

Mr. Shanay Shah i/b. Ms Radhika Samant for Petitioners.
Mr. Himanshu Takke, AGP for Respondents No.1 to 4-State.
Mr. Bhalchandra G. Saraf for Respondent No.6.

P.C. :

Heard Mr. Shah, learned Counsel for petitioners, Mr. Takke, learned AGP for respondents No.1 to 4-State and Mr. Saraf, learned Counsel for respondent No.6 at length.

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Section 21 of the Act. Aggrieved by this decision, Appeal No.22 of 2014 was preferred by the petitioners. During the pendency of the appeal, order of status-quo was passed on 19.05.2014. Appeal was eventually dismissed on 15.09.2014. Petitioners preferred Revision Application before the State Government and by order dated 18.04.2016, respondent No.2 dismissed the Revision Application. It is against these decisions, petitioners have instituted the present Petition.

3. Mr. Saraf raised preliminary objection on the ground of maintainability of the Petition at the behest of the petitioners. He submitted that respondent No.5 society's registration was cancelled on 31.12.2013. Though the status-quo was granted on 19.05.2014, it does not operate as stay to the order dated 31.12.2013. In other words, he submitted that the cancellation of the registration was not revived by the order of the status-quo. He further submitted that during the pendency of the appeal as also revision application preferred by the petitioners, no stay was granted to the order of bifurcation. He further submitted that after bifurcation, respondent No.5 is divided into - (i) Om Shree Geetanjali Nagar A & B Co-operative Housing Society Limited and (ii) Om Shree Geetanajli Nagar C Wing Co-operative Housing Society Limited. Petitions claims to be members of Om Shree Geetanjali Nagar 'C' Wing Co-operative Housing Society Limited comprising of 180 members. Petitions have not instituted present Petition in a representative capacity for and on behalf of 180 members. He, therefore, submitted that Petition at the behest of two members of Om Shree Geetanjali Nagar 'C' Wing Co-operative Housing Society Limited is not maintainable.

4. On the other hand, Mr. Shah strenuously contended that Section 18(2)(b) of the Act lays down that no order of amalgamation, division,

re-organization can be made by the Registrar unless he has dealt with the suggestions and objections which may be received either from the society or from any member or class of members thereof, or from any creditor or class of creditors. He submitted that in the present case, petitioners have filed objections on 29.10.2013 at exhibit-M (pages 124 to 126) as also exhibit-M1 (pages 127 to 129). After hearing the petitioners, respondent No.3 passed order on 31.12.2013. Aggrieved by that decision, petitioners instituted Appeal No.22 of 2014 under Section 152 of the Act and on 19.05.2014, status-quo was granted. Appeal was ultimately dismissed on 15.09.2014. He submitted that respondent No.6 did not raise objections about maintainability of the appeal on the ground that out of 180 members of society, only two members have instituted the appeal or on the ground that appeal is not instituted in a representative capacity.

5. Mr. Shah submitted that after the appeal was dismissed, petitioners instituted Revision Application under Section 154 of the Act. He submitted that Section 154 lays down that the State Government or the Registrar, suo motu or on an application, may call for and examine the record of any enquiry or proceedings of the matter. It further lays down that if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may deem fit. As the petitioners are affected persons by the bifurcation of the society, they have right to maintain Revision Application under Section 154 of the Act. That apart, respondent No.6 did not raise objection about locus of the petitioners in maintaining the Revision Application or that Revision Application is not instituted in a representative capacity under Order I,

Rule 8 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). He relied upon the Full Bench decision of the Punjab and Haryana High Court in the case of ***Jasbir Singh Vs. Commissioner (Appeals), Jalandhar Division***, 2011 SCC OnLine P & H 8055, and in particular paragraphs 49 and 50 thereof.

6. On the other hand, Mr. Saraf relied upon the decision of this Court in the case of ***Gorakh Hilal Patil Vs. Parit Samaj Seva Mandal***, 2012 (6) Bom.C.R. 619, and in particular paragraph 26 thereof. He further submitted that even otherwise, all the authorities have concurrently ordered bifurcation of the society and therefore, it is not a fit case for invocation of powers under Article 226 of the Constitution of India at the behest of two members.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, under Section 18, proceeding for bifurcation of respondent No.5 society was initiated. It is no doubt true that as per Section 18(2)(b) of the Act, any member or class of members can file objections / suggestions to the proposed bifurcation. In the present case, petitioners have filed objections on 29.10.2013 to the proposed bifurcation and they were heard by the Deputy Registrar, respondent No.4. By order dated 31.12.2013, respondent No.4, in exercise of powers conferred by Section 18 read with Rule 17 of the Rules, ordered bifurcation of respondent No.5, Society into - (i) Om Shree Geetanjali Nagar A & B Co-operative Housing Society Limited comprising of Building 'A' consisting of 9 members and Building 'B' consisting of 29 members and also gave registration number and (ii) Om Shree Geetanajli Nagar 'C' Wing Co-operative Housing Society Limited comprising of Building C-1 to 9 consisting of 180 members and also

separately gave registration number.

8. It is no doubt true that respondent No.5 as also petitioners herein preferred appeals against the order dated 31.12.2013. It is also evident that by order dated 19.05.2014, the Divisional Joint Registrar, respondent No.3 ordered status-quo. In my opinion, the grant of status-quo on 19.05.2014 will not operate stay to the order dated 31.12.2013. The cancellation of the registration of respondent No.5 society and bifurcation of respondent No.5 in two societies, as indicated hereinabove, will not stand cancelled and that existence of respondent No.5 will stand revived. Section 21 of the Act reads thus,

“21. Cancellation of registration.- The Registrar shall make an order cancelling the registration of a society if it transfers the whole of its assets and liabilities to another society, or amalgamates with another society, or divides itself into two or more societies or if its affairs are wound up, or it is deregistered under the provisions of sub-section (1) of section 21A or winding up proceedings in respect of the society are closed or terminated under section 109.

The society shall, from the date of such order of cancellation, be deemed to be dissolved and shall cease to exist as a corporate body.”

9. It is also not in dispute that the appeal was ultimately dismissed on 15.09.2014. Aggrieved by that decision, petitioners preferred Revision Application before the State Government. During the pendency of the Revision Application, no stay to the order dated 31.12.2013 was operating. Revision Application was ultimately dismissed on 18.04.2016.

10. In the case of **Gorakh Hilal Patil** (*supra*), this Court has observed in paragraph 26 thus,

“26. The contention of the counsel for the respondents that in case of *Singhai Lal Chand Jain (dead) Vs. Rashtriya Swayamsewak Sangh, Panna & ors.* (1996) 3 Supreme Court Cases 149, the Supreme Court has taken a view that the decree

passed in the suit will not be a nullity on the ground of mere not seeking a permission of the Court under Order I Rule 8 of the Civil Procedure Code and, therefore, in the instant case also merely because no permission is taken from the Court to institute the suit in the representative capacity, would not nullify the decree, is not acceptable. From the reading of the facts in case of Singhai (supra), eviction suit filed against the respondent and represented by the Manager, the President who was practicing Advocate, and also member, and all the three were prosecuting the suit. Therefore, in that case eviction suit was filed against the registered body through its Manager, President and member and all the three persons were competent to file the suit. Therefore, in the facts of that case, the Hon'ble Supreme Court had taken that view. However, in the instant case, admittedly the respondent No.1 is unregistered. It is not a registered Society or Trust etc. Therefore, it was open for all 262 members to institute the suit. The 5 plaintiffs who instituted and prosecuted the suit have not prosecuted the suit in representative capacity by taking the permission from the Court as contemplated under the provisions of Order I Rule 8 of the Civil Procedure Code. Therefore, the suit which was instituted by the respondent No.1 should have been filed by joining all its 262 members who were necessary parties to the suit. If at all the respondent No.1 wanted to file the representative suit, in that case, it was open for them to institute a representative suit by following the procedure prescribed under Order I Rule 8 of the Civil Procedure Code. In the present case, the suit was instituted in the name of Mandal through its President and 5 persons, who according to the respondent No.1 are panchas of the Mandal. The defect in the institution of suit is fatal to the maintainability of the suit itself. Therefore, in my opinion, taking overall view of the matter, it will have to be concluded that the suit which was instituted by the respondent No. 1 through its President and 5 other plaintiffs who are alleged to be the panchas of the Mandal, was not maintainable in absence of joining all 262 members as party to the suit. I also find force in the arguments of the counsel for the applicants that, if at all the possession of the suit property is to be handed over, it will have to be handed over to the 5 plaintiffs who are no more. Since the institution of the suit itself suffers from non joinder of necessary parties and the defect in the institution of the suit is fatal to the maintainability of the suit, handing over possession to the individuals who stepped in the shoes of 5 original plaintiffs who died during the pendency of the suit, would even cause damage and prejudice to the interest of the respondent No.1 itself. Therefore, though there are concurrent

findings of the fact that the respondent No.1 is entitled to decree for bonafide requirement, the defect in the institution of the suit is fatal to the maintainability of the suit and, therefore, the suit should necessarily fail. In the instant case, the trial Court has neither exercised the discretion under Order I Rule 8(1)(b) of the Civil Procedure Code to direct one or more persons to sue on behalf of all persons, nor the plaintiffs sought such permission by way of filing application to exercise such discretion. A specific objection was raised by the original defendants for maintainability of the suit.

Therefore, taking overall view of the matter, in my opinion, the judgments and orders passed by the courts below are not sustainable. Therefore, having been concluded that the suit was not maintainable, all further proceedings on merits and decree passed thereafter are of nullity.”

11. In the present case, admittedly, petitioners have not instituted the present Petition in the representative capacity under Order I, Rule 8 of C.P.C. for and on behalf of 180 members of Om Shree Geetanajli Nagar 'C' Wing Co-operative Housing Society Limited. They have also not sought leave under Order I, Rule 8 of C.P.C. In view thereof, I do not find that petitioners can maintain the present proceedings in this Court. It is no doubt true that respondent No.6 did not raise this objection either in the Appeal under Section 152 or in Revision Application under Section 154 of the Act, that however, will not confer locus on the petitioners to maintain this Petition.

12. That apart, as noted earlier, Om Shree Geetanajli Nagar 'C' Wing Co-operative Housing Society Limited comprises of 180 members. Except two petitioners, rest of the members are not complaining and / or challenging the impugned orders. Even on this ground, no case is made out for invocation of powers under Article 226 of the Constitution of India, more so when all the authorities have concurrently ordered bifurcation of the respondent No.5 society. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)