

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.183 of 2007

Mayfair Co-operative Housing
Society Ltd
Represented by its Secretary
Mr. M. K. Jos.
B/4 Mayfair Apartments
Dr Dada Vaidya Road
Panaji, Goa 403 001. .. Petitioner

Versus

1. Mr Francisco Carmo Fernandes
B/4 Mayfair Apartments
Dr Dada Vaidya Road
Panaji, Goa 403 001.
2. The Asst Registrar
Co-operative Housing Societies
Panaji, Goa 403 001 .. Respondents

Mr. Joseph Vaz, Advocate for the petitioner.

Mr. R. G. Ramani, Advocate for the respondent no.1.

None appears for the respondent no.2.

CORAM :- S. B. Shukre, J.

Reserved on : 5th January, 2016.

Pronounced on : 22nd January, 2016

JUDGMENT :

This Writ Petition challenges the legality and correctness of the judgment and order dated 03/07/2006, passed

by the President, Co-operative Tribunal, Goa at Panaji in Co-operative Appeal No.14/2003, thereby dismissing the appeal and upholding the judgment and order dated 07/03/2003, delivered by the Assistant Registrar of Co-operative Society, Central Zone, Panaji. The effect of the dismissal of the Co-operative Appeal, has been that the application, filed by the petitioner before the Assistant Registrar of Co-operative Societies under Section 91 of the Maharashtra Co-operative Societies Act, 1960 as applicable to the State of Goa at the relevant time (hereinafter referred to as the MCS Act, for short), does not raise any dispute under Section 91 and is, therefore, not tenable before the Assistant Registrar of Co-operative Societies.

2. The case of the petitioner- society before the Assistant Registrar was that a group of persons organized themselves for the purpose of forming a Co-operative Housing Society, with an object of buying a portion of land, admeasuring about 800 square metres, situated at Dada Vaidya Road, Panaji belonging to the respondent, his brother and mother and constructing a building on the said land. The building envisaged construction of flats and shops. A meeting of the promoters of the Co-operative Housing Society, to be named as "Mayfair Co-operative Housing Society Ltd." and proposed to be formed on the lines of Adarsh Co-

operative Housing Society, was held on 05/10/1967 and various resolutions were passed. The resolutions passed were regarding purchase of land admeasuring about 800 square metres for a lumpsum consideration of Rs.1,20,000/-, appointment of Mr. Domingos Felix Pereira as the Chief Promoter, looking after the preparation of the plans of the building, seeking approval of the plans from the competent authority, supervising the work of construction, bearing of the preliminary expenses in respect of formation and the registration of the society as well as municipality dues by the members of the society, appointing M/s. JKF Enterprises, Panaji as Contractor for constructing the building, opening of the account of the society in any scheduled bank, having a share capital of the proposed society of Rs.6 Lakhs, and doing other incidental things.

3. In terms of these resolutions, construction of the building of the society was completed in the year 1970 by the Contractor M/s. JKF Enterprises, a Partnership Firm, of which the respondent was one of the partners. Thereafter, the Co-operative Housing Society was registered on 21/05/1971. A meeting of the General Body was held on 10/07/1971, wherein all the actions taken by the Chief Promoter were ratified. These actions included the appointment of architect and engineer, seeking of municipal

approval to the building plans, process of registration of the society, etc. The meeting also approved the total cost of the building project, which comprised cost of the land of Rs.1,20,000/-, cost of the construction of building, consisting of 14 flats and 5 shops of Rs.4,24,700/-, engineers fee of Rs.6,000/- and architect's fee of Rs.12,741/-. The meeting approved allocation of 14 flats, but remained silent regarding allocating any of the shops.

