



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9037 OF 2024

THE ICHALKARANJI INDUSTRIAL CO-OP. ESTATE
LTD. THR. MANAGER & AUTHORIZED ..PETITIONER

VS.

DASTAGIR ABUL BHALDAR (DECEASED)
THR. LEGAL HEIR NAMELY MOBIN
DASTAGIR BHALDAR ..RESPONDENT

Mr. Shubham Dhenge a/w. Ms. Kalyani Mangave i/b. Mr. Manoj A.
Patil for petitioner.

Mr. Aditya Raktade a/w. Ms. Aarti Shah for respondent.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 31 JULY 2025.

PRONOUNCED ON : 3 NOVEMBER 2025.

JUDGMENT :

1. By an Order dated 24 July 2025, “Rule” was issued in the present writ petition and by consent of both parties, since trivial issue was involved, the matter was taken up for final hearing.

2. The present writ petition is filed by the petitioner – The Ichalkaranji Industrial Co-operative Estate (hereinafter referred to as

‘petitioner – society’), under Article 227 of the Constitution of India, thereby challenging concurrent findings recorded by 4th Joint Civil Judge Junior Division, Ichalkaranji, by the Judgment and Order dated 13 June 2014 and has confirmed by the Judgment and Order dated 19 December 2019, passed by the District Judge – 2, Ichalkaranji.

3. I have heard learned counsel for both sides and with their help I have gone through the documents on record.

4. It is the case of the petitioner – society that they are registered under the Maharashtra Co-operative Societies Act. Its bye-laws allowed it to acquire lands, develop it and divide plots of various size and give them to its members. Accordingly, they had obtained 68 Acre of land at Ichalkaranji from the Government of Maharashtra on lease basis. The petitioner – society constructed factory sheds and galas and made it available to its members. Since the petitioner – society is an Industrial Co-operative Estate, allotted the galas to its members by charging premium fees.

5. As regards the respondent, there is no doubt that he is a member of the petitioner – society. The subject gala was in possession of the predecessor of the respondent, who was a member of the

society and after the said member vacated the premises, the present respondent entered into the possession of the subject gala. There was a dispute between the petitioner – society and the predecessor of the respondent and also the present respondent. Hence, a demand notice was issued by the petitioner – society. The respondent being aggrieved by the issuance of the demand notice, preferred an application for fixation of the standard rent under the provisions of Section 8 of the Maharashtra Rent Control Act. The petitioner – society filed its reply to the said application under Section 8 and raised the issue about non application of the Maharashtra Rent Control Act as it was a dispute between the Society and its members.

6. As the application was pending before learned 4th Joint Civil Judge, Junior Division, Ichalkaranji, the respondent preferred an application under Section 91 of the Maharashtra Co-operative Societies Act before the Co-operative Court on 29 August 2011, claiming to be member of the society and the subject gala given to him without any agreement and the society was seeking exorbitant amount towards rent on the basis of purported Resolutions being passed. The Resolutions were challenged in the dispute.

7. Pending the dispute between the parties before the Co-

operative Court, the application filed under Section 8 of the Maharashtra Rent Control Act, before 4th Joint Civil Judge, Junior Division, Ichalkaranji, was heard and by Judgment and Order dated 13 June 2014, 4th Joint Civil Judge, Junior Division, Ichalkaranji, partly allowed the application of the respondent and fixed the standard rent at Rs.693/- per month excluding municipal taxes and other taxes and further held that the petitioner – society shall entitled for 4% annual increase in the rent from 1 January 2014.

8. The said Judgment and Order passed by 4th Joint Civil Judge, Junior Division, Ichalkaranji, was challenged by the petitioner – society before the District Court - 2, Ichalkaranji by way of the Civil Revision Application. The District Court – 2, Ichalkaranji, by Judgment and Order dated 19 December 2019 dismissed the Civil Revision Application, thereby confirming the Order passed by 4th Joint Civil Judge, Junior Division, Ichalkaranji.

9. Both the Courts held that in the cross-examination certain admissions were made by the witnesses appearing for the petitioner – society, so also, the questions put to the witnesses of the respondent suggested that there was relationship of landlord and tenant between the parties and the respondent proved the case that the premises was

given to him on lease by the petitioner – society. In Paragraph No.7 of the Judgment and Order dated 19 December 2019, passed by the District Court – 2, Ichalkaranji, there is a mention about the pursis filed along with statement of arrears of license fees and taxes and stated that if the respondent is ready to pay the arrears, then the society was ready to execute the registered agreement. Accordingly, as the respondent was ready to deposit the amount, he deposited the amount demanded in the Court, and the petitioner – Society has withdrawn the said amount.

10. In order to fix standard rent of the premises, there has to be a relationship of the landlord and tenant between the parties. If such relationship is not there between the parties, the standard rent of the premises cannot be fixed by the Court. In the present proceedings after the application for fixing standard rent was preferred by the respondent, who is admittedly member of the petitioner – society, the same was opposed by the petitioner – society on the ground that there is no landlord and tenant relationship between the parties.

11. Once the petitioner – society had opposed the application, learned Judge needed to be more careful and to check whether there is a relationship of landlord and tenant. The respondent's case was

that there was an oral lease agreement between the parties. Therefore, there was no document on record for learned Judge to come to a conclusion that there was relationship of the landlord and tenant between the parties. There was no dispute that the respondent was a member of the petitioner – society. He himself had filed dispute before the Co-operative Court, which was dismissed.

12. The said society being an Industrial Co-operative Estate who had obtained the land from the Government of Maharashtra on lease basis and who in turn had constructed factory sheds and galas on the said land, as per their bye-laws by availing loans from Life Insurance Corporation. The predecessor of the respondent, so also the respondent are the members of the petitioner – society. Once it is not disputed that the respondent is the member of the petitioner – society, in my opinion, there will be no question of relationship of the landlord and tenant between the parties.

13. In the Judgment of *Dr. Manohar Ramchandra Sarpare Versus The Konkan Co-operative Housing Society Ltd.*¹ which was referred by learned counsel for the petitioner-society. The Full Bench while dealing with question of dispute between a member and the Co-operative Housing Society Ltd., have held that the matter cannot be

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referred to as a dispute between the landlord and tenant and what will be applicable will be the provisions of the Maharashtra Co-operative Societies Act. Paragraph Nos.14, 15, 16, 17 and 30 read as under:-

14. The mutual rights and obligations of a co-operative housing society and its members are, therefore, quite different from those of a landlord and a tenant. The relationship is of a special type, which is governed by special laws made for this purpose, viz. the Co-operative Societies Act and the rules, by-laws and regulations made thereunder. Even though, therefore a member, to whom a tenement is given for occupation, is described in the by-laws and the regulations as a tenant, he is not a tenant in the sense in which this term is used in the Transfer of Property Act or in the Rent Act, nor is the Society his landlord.

15. Any other view would make it difficult for a co-operative housing society to function in the manner prescribed by the rules and bye-laws. If a member to whom a tenement has been given is held to be a tenant, the Society will only be entitled to receive standard rent from him. It cannot then recover from him, as provided in regulation No. 4, the cost of buildings etc. and the charges for maintenance and management of the estate as part of rent. It will also not be able to determine the tenancy under regulation No. 21 owing to failure on the part of the member to pay the amounts due from him. A person will also be able to continue in occupation, even if he has ceased to be a member or has been expelled from the Society. This will not be in accordance with the object of a co-operative housing society, which is to provide houses to its members by joint efforts and contributions of all the members.

