

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1557 OF 2015

Vithalnagar Co-operative Housing
Society .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Rahul Narichania – Senior Advocate with Mr. Rohan Rajadhyaksha and Mr. Viral Amin i/b. B. Amin & Co. for Petitioner.

Ms Aparna Vhatkar – AGP for Respondent Nos. 1 to 3.

Mr. S. G. Desai – Senior Advocate with Mr. Manohar Shetty and Mr. R. V. Govilkar for Respondent Nos. 4 and 5.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 26 February 2016

Date of Pronouncing the Judgment : 17 March 2016

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the following orders, which have concurrently disapproved the action of the petitioner society seeking to expel the respondent nos. 4 and 5 as its members:

(a) The order dated 7 December 2007 made by the Deputy Registrar, Co-operative Societies, declining approval under Section 35 of the Maharashtra Co-operative Societies Act, 1960 (said Act) for expelling the respondent nos. 4 and 5 from

membership of the petitioner society;

(b) The order dated 3 March 2010 made by the Divisional Joint Registrar, Cooperative Societies, dismissing the petitioner's appeal against the Deputy Registrar's order dated 7 December 2007;

(c) The order dated 23 September 2014 made by the Minister (Co-operative Societies) dismissing the petitioner's revision petition against the aforesaid order made by the Deputy Registrar and the Divisional Joint Registrar of Co-operative Societies.

The aforesaid orders shall hereafter be referred to as 'the impugned orders' for the sake of convenience.

3] Mr. Rahul Narichania, the learned Senior Advocate appearing for the petitioner, has made the following submissions in support of this petition:

(A) That all the three authorities have misconstrued the provisions contained in Rule 29 of the Maharashtra Co-operative Societies Rules, 1961 (said Rules) as also the decision of this Court in the case of ***Aderabad Co-operative Housing Society Limited vs. Divisional Joint Registrar & Ors.***¹ for the purposes of holding that there was no proper notice to the respondent nos. 4 and 5 in the matter of their proposed expulsion from the membership of the

1 (2007) 5 Bom. CR 595

petitioner society. Reliance was placed upon the decision of the Division Bench of this Court in the case of ***Bhaskar Laxman Rane vs. Shri Gurudev Nityanand Co-operative Housing Society Ltd. & Ors.***², to submit that the notice issued to the respondent nos. 4 and 5 in the present case complied with the predicates of Rule 29 of the said Rules as interpreted in this decision of the Division Bench;

(B) That observations made in the impugned order dated 23 September 2014 by the Minister (Co-operative Societies) to the effect that the respondent nos. 4 and 5 are the owners of the suit plot and therefore, can sell the same to any person of their choice, are vitiated by perversity, being totally contrary to the material on record. In this regard, reliance was placed upon the decision of the Hon'ble Apex Court in the case of ***Baby vs. Travancore Devaswom Board & Ors.***³, to submit that orders based on findings of fact arrived at by non consideration of relevant and material documents, consideration of which would have led to opposite conclusion, can always be interfered with under Article 227 of the Constitution of India.

4] Mr. S. G. Desai, the learned Senior Advocate appearing for respondent nos. 4 and 5, at the outset submitted that no less than three authorities, upon appreciation of the material on record as well

² 1998 (4) Bom. C.R. 247

³ (1998) 8 SCC 310

as the legal position have rightly held that no proper notice as contemplated by Rule 29 of the said Rules was ever served upon the respondent nos. 4 and 5 in the present case. He submitted that service of proper notice in terms of Rule 29 of the said Rule, being a mandatory predicate even in terms of the decisions upon which reliance has been placed by the petitioner, the three authorities are entirely justified in disapproving the proposed expulsion of the respondent nos. 4 and 5 from the membership of the petitioner society. Mr. Desai placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil***⁴, and ***State of Haryana & Ors. vs. Manoj Kumar***⁵, to submit that concurrent findings of fact, based upon the material on record may not be interfered with in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India, particularly where the matter relates to private disputes between the parties and there being no allegations of private individual acting in collusion with the statutory authorities.

5] Mr. Desai submitted that the proposed action of the petitioner society is entirely malafide. However, since there are substantive disputes pending between the parties relating to the very grounds upon which the expulsion was unsuccessfully attempted by the

4 (2010) 8 SCC 329

5 (2010) 4 SCC 350

petitioner society, the respondent nos. 4 and 5 will have no objection if appropriate directions are issued to dispose of the said disputes, without, in any manner being influenced by the observations made by the statutory authorities on the aspect of nature of allotment of the suit plot to the respondent nos. 4 and 5 and the consequent entitlement of the said respondents to deal with the same.

