

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.3782 of 2004

(Arising out of order dated 20-9-2004 of the learned Joint Registrar, Co-operative Societies, Chhattisgarh in Appeal Case No.77(1)/220/R/04)

Order reserved on: 16-1-2018

Order delivered on: 25-1-2018

1. Smt. Neha Chowda, W/o Rajesh Chawda, aged about 36 years, R/o House No.833, Sundar Nagar, Raipur (C.G.) represented through her Power of Attorney Holder – husband Rajesh Chawda.
2. Rajesh Chawda, S/o B.K. Chawda, aged about 42 years, House No.833, Sundar Nagar, Raipur (C.G.)

---- Petitioners

Versus

1. The College Ward Co-operative Housing Society through its President – Sunil Kumar Tiwari, Sundar Nagar, Raipur (C.G.)
2. Smt. Shashi Upadhyay, Wd/o Late Suman Kumar, R/o Near Bus Stand, Naya Para (Rajim), Distt. Raipur (C.G.)
3. Joint Registrar, Co-operative Societies, Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Kishore Bhaduri and Mr. Pawan Kesharwani, Advocates.
For Respondent No.1:	Mr. Kshitij Sharma, Advocate.
For Respondent No.2:	Mr. Mayank Chandrakar, Advocate.
For Respondent No.3 / State: -	Mr. Shashank Thakur, Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The College Ward Co-operative Housing Society – respondent No.1 herein, which is a Co-operative Society registered under the provisions of the Chhattisgarh Co-operative Societies Act, 1960 (for short, 'the Act of 1960'), allotted plot No.608, area 2400 sq.ft., to respondent Smt. Shashi Upadhyay and executed a registered sale

deed in her favour on 21-10-1986. She could not commence and complete the construction, as required in the bye-laws of the society, within the stipulated time leading to raising of co-operative dispute under Section 64(2)(v) of the Act of 1960 by respondent No.2, as on account of non-construction within the stipulated time, her allotment was cancelled by respondent No.1 Society and it was reallocated to one Narayan Das Rathi on 22-10-1991, but later-on he surrendered the said allotment and accordingly, it was again allotted to petitioner No.1 herein and the respondent No.1 Society by registered sale deed dated 16-10-1998 executed a sale deed in favour of petitioner No.1 herein.

2. In the pending dispute filed by respondent No.2 Shashi Upadhyay, the Deputy Registrar, Co-operative Societies, by its order dated 31-3-2004 held that the cancellation of allotment made in favour of respondent No.2 Shashi Upadhyay is in accordance with law and she is only entitled for refund of sale consideration feeling aggrieved against which she preferred an appeal before the Joint Registrar, Co-operative Societies. The Joint Registrar, Co-operative Societies, by its order dated 20-9-2004 allowed the appeal and held that respondent No.2 Shashi Upadhyay has right over the disputed subject land plot No.608 and the present petitioner No.1 Neha Chawda is entitled for entire amount along with interest.
3. Questioning legality, validity and correctness of the order passed by the Joint Registrar, Co-operative Societies, this writ petition has been preferred in which the respondents have appeared and filed

their counter affidavit opposing the same.

4. Mr. Kishore Bhaduri, learned counsel appearing for the petitioners, would submit that the order of the Joint Registrar, Co-operative Societies, declaring that respondent No.2 is the title holder of the subject land, is without jurisdiction and beyond the authority of the co-operative court, right to make a declaration of title is the exclusive province of the civil court and that runs contrary to the provisions contained in Section 34 of the Special Relief Act, 1963. He relied upon the decisions of the Supreme Court in the matters of **Marine Times Publications Pvt. Ltd. v. Shriram Transport & Finance Co. Ltd. and another**¹ and **Satya Pal Anand v. State of Madhya Pradesh and others**².
5. Mr. Kshitij Sharma, learned counsel appearing for respondent No.1, would submit that the Joint Registrar, Co-operative Societies, has erred in setting aside the well reasoned and speaking order passed by the Deputy Registrar, Co-operative Societies, as such, the order of the Joint Registrar deserves to be set aside.
6. Mr. Mayank Chandrakar, learned counsel for appearing for respondent No.2, would submit that the order passed by the Joint Registrar is strictly in accordance with law, as the relief claimed in the application under Section 64(2)(v) of the Act of 1960, is within the province of the co-operative court and the dispute has rightly been raised and allowed by the impugned order. He would further submit that the sale deed made in favour of respondent No.2 Shashi Upadhyay was never cancelled and that can be cancelled

