

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2221 OF 2024

Legacy Co-op. Housing Society Ltd. ... Petitioner

V/s.

Deputy Registrar, Co-op. Societies HW
through Deputy Registrar
Bajarang Jadhav and Anr.

... Respondents

NIKITA
KAILAS
DARADE
Digitally signed by
NIKITA KAILAS
DARADE
Date: 2024.03.21
10:33:14 +0530

Ms. Isha Rakesh Singh i/b Prakkash Rohira for the
Petitioner.

Mrs. V. R. Raje, AGP for the State-Respondent No.1.

Mr. Anand Mohan i/b Ms. Tauban F. Irani, for
Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : 19TH MARCH, 2024

PC.:

1. This petition challenges the order passed by the Deputy Registrar, Cooperative Societies refusing to issue a certificate under Section 154B-29 of the Maharashtra Cooperative Societies Act, 1960, on an application filed by the petitioner/Housing Society.

2. The petitioner, a cooperative housing society filed proceedings under Section 154B-29 of the said Act against respondent NO.1 who is the occupant of flat NO.102 along with late Mrs. Chander Chawla. The petitioner/society is a small society of twelve members. According to the society's record, respondent

No.2 failed to pay society's maintenance dues to the tune of Rs.30,17,655/- as of 1 April 2022 and, therefore, the petitioner filed application for recovery of amount. According to the petitioner, the defaulting members has failed to pay maintenance amount for several years.

3. The respondent No.1 by the impugned order rejected the application principally on the ground that issuance of such certificate against legal representatives involve complicated questions of law and fact which is beyond purview of respondent No.1's power and, therefore, the housing society need to approach Cooperative Court under Section 91 of the said Act.

4. Learned counsel for the respondent raised a preliminary objection to the availability of alternative statutory remedy in the form of Revision under Section 154 of the Maharashtra Cooperative Societies Act,1960. In support of his submissions, he placed reliance on the judgment of this Court in the case of **Sangeeta B. Vanmali v. State of Maharashtra and Ors.** reported in 2019 SCC Online Bombay 12166 and the judgment in the case of **Ramaesh Chudaman Badgujar Vs. State of Maharashtra 2015 (2) Mh. L. J. 542.**

5. To consider the preliminary objection raised on behalf of the respondent, it is necessary to consider the statutory scheme of the Maharashtra Cooperative Societies Act, 1960. Before the amendment of insertion of Chapter XIII-B, which included a separate chapter concerning the Cooperative Housing Society, the rights of Cooperative Housing Societies for recovery of

maintenance were governed by Section 101 of the Maharashtra Cooperative Societies Act, 1960. Considering the unique nature of Housing Societies, the legislature introduced a separate chapter to deal with the Cooperative Housing Society and its members. For enforcement of Chapter XIII-B, specific provisions of the MCS act provided under sub-section (1) of Section 154B were held to be applicable, and provisions referred to in subsection (2) were not applicable. Separate definitions are provided under Chapter 154B-1. Separate provisions about the registration of Housing Society, their membership, voting rights, transfer of interest and management are also introduced.

6. Section 154B-29 is relevant for adjudication of the present writ petition, which reads as follows:

“154B-29. Recovery of certain sums and arrears due to housing societies as arrears of land revenue.

(1) Notwithstanding anything contained in sections 91, 93 and 98, on an application made by a housing society for the recovery of its dues or the recovery of its repairs and maintenance, construction cost and service charges, and on the housing society concerned furnishing a statement of accounts and any other documents as may be prescribed, in respect of the arrears, the Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears.

Explanation.— For the purposes of this sub-section, the expression “repairs and maintenance and service charges” means such charges as are so specified in the by-laws of the concerned housing society.

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears, the Registrar may, on his motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, as arrears of land revenue. A revision shall lie against such order or grant of certificate, in the manner laid down under section 154, and such certificate shall not be liable to be questioned in any court.

(4) It shall be lawful for the collector and the Registrar to take precautionary measures in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 or any law or provisions corresponding thereto for the time being in force, until the arrears due to the concerned society, together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar.”

7. Sub-section (1) of Section 154B-29 starts with *non obstante* clause giving over-riding effect over sections 91, 93 and 98 of the Act. The Housing Society has the right to recover amounts towards repairs, maintenance, construction costs and service charges. Sub-section (2) of Section 154B-29 is in contradistinction with Section 101 of the Maharashtra Cooperative Societies Act, 1960. Sub-section (2) of Section 154B-29 of the Act creates an obligation on

the Registrar to be satisfied that the Housing Society has failed to take action under sub-section (1) of Section 154B-29 to initiate proceedings for recovery of amounts due to the housing societies. It requires the Registrar, on its own motion after inquiry, to grant a certificate for the recovery of the amount, which under sub-section (3) shall be treated as conclusive proof. Such dues will be recovered as arrears of land revenue in addition to the modes provided under Section 156 of the Maharashtra Cooperative Societies Act, 1960.

8. Despite the Registrar having been conferred with a statutory obligation to recover the amounts as required under sub-section (1) of 154B-29, the Registrar, by the impugned order, has failed to exercise its jurisdiction on specious ground of issuance certificate against the legal representatives would amount to involvement of complicated questions of law and fact. The Deputy Registrar has applied the principles of Rule 77 (F) of the Maharashtra Cooperative Societies Rules, 1961. Rule 77F applies to an inquiry under Section 101 of the Maharashtra Cooperative Societies Act, 1960 and has no application to the proceedings under Section 154B-2 contained in Chapter XIII-B.

9. Therefore, in my opinion, failure to exercise the jurisdiction conferred by the Act by applying illegal parameters has resulted in a miscarriage of justice and defeated the purpose of the introduction of Chapter XIII-B of the Act, which will constitute a good ground to entertain this petition.

10. In a recent judgment in the case of the **Maharashtra**

Chess Association Vs. Union of India, (2020) 13 SCC 285, the Apex Court emphasized that the mere existence of alternative forums where an aggrieved party may secure relief by itself does not create a legal bar for a High Court to exercise its writ jurisdiction. The Apex Court, in turn, has referred to earlier constitution bench judgment of the Apex Court in the case of **The State of Uttar Pradesh Vs. Mohammad Nooh** reported in 1958, SCR 595.

11. The reliance placed on the judgment in the case of **Sangeeta Vanmali** (supra), the concerned Single Judge of this Court was considering a petition where the borrower of a loan, in order to get away with mandatory Section 154(2-A), approached this Court and, therefore, this Court relying on the judgment of the Apex Court in the case of **Arun B. Khanjire Vs. Ichalkaranji Urban Co.Op. Bank Limited**, 2009 (1) ALL MR 492 refused to entertain the petition on the grounds of availability of alternative statutory remedy. In the facts of the present case, the writ jurisdiction is invoked by the Housing Society, whose application for recovery of maintenance amount has been rejected by the Deputy Registrar on flimsy grounds, which has resulted in miscarriage of justice as the purpose of introduction of Chapter XIII-B would be frustrated if such orders are allowed to remain in force.

12. The judgment in the case of **Ramesh Chudamal Badgujar** again arose out of an application filed by the borrower giving a go-by to Section 154 (2-A) of the Maharashtra Cooperative Societies Act, 1960. Therefore, this Court refused to

entertain the petition regarding non-compliance of statutory deposit under Section 154 (2-A) of the Maharashtra Cooperative Societies Act, 1960.

13. The Full Bench of this Court of this Court in the case of **Smt. Shireen Sami Gadiali Vs. Spenta CHS Ltd.** reported in 2011 (3) AIR Bombay R 594 had occasion to consider the maintainability of the second revision under Section 154 of the Maharashtra Cooperative Societies Act, 1960. While deciding on the issue, the Full Bench considered the submissions on behalf of the respondents, stating that a party can invoke the remedy under Section 154 as of right. The Full Bench relaying on **Everest Apartments CHS Ltd. Vs. The State of Maharashtra and Ors.** reported in AIR 1966 SC 1449 held that no general proposition can be laid down that in every case remedy under Section 154 of the Maharashtra Cooperative Societies Act, 1960 can be availed by an aggrieved party as of right. Such an issue will have to be decided based on the facts and circumstances of each case.

14. In the facts of the case, I am satisfied that the result of the impugned order will cause a miscarriage of justice to the Housing Society as it is a small society of only 12 members, and non-recovery of the huge amount of maintenance will have a huge impact and would also result in taking away express statutory rights created in favour of a Housing Society by way of introduction of 154B-29 of the Maharashtra Cooperative Societies Act, 1960. Moreover, it will have the effect of failure to exercise obligation cast on the Registrar under sub-section (2) of Section

154B-29(2). Therefore, this is a case where the extraordinary constitutional jurisdiction of this Court needs to be exercised to prevent a miscarriage of justice. Hence, the following order:

- a) The impugned order passed by the Deputy Registrar Cooperative Societies on 17th August 2023 bearing Application No. 3 of 2023 is quashed and set aside.
- b) The proceedings are remitted back to the District Deputy Registrar, who shall decide on the application in accordance with the law.
- c) Parties shall appear before the Deputy Registrar on 26th March 2024 at 10.30 A. M.
- d) The Deputy Registrar shall decide Application No.3 of 2023 within three months from today by affording an opportunity of hearing to both sides.
- e) The Deputy Registrar shall decide on the application without being influenced by the observations made in the present order.

15. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)