

Everest Apartments Co-Operative ... vs State Of Maharashtra & Ors on 18 January, 1966

Equivalent citations: 1966 AIR 1449, 1966 SCR (3) 365, AIR 1966 SUPREME COURT 1449, 1966 (1) SCWR 967, 1966 MAH LJ 643, 1966 SCD 931, 1966 2 SCJ 498, 1966 3 SCR 365, 1968 BOM LR 664

Author: M. Hidayatullah

Bench: M. Hidayatullah, R.S. Bachawat

PETITIONER:

EVEREST APARTMENTS CO-OPERATIVE HOUSINGSOCIETY LTD.

Vs.

RESPONDENT:

STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT:

18/01/1966

BENCH:

HIDAYATULLAH, M.

BENCH:

HIDAYATULLAH, M.

SUBBARAO, K.

BACHAWAT, R.S.

CITATION:

1966 AIR 1449

1966 SCR (3) 365

CITATOR INFO :

D 1984 SC1048 (16)

ACT:

Maharashtra Co-operative Societies Act, 1960(24 of 1961), ss.23(2) 154--Orders of Deputy Registrar under s. 23(2)-Whether final--state Government whether has revisional jurisdiction over them under s, 154-Parties whether can invoke revisional jurisdiction.

HEADNOTE:

The appellant was a registered co-operative Housing Society, registered under the Maharashtra Co-operative Societies Act, 1960. S, respondent no. 4, applied for membership of the society but this was refused. He appealed under s. 23(2) of

the Act to the Deputy Registrar Co-operative societies who decided in his favour. The appellant filed an application before the State Government for revision purporting to be under s. 154 of the Act which was rejected on the ground that Government had no revisional jurisdiction against orders under s. 23(3). The appellant then went to the High Court under Arts. 226 and 227 and failing there also came to this Court by special leave. The questions that fell to be decided were. (i) Is the finality under s. 23(3) subject to s. 154 and (ii) Has a party a right to move the State Government under s. 154 ?

HELD : (i) There is no doubt that s. 154 is potential but not compulsive. Power is reposed in Government to intervene to do justice when occasion demands it and of the occasion for its exercise Government is made sole judge. This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal under s. 149(9) of the Act. The exception was considered necessary because the legality or propriety of an order having been considered once,, it would be an act of supererogation to consider the matter twice. it follows, therefore, that Government can exercise its powers under s. 154 in all cases with one exception only, and that the finality of the order under s. 23(3) does not restrict the exercise of the power. The word 'final' in this context means that the order is not subject to an ordinary appeal or revision but it does not touch the special power legislatively conferred on Government, 'Me Government was in error in considering that it had no jurisdiction in this case for it obviously had. [371 B-D]

Commissioner of Income-tax West Punjab v. The Tribune Trust, Lahore, (1948) 16 I.T.R. 214 (P.C.) and Sheffield Corporation v. Luxford, (1929] 2 K.B. 180, referred to.

(ii) The fact that s. 154 does not expressly permit a party to invoke the revision jurisdiction under that section does not mean that a party is prohibited from moving the Government. But as Government is not compelled to take action, unless it thinks fit the party who moves the Government cannot claim that he has a right of appeal or revision. On the other hand Government should welcome such applications because they draw its attention to cases in some of which it may be interested to intervene. [371 F]

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Sheffield Corporation v. Luxford, 119291 2 K.B. 180, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1 of 1966. Appeal by special leave from the order dated June 30, 1965 of the Bombay High Court in Special Civil Application No. 1027 of 1965.

S.V. Gupte, Solicitor-General and N. N. Keswani, for the appellant.

Niren De, Additional Solicitor-General and B. R. G. K. Achar, for respondent No. 1.

The judgment of the Court was delivered by Hidayatullah, J. In this appeal by special leave we are not concerned with the merits of the controversy between the appellant and the fourth respondent, who are the contesting parties, because only two short questions of law arise for our decision. The appellant is a registered co-operative Housing Society, registered under the Maharashtra Co-operative Societies Act, 1960 (XXIV of 1961). The Society was promoted by two individuals for the construction of a block of flats in Bombay. Shivdasani (respondent 4) claims to have paid the entrance fee, share money and other demands and complaints that his membership was wrongly rejected by the Society. The Society denies these statements and the claim. We are not concerned with the details of this dispute. What we are concerned with is this: On being informed of the rejection of his application for membership, Shivdasani filed an appeal under s. 23(2) of the above Act, which was heard and decided in his favour by the District Deputy Registrar, Co-operative Societies, Bombay. The Society filed an application before the State Government for revision purporting to be under s. 154 of the Act. This application was rejected. The Society was intimated this result by the Under Secretary to the Government of Maharashtra (Agriculture and Cooperative Department) and the communication (CAR/1064/426590/ C-42, 17th May, 1965) was as follows "Sir, I am directed to state that following the hearing to you by the Deputy Secretary of this Department on 10th March, 1965, in connection with the subject noted above, a note was received in this Department from Shri M. G. Mani, Advocate wherein it was claimed that though an order was final under Section 23(3) of the Maharashtra Cooperative Societies Act, 1960, Government had inherent revisionary powers under Section 154 of the said Act to entertain in such representations against such an order. I am to inform you that the matter has been examined by Government and to state that in such cases orders given under Section 23(3) are final and Government has no revisional jurisdiction in such a matter., Yours faithfully, Sd/- (D. A. EKBOTE) Under Secretary to Government."

The Society filed a petition under Arts. 226 and 227 of the Constitution in the High Court of Bombay which was also rejected (S.C.A. 1027/65, 30 June, 1965). The High Court passed a short and laconic order which reads:

"Government right in declaring no
jurisdiction. It is wrong to say that

respondent had withdrawn the application voluntarily. Attitude of the Society unjust. Admittedly the promoters were members of Everest Co. and they wanted Rs. 3,000 from each one for themselves.

Societies are not meant for self aggrandizement. No ground to interfere. REJECTED."

It is against the last order that the present appeal has been brought and the first question is whether the Government is right in law in declining to interfere because it has "no revisional jurisdiction in such a matter." The answer to this question depends upon the construction of s. 154 of the Act but

before we attempt it, we shall say something about the Act and the provisions applicable to this case.

The Maharashtra Co-operative Societies Act, which replaced the Bombay Co-operative Societies Act, 1925 was passed to provide for the orderly development of the co-operative movement in the State of Maharashtra. It deals, among others, with housing societies, the object of which is to provide their members with dwelling houses. Every society having as its objects the promotion of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles and which is economically sound may register under the Act. This entitles the societies to obtain certain benefits. The State Government appoints a Registrar of Co-operative Societies, who has numerous powers under the Act, and may appoint one or more persons to assist him and may confer all or any of the powers of the Registrar upon them. Chapter II of the Act then deals with registration of societies and all matters connected therewith. Chapter III next deals with members and their rights and liabilities. Section 22 in that Chapter lays down who may become a member of a society and by its second sub-section provides:

.lm15 "22. Person who may become member.

(2)Where a person is refused admission as a member of a society, the decision (with the reasons therefore) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the' date of the application for admission,-whichever is earlier." Section 23 then gives a right of appeal to a member who has been refused admission. It provides:

"23. Open membership.

(1)No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its by-laws.

(2)Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar.

(3)The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof."

The appeal of Shivdasani was made under the above section. After the order in appeal was passed by the Registrar, the Society moved the State Government under s. 154 to exercise its powers under that section. It reads:

"154. Power of State Government and Registrar to call for proceedings of subordinate officer and to pass orders thereon.

The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them, except those referred to in sub-section (9) of section 149 for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State

Government, or the Registrar, that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard pass such order thereon as to it or him may seem just."

The State Government held that it had no jurisdiction as orders given under s. 23(3) were final. Two questions arise here: (i) Is the finality under s. 23(3) subject to s. 154, and (ii) Has a party a right to move the State Government under s. 154? Mr. Niren De defending the order of the State Government as well as that of the High Court, admits that the State Government has been given a power to call for and examine the record of any enquiry or the proceedings of any other matter of any officer subordinate to it, except those referred to in sub-section 9 of S. 149, and that as the present is not a matter under S. 149(9) the power could be exercised by Government for the purpose of satisfying itself as to the legality or propriety of the order. In other words, he does not contest that the finality stated by s. 23(3) does not affect the power of the State Government. In making this admission he is clearly right. The Act has provided for appeals in other sections and the decision on appeal is stated to be final. Yet the power of superintendence is given to the State Government in general terms in respect of any inquiry or proceeding with only one exception, namely, the proceedings of the Maharashtra State Tribunal, when the Tribunal calls for and examines 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. By mentioning one specific exception to the general power, the Act has indicated an intention to include every other inquiry or proceeding within the action by Governments as contemplated by s. 154. Mr. De, however, contends, firstly, that the action by Government is intended to be on its own motion and not by application, and, secondly, that the power need not be exercised unless Government itself feels that its exercise is necessary. He refers, by way of contrast, to the opening words of s. 150 where provision is made for review of orders of the Tribunal in these words :

"150. Review of orders of Tribunal.

(1)The Tribunal may, either on the application of the Registrar, or on the application of any party interested, review its own order in an case, and pass in reference thereto such order as it thinks just:

Provided that, no such application made by the party interested shall be entertained, unless the Tribunal is satisfied that there has been the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:

Mr. De next submits that this power not being coupled with any duty need not be exercised by Government even if moved to take action, unless Government itself feels inclined. He relies upon the Commissioner of Income Tax, West Punjab v. The Tribune Trust, Lahore.' In that case the question was whether s. 33 of the Indian

Income Tax Act, 1922 which conferred revisional jurisdiction on the Commissioner established a right to relief on the application of an assessee. It was contended by the assessee in that case that the relief claimed by them under s. 33 was wrongly denied to them. In dealing with this contention Lord Simond (later Viscount) observed, at page 225 of the report, as follows:-

"The fallacy implicit in this question has been made clear in the discussion of the first two questions. It assumes that Section 33 creates a right in the assessee. In their Lordships' opinion it creates no such right. On behalf of the respondent the well-known principle which was discussed in *Julius v. Bishop of Oxford*-(1880) 5 App. Cas. 214--was invoked and it was urged that the section which opens with the words "The Commissioner may of his own motion" imposed upon him a duty which he was bound to perform upon the application of an assessee. It is possible that there might be a context in which words so inept for that purpose would create a duty. But in the present case there is no such context. On the contrary Section 33 follows upon a number of sections which determine the rights of the assessee and is itself, as its language clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinates and take the necessary action upon such review. It appears that as a matter of convenience a practice has grown up under which the Commissioner has been invited to act "of his own motion" under the section and where this occurs a certain degree of formality has been adopted. But the language of the section does not support the contention, which lies at the root of the third question and is vital to the respondent's case, that it affords a claim to relief. As has been already pointed out, appropriate relief is specifically given by other sections: it is not possible to interpret Section 33 as conferring general relief."

Mr. De also relies upon certain passages from *Julius v. Bishop of Oxford*² which show the distinction between power which is discretionary in its exercise and power which must be exercised every time the occasion for its exercise arises. He contends in the words of Talbot J. in *Sheffield Corporation v. Luxford* 3 that the (1) (1948) 16 I.T.R. 214 P.C. (2) (1880) 5 App. Cas. 214.

(3). (1929) 2 K.B. 180 at 183.

37 1 word "may" always means "may" which is a permissive or enabling expression and that there are no circumstances either in the Act or in the facts here, by which it can be said that Government was under a duty to interfere. He submits that the order of Government must be read as indicating the above position and not that it had no jurisdiction.

There is no doubt that S. 154 is potential but not compulsive. Power is reposed in Government to intervene to do justice when occasion demands it and of the occasion for its exercise, Government is made the sole judge. This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal under s. 149(9) of the Act. The exception was

considered necessary because the legality or the propriety of an order having been considered once, it would be an act of supererogation to consider the matter twice. It follows, therefore, that Government can exercise its powers under s. 154 in all cases with one exception only and that the finality of the order under s. 23(3) does not restrict the exercise of the power. The word 'final' in this context means that the order is not subject to an ordinary appeal or revision but it does not touch the special power legislatively conferred on Government. The Government was in error in considering that it had no jurisdiction in this case for it obviously had.

There remains the question whether a party has a right to move Government. The Tribune Trust case is distinguishable and cannot help the submission that Government cannot be moved at all. The words of the two enactments are not materially equal. The Income-tax Act used the words 'suo motu' which do not figure here. It is, of course, true that the words "on an application of a party" which occur in s. 150 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which, Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not only not inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done, it is for the court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right of relief as in an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err, and that is what Government did in this case.

The order of the High Court in these circumstances overlooked' that the Government had denied to itself a jurisdiction which it undoubtedly possessed by considering that the finality of the order under s. 23(3) precluded action under s. 154. The High Court ought to have issued a mandamus to Government to deal with the application before it within its jurisdiction under s. 154. That mandamus shall now issue to Government.

The appeal is thus allowed with costs.

Appeal allowed.