1 (1991) 1 SCC 469

2 (2016) 10 SCC 767

only by the jurisdictional civil court under Section 31 of the Specific Relief Act, 1963 as held in the matter of **Kusum S. Verma and another v. Pritam Singh Gulati and another**³.

7. I have heard learned counsel for the parties and considered their rival submissions and given thoughtful consideration and also went through the record with utmost circumspection.
8. In order to consider the plea raised at the Bar, it would be appropriate to consider the provisions contained in Sections 64 (1), (2)(iv), (v) and (3) of the Act of 1960 which read as follows: -

“64. Disputes.—(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among 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 a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

3 1998 (1) MPLJ 578

(f) a creditor of a society.

(2) For the purposes of sub-section (1), a dispute shall include—

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) xxx xxx xxx

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court.”

9. A focused glance of the aforesaid provisions would show that Section 64 of the Act of 1960 has been given overriding effect over any other law for the time being in force and any dispute touching the constitution, management or business, terms and conditions of employment of a society shall be referred to the Registrar by any of the parties to the dispute. The word 'dispute' has been elaborated in clause (iv) of sub-section (2) of Section 64 of the Act of 1960 which provides that dispute includes a question regarding rights including tenancy rights between a housing society and its tenants or its members. The word 'right' employed in clause (iv) of sub-section (2) of Section 64 of the Act of 1960 came-up for consideration before the High Court of Madhya Pradesh in the matter of **Nagrik Grih Nirman Sahkari Samiti Jagdalpur and**

another v. Anil Kumar Mane⁴. S.C. Pandey, J, while considering the question regarding right used in Section 64(2)(iv) of the Act of 1960 has held that this word is wide enough to include a question of title and it has been observed as under: -

“13. ... That apart, the dispute shall also be covered by Clause (iv) of Sub-Section (2) of section 64 of the Act i.e. a question regarding the rights etc. including tenancy right between housing society and tenants and members. The Sub-Section (2) of section 64 of the Act shows that for the purpose of Sub-Section (1) a dispute shall include a question regarding the rights between the housing society and its members including the tenancy rights. In the opinion of this Court, the word a question of right etc. is wide enough to include even a dispute regarding title. The word right is wide enough and the subsequent clause is only an illustration. ...”

10. Thus, the question of rights includes the question of title within the meaning of Section 64(2)(iv) of the Act of 1960.

11. At this stage, it would also be expedient to notice Section 82 of the Act of 1960. Clause (c) of sub-section (1) of Section 82 of the Act of 1960 provides as under: -

“82. Bar of jurisdiction of Courts.—(1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) any dispute, required to be referred to the Registrar or his nominee or board of nominees;

(d) xxx xxx xxx”

12. The aforesaid provision bars the jurisdiction of civil court if the dispute is required to be referred to the Registrar or his nominee or board of nominees. The M.P. High Court in **Nagrik Grih Nirman Sahkari Samiti Jagdalpur** (supra) dealing with Sections 64(2)(iv)

4 2000 RN 343

and 82 of the Act of 1960 has clearly held that once sale deed of plot is executed after allotment to its member by the Society and if it is again transferred in favour of another member, the dispute of this nature is covered by Section 64 of the Act of 1960 and no civil suit is maintainable and jurisdiction of civil court is barred.