4. It was the case of the petitioner that the respondent no.1 retained physical possession of 5 flats and even leased out the shops to different persons from time to time and earned income by way of rent, without informing the society or engaging the society in any manner about the deals made by him with those lessees. The petitioner submitted that it became aware only in the year 1998 about physical possession of the shops being with the respondent no.1, when some documents in that behalf were made available to the society. Petitioner demanded back the possession of the shops, but the respondent no.1 refused to do so, claiming that five shops belonged to him. Petitioner apprehended that the respondent no.1 may enter into a long term deal with some third party, regarding lease or conveyance of these five shops. Therefore, the petitioner preferred a dispute application, under Section 91, MCS Act, before the Assistant Registrar of Co-

operative Societies.

5. Notice was served upon the respondent no.1 by the respondent no.2, in accordance with Section 91 (2) of MCS Act, to which a detailed reply was filed by the respondent no.1. In his reply, he denied the contentions of the petitioner-society regarding formation of the society and subsequent events. According to him, the Mayfair building was constructed by the owners of the land i.e. he himself, his mother, brother and sister, by appointing M/s. JKF enterprises as Contractor for construction of the building. The respondent admitted that he was one of the partners of M/s. JKF Enterprises. He submitted that the building was constructed by the land owners from out of their own funds and the building was having six shops and two flats on the ground floor and 12 flats on the upper floor. He also submitted that all the flats, except three flats, were sold by the land owners/ builders to various purchasers under agreements of sale and that the flats that were retained by the land owners, were for the own use of the respondent no.1, his brother and his sister. He also submitted that the shops on the ground floor were not sold by the land owners/ builders to anyone and were retained by them for their own use. He also submitted that the society was formed by the flat holders only after purchase of the flats by them, which flats

were sold by him and not by the society. He submitted that after registration of the society on 21/05/1971, the land, on which Mayfair building stood, was sold by the land owners to the society by three separate sale deeds, all dated 30/10/1971. He further submitted that the building portion consisting of flats only and not shops was conveyed to the society. He further submitted that the society was never formed following the example of Adarsh Co-operative Housing Society of Caranzalem. The respondent no.1 further submitted that since five shops in the building belonged to him and were never owned by the Society, the dispute raised by the Society in respect of these five shops would not be touching the business of the society, as envisaged under Section 91 of the MCS Act and, therefore, the dispute raised by the Society, was not maintainable before a Co-operative Forum.

6. The preliminary objection so taken by the respondent no.1, was heard at length by the learned Assistant Registrar and being convinced of its substance, the learned Assistant Registrar, dismissed the dispute application by his judgment and order dated 07/03/2003, holding that the case filed by the disputant (petitioner- society), was not a dispute within the meaning and purview of Section 91 of the MCS Act, as in force in the State of Goa. The judgment and order were carried in appeal before the

Co-operative Tribunal, Goa, by the petitioner. However, the appeal was also dismissed by the judgment and order passed on 03/07/2006 by the learned President of Co-operative Tribunal. Not being satisfied with the same, petitioner is before this Court in the present writ petition, filed under Article 227 of the Constitution of India.

7. I have heard Shri Joseph Vaz, learned Counsel for the petitioner and Shri R. G. Ramani, learned Counsel for the respondent no.1. With their assistance, I have carefully gone through the paper book of the petition, including the impugned judgments and orders.

8. Mr. Joseph Vaz, the learned Counsel for the petitioner submits that the impugned order passed by the learned President of the Co-operative Tribunal, Goa, confirming the order of the Assistant Registrar, holding that the dispute raised by the petitioner, does not fall within the scope and ambit of Section 91 of the MCS Act, is perverse, arbitrary and not at all based upon the facts and documents placed on record. He submits that the Assistant Registrar as well as the Appellate Tribunal, have not at all considered the documents placed on record by the petitioner in their proper perspective and the result is passing of perverse

orders by both these authorities. He further submits that the documents placed on record by the petitioner clearly show that the building in question consists of not only 14 flats, but also 5 shops and the entire building has been constructed from out of the funds of the society, sourced from contributions made by the members of the society. He further submits that by three separate sale deeds, the entire land, on which the building in question stands, has been transferred absolutely by the respondent no.1 to the petitioner and there is no document nor any evidence to show that the building, standing on the land, is constructed and owned by the respondent no.1. He, therefore, submits that the impugned orders be quashed and set aside and the matter be sent back to the respondent no.2, for its trial in accordance with law.