16. The next question, which arises for our determination, is about the relationship created when the tenement is given for occupation by a member of a Co-operative Housing Society to another member or a nominal member of such Society. Under regulation No. 5, a tenement cannot be given to any other member without the consent of the Society. The person to whom a tenement is given must also become a member of the Society, if he is not already a member. The Society is, however, not a direct party to the transaction. It only gives its consent to the transaction and grants the application of the proposed occupant for his becoming a nominal member. The payment for the use and occupation of the tenement is also made to the member and not to the Society. The Co-operative Tribunal has taken the view that since a member, who has taken the tenement from the Society, cannot be regarded as a tenant, the person who claims through him cannot also claim the status of a tenant. In law, however, it is possible for a person, with a possessory title, to create a tenancy. Such a transaction will be binding between him and his tenant,

though it may be defeasible at the hands of the person with a superior title. Consequently, we cannot say that the relationship of a landlord and a tenant cannot exist between two members of a Co-operative Housing Society or between a member and a nominal member of such Society. The question whether the transaction is a lease and whether the relationship created is that of landlord and tenant, must be decided in each case, having regard to the facts and circumstances of that case. It is hardly necessary to add that the tenancy, if any, will be between the occupant and the member who has given it for occupation. The latter not being a tenant of the Society, the occupant or the nominal member cannot claim the benefit of s. 14 of the Rent Act as against the Society. No question of tenancy can, however, normally arise when the member, in whose name the tenement stands, and the member, who is actually occupying it, are both joint holders of the same shares of the Society.

17. The next question, which arises for our consideration, is whether in cases in which the relationship of landlord and tenant exists between two members of a co-operative housing society or between a member and a nominal member of such society, the Registrar or his nominee is competent to decide the dispute relating to possession of the tenement or the recovery of the amount due for the use and occupation of such tenement, or whether only the Court specified in s. 28 will have jurisdiction to decide it. Both the Co-operative Societies Act and the Rent Act are beneficial measures, though the duration for which the Rent Act will remain in force is limited. As observed by the Supreme Court in *Shri Ram Narain v. The Simla Banking and Industrial Co. Limited*,¹ the overriding effect of one or the other of the relevant provisions in these two Acts should be determined on broad considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein. Section 54 of the Co-operative Societies Act provides inter alia that if any dispute touching the business of a society arises between members of the society, it shall be referred to the Registrar for decision by himself or his nominee. Section 57 states that the award of the Registrar or his nominee under s. 54 shall not be liable to be called in question in any civil or revenue Court. An appeal against the decision of the Registrar or his nominee lies to the Bombay Co-operative Tribunal constituted under s. 63A of the Act. Sub-section (7) of this section states that an order passed by the Tribunal shall be final and conclusive and shall not be liable to be called in question in any civil or revenue Court. It has been held by this Court in several cases that the jurisdiction conferred by s. 54 is exclusive. A dispute regarding possession of a house belonging to a co-operative housing society can be said to touch the business of the society. Under s. 54, therefore, such a dispute must be referred to the Registrar for decision by him or his nominee. Sub-section (1) of s. 28 of the Rent Act provides as follows:

“(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.”

30. Our reply to the question referred to the Full Bench will, therefore, be that a dispute between a co-operative housing society and a member of such society, to whom a tenement has been allotted by the society in accordance with the rules, by-laws and regulations of the society, relating to the recovery of possession of such a tenement or the amount payable by the member for the occupation of such tenement, can be decided only by the Registrar or his nominee under s. 54 of the Bombay Co-operative Societies Act. Only the Courts referred to in s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, will have jurisdiction to decide a similar dispute between two members of the society or between a member of the society and a nominal member of the society, if the relationship between them is that of landlord and tenant. In other cases, where such a relationship does not exist, the dispute can be decided only by the Registrar or his nominee under s. 54 of the Co-operative Societies Act.

(Emphasis supplied)

Therefore, the law as regards to whether the Rent Act would be applicable to the parties where there is a relationship of society and its members is quite settled long back. Hence, in my view, in the present proceedings, the application preferred under Section 8 of the Maharashtra Rent Control Act by the respondent was not maintainable before 4th Joint Civil Judge, Junior Division, Ichalkaranji

and hence, findings recorded by 4th Joint Civil Judge, Junior Division, Ichalkaranji and as confirmed by the District Judge – 2, Ichalkaranji, are perverse and therefore, both the impugned Judgments and Orders are quashed and set aside.

14. Rule is made absolute in terms of prayer clause (b).

15. The writ petition is disposed of accordingly.

(Rajesh S. Patil, J.)