 18 reveals that the entire procedure of calling and conduct of meetings has been availed in the instant case and it is contended that said general body meeting held on 19th January, 2013 was illegal, null and void. The contents of paragraph 18 are reproduced below for ease of reference :

“18. It is submitted that the procedure for calling and conducting meetings has given in the said act, rules and bye laws has. The opponent is under obligation to follow the said procedure as and when meetings of society is called. However, the opponent society without serving notice on the disputants and without following due process of law shown to have conducted the special general body meeting dated 19/4/2013. Hence, the special general body meeting dated 19/4/2013 and resolutions passed therein are illegal, null and void.”

4. Furthermore, in paragraph 20 of dispute the respondent have questioned the validity of the procedure adopted for byelaw no.38A on various grounds. According to learned advocate for the respondents both

the Co-operative Court as well as Appellate Court have considered the objections of the petitioner as to jurisdiction and have held against the petitioner on that aspect.

5. As against this the learned counsel for the petitioner has submitted in rejoinder that the specific provisions of law such as proviso to section 91 read with provisions of section 152 will operate as bar against filing of the dispute under section 91 of the Co-operative Court. The learned counsel for the petitioner also submitted that under section 163 there is also a bar against any court entertaining a dispute of similar nature. However, the bar under section 163 operates only against the Civil Court entertaining such dispute. The learned counsel for the petitioner has relied upon a decision of the Single Judge of this Court in Wadala Shriram Industrial Premises Co-operative Society Ltd. Vs. Kotecha and Company and Others 2001(4) Mh.L.J. and contended that whether or not compliance of the procedural requirement was achieved while holding a meeting and for amending of byelaw is a question to be considered by the Registrar before registration of the amendment and in that case the Court was concerned with whether that particular byelaw was applicable to the fact of that case.

6. The learned counsel then referred to the decision of the Supreme Court in the case of Ahmednagar Zilla S.D.V. & P.Sangh Ltd. and Anr. Vs.

State of Maharashtra and Others (2004) 1 SCC 133 and submitted that in a fact situation as the present one, the Court had held that the respondent has no other remedy but to file an appeal before the Appellate Court and as regards challenge to the byelaw and as such there is a clear finding on jurisdictional aspect that challenge in the instant case also should have been made before the Appellate Authority, namely, under section 152. While dealing with this judgment, I must also make mention of the fact that in paragraph 6 of the judgment the Supreme Court has said that both the Appellate Court as well as the Revisional Court have come to the finding that conditions precedent for amending the bye-laws had not been complied with. Such a finding on jurisdictional fact has been held by the High Court as not “perverse” warranting interference under Article 227 of the Constitution and in that case the Court could not be prevailed upon to take different view.

7. In the present case I find that the controversy arising out amendment of the bye-law is not limited to the bye-laws itself but encompasses the issue as to the conduct of special general meeting. In this view of the matter the dispute would be one which clearly falls within the ambit of section 91 and it would not be proper to permit the petitioners to avoid contesting proceedings before the Co-operative Court. Moreover, in view of the findings of both authorities, namely, the Co-operative Court, Pune as well as the Appellate Court of this aspect, I do not find any perversity

which calls for interference in writ jurisdiction. Accordingly, I pass the following order :

The writ petition is dismissed. No orders as to the costs.

At this stage learned counsel for both the parties have jointly requested that the dispute before the Co-operative Appellate Court, Pune be expedited. In the circumstances the hearing of appeal before the Co-operative Appellate Court, Pune is expedited subject to the disposal of already listed disputes for final hearing. It is further made clear that neither parties shall seek adjournment except under unavoidable circumstances and the observations in this judgment will not come in way of either party adopting remedies available in law.

(A.K.MENON, J.)