9. Mr. R. G. Ramani, learned Counsel for the respondent no.1 submits that the substance of the controversy, involved in this case, revolves around the title to the five shops, which exist in the building constructed on the land sold by the respondent no.1 to the petitioner and this dispute, being a dispute about title to an immovable property, cannot be resolved or adjudicated in a proceeding initiated under Section 91 of the MCS Act. He submits that proper forum for such a nature of dispute, is Civil Court and not the forum of Assistant Registrar, Co-operative Societies. He

further submits that the documents placed on record, do not show anywhere that the shops have been constructed by the society and that their possession has been retained by the society. On the other hand, he points out that a copy of the agreement of sale dated 20/09/1967, executed between the respondent no.1 and his family members on one hand and Lawrence S. Mendes on the other hand, in respect of sale of flat no.14 of Mayfair building, for Rs.36,300/- and also a copy of receipt dated 13/01/1968 for Rs.14,500, issued by the respondent no.1 in favour of one Caetano D'Mello, produced by him before the learned Assistant Registrar, would amply show that the entire building was constructed from out of his funds, by the respondent no.1 and this is the reason why, he could enter into such transactions. He further submits that the petitioner did not offer any explanation regarding these documents. He also submits that the building was constructed by the respondent no.1 by appointing M/s. JKF Enterprises as the Contractor. Therefore, the learned Counsel submits that such a dispute would require elaborate evidence on question of fact and proper forum for such a dispute can only be a Civil Court and not a co-operative authority under the MCS Act. On these grounds, he urges that the Writ Petition be dismissed.

10. In order to appreciate the rival arguments, which orbit

around the question- whether or not the claim made by the petitioner qualifies itself to be called a dispute under Section 91 of the MCS Act, it would be necessary first to understand what the Section 91 of MCS Act lays down. It reads as under :

“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 other than elections of committees of the specified societies including its officer], 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 defined 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 other than a notified society under section 73-1C or a society specified by or under section 73-G, or refusal of admission to membership by a society to any person qualified therefor [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 subordinate 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."

11. It is clear from the provisions of Section 91 of the MCS Act that any dispute, which touches the constitution, election of committee or its officers other than election of the committees of the specified societies, conduct of general meetings, management or business of a society, are the disputes, which are required to be referred to the Co-operative Court; in the State of Goa it is not in dispute that the Co-operative Court envisaged by this Section, is the Court of Assistant Registrar, Co-operative Societies; provided the parties to the dispute are the ones referred to in the Section. Both the parties referred to in Section 91 must be one or other of a society, its present or past committee, a present or past member, a person other than a member of the society with whom, the society has certain transactions and such other persons or societies, as described in various clauses of subsection (1) of Section 91. In the case of ***Margret Almeida & Ors Vs. The***

Bombay Catholic Co-operative Housing Society Ltd. & Ors, reported in 2013(1) All MR 914 (S.C.), Hon'ble Apex Court has held that the Section is mandatory and imperatively requires that the disputes of the nature described in the Section are referred to "Co-operative Court", constituted under the Act. Subsection (3) further reinforces the mandatory nature of Section 91 by providing for ouster of jurisdiction of the Civil Court. It lays down that no other Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in subsection (1). There is, of course, an exception carved out to the bar of jurisdiction of the Civil Court, which has to be found in subsection (2) of Section 93. It reads as under :

"93. Transfer of disputes from one Co-operative Court to another and suspension of proceedings in certain cases.

- (1)
- (2) *Notwithstanding anything contained in this Act, the Co-operative Court, on an application made to it by any of the parties to the dispute, may, if it thinks fit suspend any proceedings in respect of any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit*

is not instituted in a Civil Court within two months from the date of the order (of) the Co-operative Court, shall continue the proceedings and decide the dispute].”

Thus, subsection (2) provides that on an application made by any of the parties to the dispute, a Co-operative Court may suspend any proceedings in respect of any dispute, if the dispute involves complicated questions of law till the time the question is tried and answered by the Civil Court, provided the suit is instituted by the claimant within two months from the date of the order. If no such suit is instituted, the Co-operative Court would have to continue the proceedings and decide the dispute by itself.

12. A careful reading of the provisions of Section 91 and 93(2) of the MCS Act, indicates that the question as to whether or not the dispute referred to a Co-operative Court under Section 91 of MCS Act, is the dispute lying within the scope and ambit of Section 91 of the MCS Act itself has to be decided by the Co-operative Court, and it is all the more so, when an objection whether preliminary or otherwise, in that regard, is taken by any of the parties to the dispute. While exercising such a power, some times, a Co-operative Court may come across a question of

deciding a complicated issue of law and facts and some times, even a question regarding the ownership or title of a party to the property which is subject matter of the dispute. If the Co-operative Court is called upon, through an application, made by any of the parties to the dispute, to suspend the proceedings on the ground that the issue involves complicated question of law and fact which ought to be decided by a Civil Court, as provided under subsection (2) of Section 93 of the MCS Act, the Co-operative Court, in its discretion, may suspend the proceedings till the issue is tried and decided by a regular Civil Court. While deciding such a question, the Co-operative Court may also be required to examine the nature of the evidence and the documents placed before it and if it forms an opinion that the issue does not involve any complicated question of law and fact, it may, instead of suspending the proceedings, continue with the proceedings and adjudicate the dispute. However, if no application is filed under Section 93(2) or though filed and granted, no civil suit is instituted within 2 months from the date of the order of suspension, the Co-operative Court must continue with the proceedings and decide the dispute one way or the other.

13. Having understood the applicable provisions of law, let us come to facts of this case. The dispute application discloses

that the main relief sought by the petitioner is the restoration of 5 shops existing in the building of the society, which are claimed to be constructed and owned by the society. This is seriously disputed by the respondent no.1, who states that the flats and the shops in the building, were constructed by him and that he is the owner of the same. The respondent no.1 also claims that he is in lawful possession of 5 flats, which are the subject matter of the present dispute. Obviously, such a dispute, for the purposes of Section 91 of the MCS Act, would not relate to the constitution of the society or elections of the committee or its officer bearers or conduct of general meetings or the elections of the society. It would, at the most, be a dispute touching the business of the society or the one for a claim by the society for any loss caused to it by its member, as provided under Explanation 2(iii) to subsection (3) of Section 91 of the MCS Act. I must make it clear here that the fact that the respondent no.1 is a member of the society is not in dispute. The learned Single Judge of this Court way back in the year 1984, in the case of ***Bhandara Jilha Sahakari Shetki Kharedi Vikri Samiti Limited Vs. Damodar and others***, reported in AIR 1984 Bombay 362, referred to the parameters laid down by the Hon'ble Supreme Court in the case of ***"Deccan Merchants Co-operative Bank Ltd. Vs. M/s Dalichand Jugraj Jain***, reported in AIR 1969 SC 1320 on the

touchstone of which, a question as the one involved in this case has to be decided. The learned Single Judge also reproduced the relevant observations of the Supreme Court in para 4, which read thus :

"After going through the pleadings of the parties, the learned Officer on special Duty in Arbitration Case No. 7/1973, vide award dated 30th April, 1973 held that dispute filed by the petitioner against respondents 1 and 2 is not a dispute triable under Section 91, Maharashtra Co-operative societies Act, and hence the dispute be returned back to the petitioner society for filing before the appropriate Court. The learned Officer on Special Duty also held that the petitioner in fact recovered the defalcated amount from respondent 1 and so far as the business of the petitioner society with respondent 1 is concerned, it was not subsisting and the dispute, which is alleged is altogether a different dispute extraneous to the business and of the petitioner and would not come within the ambit of dispute touching the business of the society within the meaning and scope of S. 91, Maharashtra Co-operative Societies Act. The learned Officer on Special Duty relied on ruling, reported in AIR 1969 SC 1326 Deccan Merchants Co-operative bank Ltd. V. M/s Dalichand Jugraj Jain. In this ruling while discussing the question whether the dispute touches the assets of the business of the society, their Lordships of the Supreme Court remarked as follows (at p. 1326) :-

"The question arises whether the dispute touching

the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns building and lets out parts of the building which it does not require for its own purposes it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business."

14. These observations serve as guiding principles for deciding the question as to whether or not the dispute touching the assets of the society, would be a dispute touching the business of a society. They show that if the nature of the society and the rules and its bye-laws are such that it is the business of the society to construct and buy houses and let them out to its members, letting out of the property may be a part of its business. In the instant case, the relief sought is only regarding the restoration of possession of the subject 5 shops together with incidental reliefs, such as, stopping of the alteration work and payment to the society of the compensation by way of lease rent for the unauthorised occupation of the shops by the respondent no.1 etc. These reliefs show that the dispute is not raised in respect of letting out of the property and the dispute is only relating to the

assets of the society of which possession is claimed back by the society. The petitioner has not filed on record its rules and bye-laws governing it. But, the nature of the society and the purpose for which it was formed and later on registered in the year 1971, can very well be ascertained from the documents placed on record by the petitioner society, in respect of which, there is no dispute raised by the respondent no.1. Now, it would be interesting to see what these documents say.

15. The relevant documents are - a copy of the minutes of the first meeting of the promoters of the proposed Co-operative Housing Society, dated 05/10/1967, an application dated 14/08/1971 made to the Registrar of Co-operative Societies by the petitioner, for its registration, together with all the accompanying documents including such documents as questionnaire, notice dated 23/06/1971 of the first general body meeting of the society to be held on 10/07/1971 and a copy of the minutes of the general body meeting dated 10/07/1971, and copies of the three sale deeds dated 30/10/1971 conveying the land of the building to the petitioner society.

16. Perusal of the all these documents disclose that the petitioner society by name "Mayfair Co-operative Housing Society

Ltd.", was formed, as the name suggests, as a Co-operative Housing Society for the purpose of constructing a building consisting of 14 flats and 5 shops by purchasing a land from the respondent no.1 and his mother and brother. The minutes of the first meeting of the promoters, dated 05/10/1967, show that the meeting was held to appoint Chief Promoter to look after the formalities regarding formation and registration of the society, to discuss about the site in view that was belonging to Francisco Fernandes (Respondent no.1), Antonio Carlos Fernandes, Telma Maria and Garmelina Honorata Fernandes, to entrust the work of the construction of the building to the Contractor and other incidental matters.

17. The application dated 14/08/1971 made by the petitioner for registration of the society shows that 14 flats and 5 shops were constructed by the society on the land subsequently purchased vide sale deeds dated 30/10/1971. The questionnaire annexed to the registration application also discloses the same thing. Minutes of the first general body meeting dated 10/07/1971 confirmed the construction of 14 flats and the shops, when the members of the society unanimously agreed that the monthly contribution of Rs.10/- per flat and Rs.20/- for all the shops, would be made by each of the members with effect from 01/08/1971.

These minutes also ratify the agreements entered into by the Chief Promoters with land owners for purchase of the land at the rate of Rs.150/- per square metre, appointment of Society architect and engineer and also the Contractor, M/s. JKF Enterprises, for construction of the society building for a lumpsum amount of Rs.4,24,700/-. Interestingly, the respondent no.1 is a party to all these proceedings and he does not utter a single word of protest or about his constructing the building from his own funds in all these proceedings. Even the sale deeds dated 30/10/1971 executed between the land owners, including the respondent no.1 on one hand and the society on the other, referred to in the resolutions passed in the first general body meeting of the society held on 10/07/1971, do not speak of existence of any such building on the land being sold as has been constructed by the respondent no.1. The conclusion is, therefore, irresistible. The petitioner-society was formed for the purpose of constructing flats and shops for their use by its members and the building was also constructed by it. Therefore, the dispute involved in the present case, touches the assets of the society and is in reality and in its basal form, a dispute that touches the business of the society. Even otherwise, under explanation 2(iii) to subsection (3) of Section 91, which bars the jurisdiction of the Civil Court to entertain any such dispute, a claim by a society for any loss caused to it by a member, is also a

dispute, which cannot be adjudicated upon by a Civil Court and consequently, has to be decided by a Co-operative Court. Surely, raising of a claim by the society for restoration of the possession of its shops, of which it says that it is a lawful owner, and also a claim seeking compensation by way of lease rent, in effect, amount to raising of a claim for the loss occasioned by the society by the alleged unlawful acts on the part of its member. Viewed in this way, I find that the dispute involved in this case is a dispute touching the business of the society as well as involving a claim regarding loss occasioned by the society.

18. The claim so made by the Society, in the opinion of the learned Counsel for the respondent no.1, would require going into the question of ownership of the shops, given the assertion of the respondent no.1 that the building consisting of flats and shops, was constructed by him and not by the society and the shops were even sold by him, without any intervention of the society and so in any case cannot be decided by a Co-operative Court. The argument is not without substance, if considered only in terms of its underlying principle and not in terms of its applicability to facts of this case. Applicability of this principle certainly will vary from case to case. In a given situation, the material available on record may be such as to render it impossible to give any finding about

the ownership of the society in respect of its assets without making a deeper inquiry into that issue. In such a case, the core issue involved, would be one of title to the property and, therefore, under general civil law, such an issue would have to be left to be decided only by a Civil Court and the Co-operative Court would be justified in saying that since it is not its job to decide the title issue, the dispute goes beyond the frame work of Section 91 of the MCS Act. But, there could be a situation, wherein the facts and circumstances of the case are such that the cloud cast upon the title of the society is only an eye-wash just to deflect the Co-operative Court from hitting the bulls eye and the documents and other evidence clearly and manifestly show the ownership of the society. In such a case, a Co-operative Court can decide the issue and form a view as to whether or not the dispute is touching the business of the society. This is of course subject to provisions of Section 93(2) of MCS Act, nature of which has been discussed earlier. Thus, there cannot be any one principle laid down, which would have universal application to all cases. All will depend upon the facts and circumstances of each case.

19. Now let us again go back to the material placed on record by the parties. I have already referred to the documents filed by the petitioner and have also expressed an opinion about

what do they indicate. Even when they are considered against the claim of the respondent no.1, they, in my view, give rise to only one conclusion and it is that the petitioner society is the owner of the building, which comprises 14 flats and 5 shops. In other words, the subject shops are constructed and owned by the petitioner society and that the respondent no.1 is not the owner thereof nor has he constructed them from out of his own funds. Such a conclusion is possible by a simple examination of the material placed on record by the parties as the contents of the material have not been disputed by the parties, which makes its reading without any further proof possible. This is, therefore, not a case which involves so complicated questions of fact and law or of disputed facts as to title to property as would require adjudication by civil Court. This can be seen and confirmed by revisiting the very material available on record.

20. The minutes of meeting dated 05/10/1967 sufficiently disclose that the society was to be formed for constructing a building by purchasing land from the owners, including the respondent no.1. The minutes of first general body meeting dated 10/07/1971 show that all the actions taken by the Chief Promoter regarding entering into agreements with the land owners for purchase of land, appointment of Contractor- M/s. JKF Enterprises

for the construction of the Society's building "for a lumpsum amount of Rs.4,24,700/-", appointment of architect and engineer for construction of the building and doing all incidental things, payment of certain fees to them, subscription of Rs.10/- per flat and Rs.20/- for all the shops, to be made by each of the members of the society with effect from 01/08/1971 and so on and so forth, have all been ratified. Even the sale deeds dated 30/10/1971, to which the respondent no.1 was a party, either as a vendor or a confirming party, also referred to the resolutions passed in the first general body meeting dated 10/07/1971. These documents nowhere show that the building consisting of flats and shops was to be constructed and was indeed constructed by the respondent no.1.

21. The respondent no.1, I must say, has not raised even a whisper of protest or doubt about these documents. It is his case, as seen from his reply dated 25/02/2002 given to notice dated 06/02/2002 issued under Section 91(2) of the MCS Act by the respondent no.2, that the building was constructed by he himself and his co-owners on the land belonging to all of them and these flats were sold by all the owners/ builders to various purchasers under agreements of sale and that the shops were not sold by the owners. He has also averred that these flats were sold by the

owners/ builders at a cost, which included not only the cost of respective flats, but also the proportionate cost of land, that was duly received by them from the respective purchasers. He had also produced before the respondent no.2, one agreement of sale dated 20/09/1967 regarding sale of flat no.14 to one Lawrence S. Mendes and also a copy of receipt dated 31/01/1968 issued by him in favour of one Caetano D'Mello regarding sale of yet another flat being flat no.22. Both these transactions were prior to the first general body meeting dated 10/07/1971 and sale deeds dated 30/10/1971. The respondent no.1 was consenting and ratifying party to the resolutions passed in first general body meeting and also to the sale deeds. But, the respondent no.1 has not said anything about the sale of flats or receipt of the cost of the flats together with proportionate cost of land from various purchasers of flats in the said meeting or in the sale deeds. If he had really agreed to sell these flats, asserting himself to be the owner of the flats, the respondent no.1 would have certainly protested in the first general body meeting and at any rate, would not have ratified various acts, which have been already discussed earlier. Even, in the sale deeds, he would have certainly mentioned all these facts. The sale deeds dated 30/10/1971 show that what was transferred to the petitioner society, was the entire land and not only that much of land, which was left out after selling proportionate

portions of the land, together with flat, to various purchasers, as claimed by the respondent no.1. If as per the own claim of the respondent no.1, the cost that he received from the flat purchasers included the cost of the flat and proportionate cost of the land, there was no reason for the respondent no.1 to again sell for consideration that portion of the land, in respect of which, he had already received price of the land from the respective flat purchasers. In such a situation, the respondent no.1, as a law abiding citizen and conscientious owner, would have certainly made clean breast of his previous dealings in this fashion and ensured that there was no selling of the land twice and unjust enrichment. The fact that such a course was not adopted by the respondent no.1, speaks volumes for itself. The assertion of the respondent no.1 that it is him who had constructed the building consisting of flats and shops and it is he who owns the shops in the society is manifestly sham and has been made just for namesake, without any basis of whatsoever nature.

22. There are other documents as well, which sufficiently indicate the ownership of the society in respect of the shops. These documents include registration application dated 14/08/1971 together with its accompaniments, including the questionnaire and Auditor's report dated 10/11/2001 for the year

2000-2001. These documents do show that the society building consists of flats and shops as per the approved plans and occupancy certificate and that the entire building was constructed by the society from out of its share capital subscribed to by its members, including the respondent no.1. The cost of the scheme has been shown to be at Rs.5,62,700/-, of which, cost of construction of the building is Rs.4,24,700/-. They further show that Rs.5,54,800/- was collected by the society by way of share capital, deposit, etc. from its members. These documents have not been disputed by the respondent no.1 nor the respondent no.1 has given any explanation or clarification in respect of these documents.

