Sant Lal Gupta & Ors vs Modern Coop. G.H. Society Ltd. & Ors on 18 October, 2010

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9439 OF 2003

Sant Lal Gupta & Ors. ...Appellants

Versus

Modern Co-operative Group Housing

Society Ltd. and Ors. ...Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been filed against the judgment and order dated 4.9.2002 passed by the Delhi High Court in Civil Writ Petition No. 2/98 by which the High Court has set aside the judgment and order of the Financial Commissioner dated 3.11.1997 passed in Case No.234/97-CA, and also the judgment and order of the Registrar of the Co-operative Societies dated 26.8.1997.

2. Facts and circumstances giving rise to this appeal are that the appellants had been the members of the Modern Co-op. Group Housing Society Ltd. (hereinafter called the `Society') and claimed to have paid all their subscriptions of membership and other dues on the demands made by the Society. The Society had proposed the expulsion of 27 members including the appellants, by its Resolution dated 27.4.1987 and the said proposal was sent to the Registrar of the Co-operative Societies (hereinafter called the Registrar) as required under the provisions of the Delhi Co-operative Societies Act, 1972 (hereinafter called as `Act 1972'), for approval on 20.2.1988 and meanwhile it enrolled new members, whose approval was also sought.

In spite of all efforts made by the Registrar, the Society did not submit the record before him prior to 19.9.1995. The Registrar vide order dated 2.2.1996 issued notice to the Society for consideration of the said resolution and vide order dated 4.6.1996 rejected the approval.

3. Being aggrieved, the Society approached the Financial Commissioner by filing a revision under Section 80 of the Act 1972 which was also dismissed vide judgment and order dated 30.7.1996.

Being aggrieved, the Society filed Writ Petition No.3325/1996 before the Delhi High Court and after hearing the same, the matter was remanded to the Registrar for reconsideration. In pursuance of the order of the Delhi High Court, the Registrar considered the matter afresh and passed an order dated 26.8.1997 rejecting the approval of the expulsion of the appellants and other members. Being aggrieved, the Society preferred a revision before the Financial Commissioner which was also dismissed vide order dated 3.11.1997.

4. The Society challenged the aforesaid orders of the Financial Commissioner as well as of the Registrar by filing Writ Petition before the Delhi High Court which has been allowed. Hence, this appeal.

5. Shri D.N. Goburdhan, learned counsel appearing for the appellants has submitted that the High Court has mis-directed itself and did not decide the core issue involved in the case. The High Court has held that in case the resolution sent by the Society is not considered and decided finally by the Registrar within a period of 6 months as required under Rule 36(3) of the Rules 1973, it will be deemed to have been approved, though, there is no such deeming provision under the Act 1972. The High Court further committed an error extending the period of 6 months to 1 year re-legislating the statutory provision. More so, there is no reference to the findings recorded by the Financial Commissioner and the Registrar in their impugned orders and no reasons have been recorded to set aside the same. Thus, appeal deserves to be allowed.

6. On the contrary, Shri M.C. Dhingra, learned counsel appearing for the Society, has vehemently opposed the appeal contending that the appellants had been defaulters and in spite of several demands made by the Society they did not pay the amount. Their expulsion was strictly in consonance with the Delhi Co-operative Societies Rules, 1973 (hereinafter called the Rules). No fault can be found with the judgment and order of the High Court. The appeal lacks merit and is liable to the dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Rule 36(3) of the Rules reads as under:

> "36. Procedure for expulsion of members-
>
> (1) xx xx xx xx (2) xx xx xx xx (3) When a resolution passed in accordance with sub-rule (1) or (2) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiry as to whether full and final opportunity has been given under sub-rule (1) or (2) give his approval and communicate the same to the society and the member concerned within a period of 6 months. The resolution shall be effective from the date of approval." (Emphasis added).

9. It is evident from the aforesaid provision that the legislature desired that every such resolution sent to the Registrar by the Society be considered and decided within a period of 6 months and that the resolution shall be effective from the date of approval. If approval is required, the order which is required to be approved by the statutory authority cannot become effective unless the approval is accorded.

10. Approval means confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. The very act of approval means, the act of passing judgment, the use of discretion, and determining as an adjudication therefrom unless limited by the context of the Statute. (Vide: Vijayadevi Navalkishore Bhartia & Anr. v. Land Acquisition Officer & Anr., (2003) 5 SCC 83).

11. There can be no quarrel with the settled legal proposition that if a statute provides for the approval of the higher Authority, the order cannot be given effect to unless it is approved and the same remains inconsequential and unenforceable. (Vide: Trilochan Mishra etc. v.

State of Orissa & Ors., AIR 1971 SC 733; Union of India & Ors. v.

M/s Bhimsen Walaiti Ram, AIR 1971 SC 2295; State of Orissa & Ors. v. Harinarayan Jaiswal & Ors., AIR 1972 SC 1816; State of U.P. & Ors. v. Vijay Bahadur Singh & Ors., AIR 1982 SC 1234;

and Laxmikant & Ors. v. Satyawan & Ors., AIR 1996 SC 2052).

12. While dealing with the approval of an award under the Land Acquisition Act, this Court in Vijayadevi Navalkishore Bhartia (supra) held:

> "In the context of an administrative act, the word `approval' does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. This is only an administrative power which limits the jurisdiction of the authority to apply its mind to see whether the proposed award is acceptable to the Government or not."

13. Therefore, it is evident from the aforesaid settled legal proposition that the resolution passed by the Society cannot be given effect to unless approval is accorded by the Registrar as mandatorily required by the Act 1972 and the Rules.

14. The Legislature in its wisdom has not enacted any deeming provision providing that in case the resolution is not considered and finally decided by the Registrar within a period of six months, the resolution shall become effective and operative. It is the exclusive prerogative of the Legislature to create a legal fiction meaning thereby to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. Even if a legal fiction is created by the Legislature, the court has to ascertain for what purpose the fiction is created, and it must be limited to the purpose indicated by the context and cannot be given a larger effect. More so, what can be deemed to exist under a legal fiction are merely facts and no legal consequences which do not flow from the law as it stands. It is a settled legal proposition that in absence of any statutory provision, the provision cannot be construed as to provide for a fiction in such an eventuality. More so, creating a fiction by judicial interpretation may amount to legislation, a field exclusively within the domain of the legislature. (Vide: Ajaib Singh v. Sirhind Coop. Marketing-cum-

processing Service Society Ltd. & Ors., (1999) 6 SCC 82).

15. In Union of India & Anr. v. Deoki Nandan Aggarwal, AIR 1992 SC 96, this Court observed as under:

> "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Court."

This Court explained the distinction between the `deeming provisions' and `presumption' and held that the distinction is well discernible.

16. Be that as it may, the High Court has referred to its Division Bench judgment in B.B. Chibber v. Anand Lok Co-operative Group Housing Society Ltd. & Ors., 90 (2001) DLT 652, wherein the same provision has been considered and it had categorically been held that deeming approval was not legally permissible.

17. In view of the above, it was neither desirable nor permissible by the Co-ordinate Bench to disapprove the earlier judgment and take view contrary to it. More so, extension of the period from 6 months to 1 year amounts to legislation.

18. A coordinate bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate rules of law form the foundation of the administration of justice under

our system.

Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide: Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel & Ors., AIR 1968 SC 372; Sub-

Committee of Judicial Accountability v. Union of India & Ors., (1992) 4 SCC 97; and State of Tripura v. Tripura Bar Association & Ors., (1998) 5 SCC 637).

19. In Rajasthan Public Service Commission & Anr. v. Harish Kumar Purohit & Ors., (2003) 5 SCC 480, this Court held that a bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues. If the latter bench wants to take a different view than that taken by the earlier bench, the proper course is for it to refer the matter to a larger bench.

20. In the instant case, the position before us is worse as the latter bench has taken a divergent view from an earlier coordinate bench, particularly taking note of the earlier decision holding otherwise, without explaining why it could not follow the said precedent even while extensively quoting the same. Judicial propriety and discipline are not served by such conduct on the part of the division bench.

21. Thus, in view of the above, it was not permissible for the High Court to take the course which it has adopted and such a course cannot be approved.

22. The High Court had found fault with the orders of the Registrar and the Financial Commissioner basically on the grounds of delay and laches without realising that the writ petition was not against the orders passed by the Registrar after inordinate delay of 7 years. That had been the subject matter of the earlier writ petition No. 3325/1996 filed by the Society and the High Court was dealing with subsequent orders which had been passed by those authorities after remand.

Therefore, there was no occasion for the High Court to go into those issues and leaving the core issue undecided. In fact the High Court has made an attempt to review its earlier order as it dealt with the issues involved in the earlier writ petition No.3325/1996. The High Court failed to appreciate that it was not dealing with a review petition as it had reviewed its earlier judgment indirectly.

23. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud." An authority cannot be permitted to evade a law by "shift or contrivance". (See: Jagir Singh v. Ranbir Singh & Anr., AIR 1979 SC 381; and M.C. Mehta v. Kamal Nath & Ors., AIR 2000 SC 1997).

24. The Registrar after remand considered the matter and vide order dated 26.8.1997 disposed of the same dealing with the question of the expulsion of the appellants and others. The case was decided after giving full opportunity of hearing to all the parties concerned. The contention of the Society has been that in spite of sufficient opportunities the proposed expelled members did not pay the dues, and therefore, the Society was justified in passing the resolution for their expulsion. The appellants had contended that no valid demand had ever been made by the Society and affairs of the Society were totally mismanaged by one Shri C.D. Garg, who had no competence to deal with the working of the Society. After appreciating the evidence on record the Registrar recorded the following findings:

> (i) Affairs of the Society were mis-managed by Shri C.D. Garg who was father of the Secretary of the Society and had no authority to function on behalf of the Society;
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> (ii) There was no development in the Society in spite of large turnover of members;
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> (iii) New members had been enrolled before grant of any approval of expulsion by the Registrar;
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> (iv) No construction had been started and there was no progress in the work and thus no demand could have been made from the members of the Society;
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> (v) Affairs of the Society required to be enquired into; and
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> (vi) According approval of expulsion to the members would amount to encouraging the mal-practices in the Society.

25. While considering the revision filed by the Society under Section 80 of the Act 1972, the Financial Commissioner in his judgment and order dated 26.8.1997 concurred with the reasoning given by the Registrar and the revisional authority, and had given cogent reasons for such agreement.

26. The High Court has dealt with the case without meeting any of the reasons given by the Registrar and unnecessarily laboured in digging the old fossils that the Registrar failed to decide the case for long 8 years and in such a fact-situation he would become functus-

officio, without appreciating that if the Society was so aggrieved by inaction of the Registrar, it could have approached the High Court to issue a direction to the Registrar to decide the case within a stipulated period. It is not to be forgotten that there could be many reasons and circumstances to account for the resolution not having been considered within the stipulated time. In such cases delay may be for reasons on the part of the applicant himself. The statutory authorities must be allowed to exercise their powers reasonably and in good faith.

In the instant case, the Resolution dated 27.4.1987 was forwarded by the Society to the Registrar for approval after an inordinate delay on 20.2.1988. The High Court in paragraph 13 of the impugned

judgment itself has taken note that "several opportunities were given to the Society which finally submitted the records on 19.9.1995." Thus, delay was totally attributable to the Society itself.

27. So far as the issue of the expulsion of the members of the Society is concerned, the High Court has not recorded any finding of fact as to when the demands had been made from the members and as to whether there was any progress in the construction work of the Society. We have been taken through the entire judgment of the High Court. We cannot find any single iota which may be termed as a reason for the judgment and we are at a complete loss and could not find out as what the High Court has decided.

28. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum.

Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.

[Vide: State of Orissa v. Dhaniram Luhar AIR 2004 SC 1794;

State of Rajasthan v. Sohan Lal & Ors. (2004) 5 SCC 573; Vishnu Dev Sharma v. State of Uttar Pradesh & Ors. (2008) 3 SCC 172;

Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. v.

Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. v.

Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal v. State of Haryana & Ors. (2009) 3 SCC 258; State of Himachal Pradesh v.

Sada Ram & Anr. (2009) 4 SCC 422; and The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors., AIR 2010 SC 1285).

29. The High court ought to have considered that it was a writ of certiorari and it was not dealing with an appeal. The writ of certiorari under Article 226 of the Constitution can be issued only when there is a failure of justice and it cannot be issued merely because it may be legally permissible to do so. There must be an error apparent on the face of record as the High Court acts merely in a supervisory capacity.

An error apparent on the face of the record means an error which strikes one on mere looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions.

Such error should not require any extraneous matter to show its incorrectness. Such errors may include the giving of reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence. Such a writ can be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to act.

While issuing the Writ of Certiorari, the order under challenge should not undergo scrutiny of an appellate court. It is obligatory on the part of the petitioner to show that a jurisdictional error has been committed by the Statutory Authorities. There must be the breach of principles of natural justice for resorting to such a course. (Vide: Harbans Lal v.

Jagmohan Saran, AIR 1986 SC 302; Municipal Council, Sujanpur v. Surinder Kumar, (2006) 5 SCC 173; Sarabjit Rick Singh v.

Union of India, (2008) 2 SCC 417; and Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited, (2008) 14 SCC 171) In view of the above, we are of the considered opinion that facts of the case did not warrant any interference by the High Court in its equity jurisdiction for raising the writ of certiorari.

30. In view of the facts and circumstances of the case and the manner in which the impugned judgment has been passed, appeal deserves to be allowed.

31. Be that as it may, we have been informed by learned counsel for the parties that the Society has been taken over by the Administrator and a large number of flats remained un-allotted. The appellants have filed the information sought by them under the Right to Information Act, 2005 on 23.4.2008 which makes it clear that 15 flats bearing Nos. 14, 23, 217, 324, 325, 327, 418, 421, 426, 513, 516, 619, 623 and 726 category-`B' and 737 category-`A' remained un- allotted. In order to meet the ends of justice it is required that appellants be adjusted against the said un-allotted flats. However, the Society shall put a demand, if any, and the appellants are directed to make the payment with interest in accordance with law.

32. In view of the above, appeal is allowed. Judgment and order of the High Court dated 4.9.2002 in Civil Writ Petition No. 2/98 is hereby set aside and the judgment and order of the statutory authorities dated 26.8.1997 and 3.11.1997 are restored. There shall be no order as to costs.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, October 18, 2010