13.A Division Bench of the M.P. High Court in the matter of **Madhavrao Kulkarni v. 9th Additional District Judge, Indore and others**⁵ has clearly held that in case of dispute between cooperative society and its members, the nature of the dispute is touching the business of society and clearly falls within the ambit of Section 64 of the Act of 1960 and jurisdiction of civil court is barred, and observed as under: -

“4. From the aforesaid contents of the plaint, it is clear that the main relief has been sought against the defendant No.1 Society and defendants Nos. 7 and 8 in whose favour the Society has allegedly registered plot No.178 or plot No.175 illegally. The learned Additional Judge to the Court of the District Judge, Indore has held that such a suit is squarely covered by S. 64 and 82 of the M.P. Cooperative Societies Act, 1960 and has, therefore, allowed the revision application and set aside the order of the trial Court in favour of the plaintiff. In para 15 of the order under challenge the learned Judge has correctly summarised the dispute and has correctly held that the dispute was mainly between the Society and its members. It is also not clear from the plaint as to how the respondents Nos.2, 3 and 4 were being held to be responsible for allotment of a particular plot to a particular member. The Court has rightly held that the dispute raised in the plaint was a dispute touching the constitution, management or business of the Society and has to be referred to the Registrar. Shri K.L. Sethi's contention that it was a dispute mainly about the allotment of plots by the Indore Development Authority cannot be accepted against the plain language of the plaint. There is, therefore, no force in this petition, which deserves to be dismissed.”

5 1991 RN 81

14. In the matter of **Satya Pal Anand v. State of Madhya Pradesh and others**⁶, the Supreme Court has held that the decision of the Society to cancel the allotment of a plot to its member and to allot the plot to another member, is undoubtedly the business of the Society and the Supreme Court observed as under: -

“28. The decision of the Society to cancel the allotment of a plot to its member or to rescind his membership and to allot the plot to another member, is undoubtedly the business of the Society. Any cause of action in that behalf, indeed, can be pursued before the competent forum by the aggrieved member or his legal representative. That will require examination of the governing cooperative laws and the bye-laws of the Society—to ascertain whether it is open to the Society to cancel the allotment of a plot to its members including to cancel the membership of such person. If that action of the Society is held to be just and permissible in law, the appellant may not be entitled to any other relief much less the declaration as sought. Further, remedy of writ cannot be used for declaration of private rights of the parties or enforcement of their contractual rights and obligations.”

15. Following the principles of law laid down in the above-stated judgments and flowing from the statutory provision contained in Section 64(2)(iv) read with Section 82(1)(c) of the Act of 1960, reverting to the factual matrix of the present case, it is undisputed position on record that respondent No.1 is a registered co-operative society incorporated under the provisions of the Act of 1960 which is engaged in the business of allotment of residential plots and executed a sale deed in favour of respondent No.2 bearing plot No.608 admeasuring 2400 sq.ft, situate at Sundar Nagar, Raipur on 21-10-1986 with a pre-condition of completing construction within a time of three years. The construction could not be carried out within the specified time by respondent No.2

⁶ (2016) 10 SCC 767

leading to cancellation of her allotment after obtaining permission from the Deputy Registrar, Co-operative Societies, on 3-7-1991 and thereafter allotment was made in favour of Narayan Das Rathi on 16-9-1991, but he surrendered the plot and it was allotted in favour of petitioner No.1 and sale deed was executed on 16-10-1998 for a sale consideration of ₹ 72,000/- which was challenged by respondent No.2 by raising a co-operative dispute under Section 64(2)(iv) of the Act of 1960 before the Deputy Registrar, Co-operative Societies unsuccessfully and on appeal being preferred, the Joint Registrar, Co-operative Societies, allowed the appeal and directed return of sale consideration to petitioner No.1.