23. So, the inevitable conclusion that can be made from the discussion of the above referred facts and circumstances is that the building consisting of 14 flats and 5 shops, was constructed by the society from its own funds, sourced through subscriptions of its members and it was constructed by appointing a Contractor M/s. JKF Enterprises and assisted by society appointed architect and engineer. The respondent no.1 has not produced on record a single document showing that he had constructed the building from his own fund through M/s. JKF Enterprises, of which, admittedly, he is one of the partners. The

respondent no.1 could have placed on record, he being partner, some agreement entered into by him and the other co-owners with M/s. JKF Enterprises, regarding development of the property, some receipts of the expenditure incurred by him towards cost of the construction and other supportive material. He has not done so. On the other hand, even though such expenditure receipts or agreement with the Contractor M/s. JKF Enterprises entered into by the society were not produced on record, the documents available on record, as discussed at length earlier, sufficiently establish the fact that the petitioner society is the owner of the building, which includes subject shops.

24. In a scenario as the present one, no adverse inference, as has been drawn by the respondent no.2 as well as the Appellate Tribunal, against the petitioner society for failure to produce on record construction agreement and expenditure receipts, could have been drawn as the petitioner's documents were not disputed by the respondent no.1 and they sufficiently established the claim regarding the ownership of the society. The claim of the society was further strengthened by the fact that even the respondent no.1 failed to produce on record any development agreement or expenditure receipts despite being partner of M/s. JKF Enterprises and did not care to mention anything about the

construction of building and selling of the flats by him in the various meetings of the society attended by him and also in the sale deeds. In fact, the first alleged agreement of sale dated 20/09/1967 executed by the respondent no.1 in respect of the sale of flat no.14 itself was about 15 days prior to the first meeting of the promoters, held on 05/10/1967. The minutes of this meeting show that the respondent no.1 was one of the promoters of the society formed for purchasing land and constructing a building thereon. In this meeting, the respondent no.1, for the reasons best known to him, did not utter a single word about the said agreement of sale rather, he chose to play ignorant and joined hands with other promoters in making a plan for formation of society for construction of building. All these facts would only and firmly show that the Society was formed for the purpose of constructing a building comprising flats and shops and that it is the society, which is the owner of the building that includes 5 subject shops since its inception. There is thus no substance in the submissions of the respondent no.1 that the society was formed after sale of flats to individual members and that the society has only possessory title and not the ownership title.

25. The learned President of the Co-operative Tribunal as well as the respondent no.2 have not considered the documents

produced on record by the petitioner and other material as discussed above and chose to go against well settled principles of law by drawing adverse inference against the petitioner by saying that the petitioner has not given any explanation with regard to the disputed documents of agreement of sale and receipt, showing sale of two flats by the respondent no.1. The explanation rather was owed by the respondent no.1, which he never gave. Both these Authorities have committed perversity and arbitrariness in appreciating the rival contentions and material produced on record by them. Therefore, I find that this is a fit case warranting interference with both the impugned orders.

26. In the circumstances, I hold that the petitioner has sufficiently established the fact that it is the owner of the subject shops and having regard to the nature of the reliefs claimed here, I further find that the dispute raised herein is the one falling within the four corners of Section 91 of the MCS Act and that the respondent no.2 has the jurisdiction to entertain and try the same.

27. The Writ Petition is allowed. The case is remanded to the respondent no.2, for being dealt with and decided in terms of Section 91 of the MCS Act, by following the procedure, in accordance with law. It is made clear that the view taken in this

case is confined to only the question as to whether or not the dispute raised herein is the one contemplated under Section 91 of the MCS Act and all contentions of the parties on merits of the case, are kept open, which shall be decided in accordance with law, by the respondent no.2.

S. B. SHUKRE, J.

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