6] Rival contentions now fall for determination.

7] The petitioner is a tenant ownership cooperative housing society deemed to be registered under the provisions of the said Act. By indenture of lease dated 10 December 1965, plot no. 64 admeasuring 485 sq. yards (suit plot) was leased to Harbhagwan Malhotra, who was duly admitted to the membership of the petitioner society. At the meeting of the managing committee held on 8 December 1980 the respondent nos. 4 and 5 were also admitted as joint members of the petitioner society and the lease in respect of the suit plot was also resolved to be transmitted in their names. The indenture of lease dated 27 February 1981 was also executed, *inter alia*, in favour of the respondent nos. 4 and 5.

8] By a notice dated 28 March 2006, the petitioner society, purported to terminate the lease in respect of the suit plot, by

alleging breaches of terms and conditions subject to which, the lease was made. The respondent nos. 4 and 5, thereupon, instituted dispute no. 185 of 2014 (old no. 378 of 2006) in the Co-operative Court, Mumbai, *inter alia*, impugning the notice of termination dated 28 March 2006. Till date, said dispute is pending before the Co-operative court.

9] On 11 December 2006, the respondent nos. 4 and 5 *inter alia* are stated to have assigned their leasehold rights to the suit plot in favour of Gautam Patel and Sonzal Patel (Patels). On 21 June 2007, the said Patels applied for membership of the petitioner society. The Deputy Registrar of Cooperative Societies by order dated 15 October 2007 has declared Patels as deemed members of the petitioner society. The petitioner's revision application against the same, has since been dismissed by the revisional authority on 10 November 2014. The petitioner society has instituted writ petition no. 11508 of 2014, which came to be admitted on 9 October 2015. There is an interim order in terms of prayer clause (c) of the said petition, in operation.

10] On 1 August 2007, the petitioner society issued show cause notice to the respondent nos. 4 and 5, requiring them to show cause as to why the said respondents should not be expelled from the

membership of the petitioner society under Section 35 of the said Act read with the said Rules and the bye-laws of the society. The notice also informed the respondent nos. 4 and 5 that a special body meeting of the society is fixed on 8 September 2007 and the said respondents would be allowed to attend the meeting, only in person and not through their attorneys. There is material on record which establishes that said notice was received by the respondent nos. 4 and 5 on 4 August 2007.

11] On 14 August 2007, the petitioner society issued notice to all its members to attend the special general body meeting fixed on 8 September 2007, inter alia, to discuss and deliberate upon issue of proposed expulsion of respondent nos. 4 and 5. The text of the proposed resolution proposed to be adopted at the meeting of 8 September 2007, was specifically transcribed in notice dated 14 August 2007.

12] In the meanwhile, the respondent nos. 4 and 5 through their constituted attorney submitted their reply to the notice dated 1 August 2007 to the managing committee of the petitioner society on 27 August 2007. By response dated 6 September 2007, the petitioner society informed the respondent nos. 4 and 5 that the cause shown by the said respondents in the matter of their

proposed expulsion was not satisfactory.

13] On 8 September 2007, at the special general body meeting of the petitioner society, the resolution for expulsion of respondent nos. 4 and 5 from the membership of the petitioner society was adopted by the special general body.

14] The petitioner society thereafter made application no. 8 of 2007 before the Deputy Registrar, seeking approval as required under section 35 of the said Act for expelling the respondent nos. 4 and 5 from membership of the petitioner society. By order dated 7 December 2007, the Deputy Registrar has dismissed the petitioner's application no. 8 of 2007 and declined approval for expulsion. The appeal instituted by the petitioner society was dismissed by the Divisional Joint Registrar on 3 March 2010. The Minister (Co-operative Societies), has thereafter dismissed the petitioner's revision petition by order dated 23 September 2014. Hence, the present petition.

15] Section 35 of the said Act provides that a society may, by resolution passed by a majority of not less than $\frac{3}{4}$ th of the members entitled to vote who are present at the general meeting held for the purpose expel a member for acts which are detrimental

to the interest or proper working of the society. The proviso to sub section 1 of Section 35 provides that no such resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no such resolution shall be effective unless it is approved by the Registrar. Sub Section (2) of Section 35 of the said Act deals with the aspect of readmission of an expelled member, with which, we are not concerned with in the present petition.

16] Rule 29 of the said Rules provides the procedure for expulsion of members and the same reads thus :

“29. Procedure for expulsion of members.

(1) *Where any member of a society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.*

(2) *When a resolution passed in accordance with sub-rule (1) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval."*

17] There was no serious dispute raised by the learned counsel for the contesting parties to the legal proposition that since expulsion of a member entails drastic consequences, the provisions contained in Section 35 of the said Act as well as Rule 29 of the said Rules are mandatory and have to be complied with before there can be any valid and effective expulsion. The dispute really was whether, the provisions contained in Rule 29 have indeed been complied with by the petitioner society or not. As noted earlier, three authorities have concurrently ruled that there was no such compliance by the petitioner society.

18] The petitioner society relies upon the show cause notice dated 1 August 2007 issued by the managing committee of the petitioner society to the petitioner, requiring the respondent nos. 4 and 5 to show cause as to why they should not be expelled from the membership of the petitioner society. Paragraphs 17 and 18 of the show cause notice, which can be said to contain the operative

portion, read thus :

“17. In the circumstances aforesaid you are hereby called upon to show cause to the Society within one month from the date of receipt hereof by you, why you should not be expelled from the membership of the Society and why the shares held by you in the Society should not be forfeited and why expulsion proceedings should not be adopted against you as provided under Section 35 of The Maharashtra Co-operative Societies Act, 1960 read with Rules 28 and 29 of The Maharashtra Co-operative Societies Rules and bye law 12 of the Society. If you have any explanation to give, you may send the same in writing to the Society within the aforesaid period. If, however you intend to remain present and explain to the General Body of Members, you may do so at the Special General Meeting fixed on 8th Sep. 2007 at 7.30 p.m. at 2nd Floor party hall, Next to Table tennis Hall, Juhu Gymkhana Club, 13th N. S. Road, J v p d Scheme, Mumbai 400019. Please note that only you would be allowed to attend the said meeting and your Agent / Representative and/or Power of Attorney holder shall not be allowed to attend the same in any circumstances.

18. If however, in the meantime any explanation is received from you the same will be circulated to the Members of the Society and placed before the General Meeting for its consideration.”

19] The material on record, does indicate that the aforesaid show cause notice dated 1 August 2007 was received by the respondent nos. 4 and 5 on 4 August 2007. Therefore, relying upon the decision of the Division Bench in the case of *Bhaskar Rane* (supra), Mr.

Narichania contended that the services of such notice containing the gist of the proposed action served upon the respondent nos. 4 and 5 more than one month prior to the date fixed for the special general body fixed on 8 September 2007 constitutes compliance with the procedure prescribed under Rule 29 of the said Rules. Mr. Narichania, emphasized that the notice is prescribed by Rule 29 of the said Rules contemplates notice to the member or members against whom resolution for expulsion is proposed to be passed at least one month prior to the date of the meeting.

20] Mr. Narichania submitted that the three authorities have made reference to notice dated 14 August 2007 which was addressed to the members of the petitioner society and incorrectly regarded the said notice as one issued in terms of Rule 29 of the said Rules. Mr. Narichania submitted that notice dated 14 August 2007, was notice to the members of the society that special general body meeting to consider the expulsion of the respondent nos. 4 and 5 is scheduled for 8 September 2007. However, the notice in terms of the provisions contained in Rule 29 issued to the respondent nos. 4 and 5 was the notice dated 1 August 2007, which was admittedly received by the said respondents on 4 August 2007 and therefore, there is compliance with the provisions contained in Rule 29 of the said Rules.

21] In the context of the provisions contained in Rule 29 of the said Rules, the learned Single Judge of this Court in the case of *Aderabad Co-operative Housing Society Limited* (supra), after consideration of the decision of the Division Bench in the case of *Bhaskar Rane* (supra) at paragraphs 36 and 37 has observed thus:

“36. Since a notice of expulsion entails drastic consequences the provisions of Rule 29 are held to be a mandatory and a notice of less than one month under the said Rule is held liable to be set aside in the case of Bhaskar Rane (supra) as well as in the case of (Narayan Ramkrishna Embadwar v. Assistant Registrar, Co-operative Societies, Yavatmal) 1996 Supp Bom. C.R. (N.B.) 721 : 1994 Mh. L.J. 822.

37. A reading of Rule 29 shows that the resolution incorporated in the agenda of the next general meeting is to be notified to the member proposed to be expelled. The agenda has not been shown in the Notice dated 27.12.2004, though it sets out the case of the petitioner – Society against respondent Nos. 3 and 4 for their expulsion on merits. The agenda incorporating the resolution is served upon respondent nos. 3 and 4 only on 30.1.2005. It cannot, therefore, be taken to be strict compliance of the notice contemplated under section 35 of the MCS Act read with Rules 28 and 29 of the MCS Rules. Accordingly, in the impugned order, respondent No. 1 has correctly concluded that the said notice falls short of the statutory period.”

(Emphasis supplied)

22] In the facts and circumstances of the present case, if the notice dated 1 August 2007 is perused, it is quite clear that the notice of the proposed resolution included in the agenda for the next general meeting with regard to the expulsion of the respondent nos. 4 and 5, is not contained therein. The circumstance that the gist of the proposed action is contained in the notice, was not regarded as compliance with the mandatory provisions contained in Rule 29 of the said Rules in the case of *Aderabad Co-operative Housing Society Limited* (supra). In paragraph 37 referred to above, it has been observed that the agenda has not been shown in the notice dated 27 December 2004, though it sets out the case of the petitioner society against the respondent nos. 3 and 4 for their expulsion on merits. Further, in the said case, the agenda incorporating the resolution was served upon the respondent nos. 3 and 4 in the said case only on 30 January 2005, when in fact, the special general body meeting was scheduled to be held on 6 February 2005. The learned Single Judge in the case of *Aderabad Co-operative Housing Society Limited* (supra) has taken note of and considered the decision in the case of *Bhaskar Rane* (supra) as also the decision in the case of ***Narayan and etc. etc.. vs. Assistant Registrar, Co-operative Societies, Yavatmal & Ors.***⁶, to which reference shall be made hereafter.

6 AIR 1994 Bom. 239

23] In the present case as well, the agenda incorporating the resolution proposed to be passed in the meeting scheduled on 8 September 2007 is contained in the notice dated 14 August 2007. There is some controversy as to whether the notice dated 14 August 2007 was at all served upon the respondent nos. 4 and 5 in the present case. However, even if we are to proceed on the basis that the same was served upon the respondent nos. 4 and 5 on 14 August 2007 itself, there would be no compliance with the mandatory provisions contained in Rule 29 of the said Rules, because, such notice is required to be served upon the members against whom the resolution of expulsion is proposed to be brought at least one month prior to the date of the special general body meeting where such resolution is to be considered. Thus construed, it cannot be said that view taken by the three authorities concurrently is vitiated by any jurisdictional error or suffers from any serious legal infirmity.

24] In the case of *Narayan* (supra), the learned Single Judge of this Court Hon'ble Mr. Justice Sirpurkar (as His Lordship then was) has after quoting the provisions contained in Rule 29 at paragraph 3, observed thus :

“The language of Rule 29 thus is very clear that where the society proposes to expel a member from the membership, not only that the member shall be individually served with a notice, which would contain an

agenda of the said proposed general body meeting but the said meeting has to be held not earlier than a period of one month from the date of such notice. In the present case admittedly the notice is dated 4.1.1986. Meeting has been held on 1.2.1986 i.e. within a period of one month. **The language of Rule 29 is mandatory and as such the meeting in which the resolution of expulsion of these members was passed is itself rendered illegal.** The Assistant Registrar, who granted approved of this expulsion was bound under Section 35 of the Maharashtra Co-operative Societies Act to consider this aspect as the said approval by the Registrar provided in Section 25(1) of the Act is not an empty formality. The Registrar, who was approached by the society for the approval of the resolution, has to examine all the legal aspects with open eyes. He cannot depend only upon the submissions made to him by the parties. I have seen the order of the Assistant Registrar, which is completely silent on this aspect. It is significant to note that in the appeal memos this point was specifically raised by all the three petitioners. It was pointed out that the mandatory notice firstly was never served and secondly the meeting itself was an illegal meeting having been held before the period of one month being elapsed after the notice was given. The Divisional Joint Registrar has merely referred to this point but has not bothered to consider the importance of the matter. He has merely stated that such point was not raised before the Assistant Registrar. Whether such point was raised before the Assistant Registrar or not, the impact of this legal submission was bound to be considered by the Divisional Registrar particularly because the provision in Rule 29 is a mandatory provision. **Similar such controversy came up**

before this court in Writ Petition No. 2601/1990, decided on 20.11.1990 (M.S. Deshpande, J.) wherein this Court has taken the view that Rule 29 is of a mandatory nature and non-compliance with the same will make the resolution illegal. The decision being of co-ordinate bench of this court is binding on me. The provision being a mandatory provision, merely because the question was not raised before the Assistant Registrar, it would not absolve the authority by simply saying that the mandatory provisions of law were complied with by the society before the expulsion resolutions were passed."