16. Undisputedly, respondent No.2 is a member of respondent No.1 Co-operative Society and the dispute is with regard to cancellation of sale deed executed in her favour and transfer of said land in favour of petitioner No.1 which definitely is a dispute regarding rights of respondent No.2 touching the business of society for which co-operative dispute certainly lies under Section 64(2)(iv) of the Act of 1960 and jurisdiction of civil court is barred by Section 82(1)(c) of the Act of 1960 as held by the M.P. High Court in **Madhavrao Kulkarni** (supra), a Division Bench decision, which has been subsequently followed by the M.P. High Court in **Nagrik Grih Nirman Sahkari Samiti Jagdalpur** (supra) holding question of right includes question of title also, as such, the dispute between respondent No.1 and respondent No.2 is definitely a co-operative dispute between the co-operative society and its member (respondent No.2) touching the business of the society and undisputedly, falls within the ambit of Section 64(2)(iv) of the Act of

1960. Once the dispute is referable and has been referred to the Registrar, Co-operative Societies, looking to the fact that in case of dispute between the co-operative society and its members and the nature of dispute is touching the business of the society, civil court has no jurisdiction and civil suit is barred by virtue of the provisions contained in Section 82(1)(c) of the Act of 1960. Therefore, the dispute has rightly been entertained by the Joint Registrar, Co-operative Societies and the plea of jurisdiction raised by the petitioners in this regard is held to be unacceptable. Further, it has rightly been entertained by the Joint Registrar, Co-operative Societies in appeal holding it to be the co-operative dispute entertainable under Section 64 (2)(iv) of the Act of 1960.

17. There is one more reason for upholding the order of the Joint Registrar, Co-operative Societies in appeal. It is not in dispute that sale deed was executed by respondent No.1 in favour of respondent No.2, but the registered sale deed was sought to be cancelled by respondent No.1 after leave of the Deputy Registrar, Co-operative Societies and sale deed was even not cancelled in accordance with law.

18. Section 31 of the Specific Relief Act, 1963 provides as under: -

“31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered;

and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

19. In order to cancel the registered sale deed executed in favour of respondent No.2, respondent No.1 ought to have filed civil suit for cancellation of sale deed. In the matter of **Thota Ganga Laxmi and another v. Government of Andhra Pradesh and others**⁷, the Supreme Court has laid down the following proposition: -

“4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get the sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.”

20. Similar proposition has been held by the M.P. High Court in **Kusum S. Verma** (supra). Relevant portion of the report reads as follows: -

“22. However, taking into consideration the pleadings of the parties and the nature of the claim as set forth in the plaint, in the present case, it is obvious that the dispute raised by the plaintiff cannot by any stretch of imagination be taken to be a dispute touching the constitution, management or business of the society. The society, *ex facie* had parted with its interest in the plot in dispute with the execution of the sale deed dated 19th June, 1981. The transaction of the sale of the plot stood completed with the registration of the sale-deed. In case, this sale-deed was voidable; its effect could only be taken away by avoiding the same and getting it cancelled through a civil Court of competent jurisdiction. So long as a voidable sale-deed is not cancelled, it continues to remain valid and effective. ...

⁷ (2010) 15 SCC 207

24. I am of the considered opinion that the dispute in regard to the invalidity of a particular sale deed and its cancellation on the ground that it was voidable could only be determined and adjudicated upon by a civil Court of competent jurisdiction.”

21. Considering the matter from all the angles, I am of the opinion that it cannot be held that the dispute as in the instant case, is not covered by co-operative dispute cognizable under Section 64(2)(iv) of the Act of 1960 and therefore it has rightly been entertained by the co-operative court and relief has rightly been granted to respondent No.2. Shaping of relief incorrectly will not denude the co-operative court to grant the relief which the member of the society is otherwise entitled and that has been granted by the learned Joint Registrar, Co-operative Societies. Even the petitioners have not raised a plea before the co-operative court that the instant dispute is not a dispute covered under Section 64(2)(iv) of the Act of 1960 in their written statement filed before the co-operative court. Hence, the petitioners cannot be permitted to take a plea for the first time before this Court that such a plea was not cognizable by the co-operative court and relief granted is barred. Judgment of the Supreme Court in the matter of **Shriram Transport** (supra) is not helpful to the petitioners.

22. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge