

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 723 OF 2016**

Shri P.G. Kenkre,
Son of late Govind Kenkre,
Aged 74 years,
C/o La Campala Co-operative
Housing Society Ltd.,
Campal, Panaji-Goa.

... Petitioner

Versus

The Goa State Co-operative Housing
Finance & Federation Ltd.,
having its office at IIIrd Floor,
Gomes Building, Near Hotel Delmon,
Panaji-Goa.

... Respondent

Mr. Gaurish N. Agni, Advocate for the Petitioner.

Mr. Devidas J. Pangam, Advocate for Respondent no.1.

Coram:- C. V. BHADANG, J.
Date:- 18th January, 2017.

P.C.:

This petition challenges the judgment and order dated 21/3/2011 passed by the Assistant Registrar of Co operative Societies, Arbitration and Execution, (North Goa District) Panaji-Goa, by which the Asst. Registrar while rejecting the objection raised on behalf of the petitioner had held that

there exists a dispute within the meaning and purview of section 83 of the Goa Co operative Societies (amendment) Act 2009.

2. Shri Pangam, the learned counsel for the respondent no.1 has raised a preliminary objection on the ground that the petitioner has an alternate remedy against the impugned order under section 114 (7) of the Act. He relies on the decision of this Court in the case of MANDОВI NAGAR COOPERATIVE HOUSING SOCIETY LTD. VS. THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES AND TWO OTHERS, 1995 (2) Goa L.T. 148, in order to submit that in respect of similar provisions contained in the Maharashtra Cooperative Societies Act 1960, it has been held that a revision lies.

3. It is not in dispute that prior to the coming into force of the Goa Co-operative Societies Act, the provisions of the Maharashtra Co-operative Societies Act were applicable in the State of Goa. Section 149 (9) is in pari materia with the provisions of section 114 (7), while section 91 of the Maharashtra Co-operative Societies Act are in pari materia with the provisions of section 83 of the Goa Act. In the context of a similar dispute where the Asst. Registrar had held that a dispute arises, this is, what was held in paras 23 to 25 of the judgment in the case of Mandovi Nagar (supra):

“23. As already mentioned earlier on the showing of the counsel for the tenants that if the Assistant Registrar was to take a decision that there was a dispute, he would have naturally gone on to decide the dispute on merit, in which event, there was an appeal provided under Section 97 itself. There can be, therefore, no finality to that decision of the Assistant Registrar. For the same reasons it must be held that even when the Assistant Registrar decides that the matter referred to him is not a dispute within the meaning of Section 91(1) no finality can be attached to such a decision. Coming back to Section 149(9) of the Act I have seen that the Tribunal is empowered to call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed with a power to the Tribunal to annul, modify or reverse etc. It is not disputed on behalf of the tenants that if the matter had proceeded after the Assistant Registrar had come to the conclusion that there was a dispute within the meaning of the Act, an appeal would lie to the Tribunal. The words 'any decision or order passed' can be gone into by the Tribunal in its revisional jurisdiction cannot be ignored. In my view there is no other manner of looking at the scheme and hold otherwise. As mentioned earlier there is no warrant for taking the view as canvassed by Shri Usgaonkar for the tenants. In my view, therefore, the Tribunal clearly fell in error in holding that it has no jurisdiction to entertain the revision filed by the respondents.

24. The revisional power conferred on the Tribunal under Section 149(9) empowers the Tribunal to call for and examine the record of any proceeding for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. The words 'any decision or order' cannot also be construed narrowly to hold that the Tribunal has not been given power to entertain a revision when the Assistant Registrar decides that a matter referred to him is not a dispute under Section 91(1) of the Maharashtra Co-operative Societies Act. This will be another factor, in my view, which cannot be overlooked.

25. The order of the Tribunal dated 30th April 1991 will have to be quashed and set aside. Once I have come to this decision the next question is whether I should go into the

other contentions raised by Shri Kamat Counsel for the petitioner, that this Court itself should decide whether matters raised before the Assistant Registrar is a dispute within the meaning of Section 91(1) of the Maharashtra Co-operative Societies Act in that it touches either the business and/or management of the Society. On this point I must say that I am in agreement with Shri Usgaonkar, learned Counsel for the tenants, that this Court should not usurp the jurisdiction of the Tribunal, which is a statutory forum under the Act. I am aware that some times Superior Courts embark upon to decide pure questions of law and perhaps nothing can be faulted with such exercise but when mixed questions of law and facts are required to be decided, then in my opinion they must be left to be decided by the forum created by the statutes. I am also equally aware that Society before me is invoking a writ jurisdiction and, therefore, all the more reason to leave the controversy to be decided by the Tribunal.”

4. It can thus be seen that the revisional power conferred on the Tribunal under section 114 (7) of the Goa Act cannot be construed narrowly and a revision would lie against the impugned order before the Co-operative Tribunal.

5. Faced with this, the learned counsel for the petitioner seeks permission to withdraw the writ petition with liberty to take recourse to the remedy under section 114 (7) of the Goa Act. Accordingly, the petition is disposed of as withdrawn with liberty as prayed. The rival contentions of the parties on merits are left open.

6. In the event there is an issue of limitation which arises, the Tribunal

shall have due regard to the provisions of sections 5 and 14 of the Limitation Act.

C. V. BHADANG, J.

ap/-