(Emphasis supplied)

25] In the notice dated 1 August 2007, upon which the petitioner society placed strong reliance there is neither any reference to the agenda nor the resolution which was proposed to be passed in the special general body meeting. The contention that mere gist of the proposed action might suffice as has been specifically rejected by the learned Single Judge of this Court in the case of *Aderabad Co-operative Housing Society Limited* (supra). In the case of *Narayan* (supra) this Court has held that not only the member shall be individually served with a notice, which would contain agenda of the said proposed general body meeting but the said meeting has to be held not earlier than a period of one month from the date of such notice. The interpretation adopted by the two learned Single Judges of this Court in the matter of compliance with the provisions contained in Rule 29 of the said Rules, was therefore, rightly

followed by the authorities under the said Act and it cannot be said that the impugned orders are vitiated by any jurisdictional errors, so as to warrant interference under Article 227 of the Constitution of India.

26] The decision in case of *Bhaskar Rane (supra)* is not an authority for the proposition that the notice as contemplated by Rule 29 of the said Rules need not include the agenda and the resolution which is proposed to be passed in the special general body meeting. In fact, such an issue did not arise for determination in the case of *Bhaskar Rane (supra)*. There is certainly, no jurisdictional error on the part of the three authorities in following the law laid down by this Court in cases of *Aderabad Co-operative Housing Society Limited (supra)* and *Narayan (supra)*.

27] The show cause notice dated 1 August 2007 issued by the managing committee of the petitioner society to the respondent Nos.4 and 5, in the facts and circumstances of the present case, appears to be a notice to show cause as to why resolution for proposed expulsion be not placed before the general body. The managing committee of the petitioner society, upon consideration of the cause shown, has on 6 September 2007, even replied to respondent Nos.4 and 5 that the cause shown by them was not found to be satisfactory. If the notice dated 1 August 2007 was

intended to be compliance with the procedure contained in Rule 29 of the said Rules, then there was no question of addressing response dated 6 September 2007 to the respondent Nos.4 and 5, rejecting the cause shown by them, even before the cause shown by respondent Nos.4 and 5 was placed before the general body scheduled to meet on 8 September 2007. In contrast, notice dated 14 August 2007, makes specific reference to the resolution to be included in the agenda for special general body scheduled for 8 September 2007. The notice dated 14 August 2007, does comply with the predicates prescribed under Rule 29, in the matter of inclusion of the agenda and the proposed resolution. However, since the special general meeting was held on 8 September 2007, i.e., earlier than period of one one month from the date of such notice, obviously, applying law laid down not just in the cases of *Aderabad Co-operative Housing Society Limited (supra)* ; *Narayan (supra)*, but also in case of *Bhaskar Rane (supra)* upon which reliance was placed by the petitioner, the three authorities, were quite right in the view which they have taken. Accordingly, no case is made out to interfere with the conclusion concurrently recorded by the three authorities.

28] Although, the conclusion recorded by the three authorities does not call for interference considering the restrictive parameters of jurisdiction under Article 227 of the Constitution of India,

nevertheless, Mr. Narichania is right in his submission that the Minister (Co-operative Societies) was not justified in observing that the respondent nos. 4 and 5 are the owners of the suit plot and therefore, they can sell the suit plot to any person of their choice. There was neither any occasion nor any reason to make such observations, after having upheld the orders made by the Deputy Registrar and the Divisional Joint Registrar, in the matter of non compliance with the provisions contained in Rule 29 of the said Rules. Accordingly, the said observations are not approved. There does not appear to be substantial difference between the grounds upon which the expulsion of the respondent nos. 4 and 5 was proposed and the grounds of termination of lease in respect of the suit plot. The dispute in the context of such termination is pending before the Co-operative Court vide dispute no. 185 of 2014, as noted earlier. In these circumstances, it would be appropriate to direct that the dispute no. 185 of 2014 be decided by the Co-operative Court, uninfluenced by such observations in the impugned orders. Directions to this effect are issued accordingly.

29] Accordingly, Rule is made partly absolute. Although, the challenge to the impugned orders is rejected, the findings in the impugned order dated 23 September 2014 made by the Minister (Co-operative Societies) to the effect that the respondent nos. 4 and 5 are owners of the suit plot and therefore, can sell the same to any

person of their choice, are not approved. Such issue is specifically kept open to be decided by the Co-operative Court in pending dispute no. 185 of 2014, without in any manner, being influenced by such observations.

30] In the facts and circumstances of the present case, there shall be no order as to costs.

31] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka