

Supreme Court of India

Shatish Chandra vs Registrar Of Coop. Societies on 21 April, 1994

Equivalent citations: 1994 SCC (4) 332, JT 1994 (3) 20

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

SHATISH CHANDRA

Vs.

RESPONDENT:

REGISTRAR OF COOP. SOCIETIES

DATE OF JUDGMENT 21/04/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1994 SCC (4) 332 JT 1994 (3) 20

1994 SCALE (2) 829

ACT:

HEADNOTE:

JUDGMENT:

ORDER In Writ Petition No. 20 of 1994

1. The petitioners are the practising advocates. They were the members of the Supreme Cooperative Group Housing Society Ltd., 110, Lawyers Chamber, Supreme Court Compound, New Delhi, for short 'the Housing Society'. By a resolution dated 22-2-1990 passed by the general body of the Housing Society, the petitioners are expelled from the membership of that society, that resolution is approved by the Registrar on 12-8-1991. This writ petition under Article 32 of the Constitution is, therefore, filed by the petitioners seeking the following reliefs

(a) to quash the said resolution;

(b) to declare the appointment of Architect as bad, arbitrary and illegal;

(c)to declare the dispensation of residential qualification for membership of society as arbitrary and illegal;

(d)to declare the draw of lots dated 14-4-1990 and 18-7-1992 concerning Phase 1 and Phase 11 respectively as arbitrary and illegal;

(e)to appoint an Administrator forthwith and other consequential reliefs.

2. When a question was put to the counsel for the petitioners as to how the writ petition is maintainable, it was contended that the expulsion was per se arbitrary and they are entitled to challenge on the ground of violation of Article 14. It was also contended that in similar circumstances, this Court in *Raj Rani v. Delhi Admn.* I had considered elaborately the scheme of the Delhi Cooperative Societies Act, 1972 for short 'the Act' and that, therefore, the petitioners are entitled to seek the remedy. When a further question was put to the petitioners that when they had sought for the above reliefs in the High Court in a writ petition, but they were negatived and after it was negatived and an SLP No. 630 of 1994 was filed in this Court against the order of the Division Bench of the High Court, how the present writ petition is maintainable, the counsel for the petitioner asserted that the order of the High Court does not operate as res judicata since it was not a speaking order and, therefore, the petitioners were entitled to seek the same reliefs by filing the present writ petition.

3. We are afraid that we cannot accede to any of the contentions raised by the petitioners. The petitioners filed Writ Petition No. 454 of 1989 in the High Court against the order of the Registrar under the Act made in respect of the arbitration proceedings initiated against the appointment of the Architect by the General Body of the Society, which came to be dismissed on 7-4-1989. Without filing any special leave petition under Article 136, and suppressing the fact of dismissal of the above writ petition the petitioners filed WP No. 58 of 1989 in this Court under Article 32 which this Court by order dated January-25, 1990 permitted the petitioners to withdraw the writ 1 (1977) 2 SCC 314: AIR 1977 SC 1900 petition with liberty to pursue the remedy by way of writ petition in the High Court. Then they filed Writ Petition No. 527 of 1990 challenging the constitutional validity of Section 34 of the Act and also sought for mandamus to appoint Administrator under Section 32 and also challenging the appointment of Architect as illegal, the said writ petition was dismissed on 16-7-1993. While filing the special leave petition against the said order, the petitioners filed the present writ petition. It may also be relevant to note that when other members of the Society filed Writ Petition No. 561 of 1990 etc. this Court comprised of a Bench of three Judges ultimately dismissed the above writ petition by order dated April 25, 1990.

4. In the judgment, the Delhi High Court pointed out that despite the willingness of the court to give direction to the society to withdraw the expulsion, subject to the petitioners paying all the arrears with interest thereon, the petitioners had not availed of the indulgence, nor sought any amendment to the writ petition to challenge their expulsion, apart from non availment of the statutory remedy. The conduct thus disentitles the petitioners of the remedy under Article 32. That apart the right to membership of a Cooperative Society is a right got under a statute and not a fundamental right. If the petitioners have been removed otherwise than in accordance with law, the petitioners have to

pursue the remedy as provided under the Act. This Court does not encourage the filing of the writ petition under Article 32, bypassing the statutory remedy and the remedy of Article 226. In *Raj Rani case*, the question of maintainability of the writ petition under Article 32 did not arise. That was the case where the writ petition was filed in a representative capacity under Order 1, Rule 8 CPC and since a policy of the Act was involved therein, the writ petition was entertained to resolve the controversy in accordance with law. Therefore, the ratio therein is of little assistance to the petitioners. In *Tilokchand Motichand v. H.B. Munshi*, CST2 relied on by the petitioners, far from assisting them, goes against them. This Court had expressly held that when the remedy under Article 226 was invoked, the legality thereof should be decided under Article 136 and that a writ petition under Article 32 cannot be entertained and the order passed by the High Court under Article 226 operates as a *res judicata* for the maintainability of the writ petition under Article 32. The order in Writ Petition No. 527 of 1990 dated 16-7-1993 operates as constructive *res judicata*. The petitioners might and ought to have raised the legality of their expulsion from membership of the society. The omission thereof operates as constructive *res judicata* to maintain this writ petition. Considered from this perspective, we are of the view that the writ petition is not maintainable. Accordingly, the writ petition is dismissed with exemplary costs of Rs 10,000. The costs of Rs 10,000 will be paid to the Supreme Court Legal Aid Committee. On failure, the latter is entitled to have it executed as a decree of this Court.

2 (1969) 1 SCC 110 : AIR 1970 SC 898 In SLP (C)No. 630 of 1994

5. The SLP arises from the order of the Division Bench of the High Court of Delhi in WP No. 527 of 1990 dated 16-7-1993. The petitioners sought the relief that Section 34 of the Act be declared as unconstitutional and *ultra vires* and a mandamus to the Registrar to appoint the Administrator of the respondent-Society under Section 32 of the Act. The High Court negatived both the reliefs. Thus this SLP has been filed.

6. The petitioners have not canvassed before us the grounds on which the validity of Section 34 was assailed and upheld by the High Court or of the appointment of the Administrator under Section 32 of the Act. On the other hand, the petitioners have contended that the Society had given a notice 'Annexure G' dated 19-8-1989 calling upon the petitioners to pay Rs 1,50,000 on or before October 18, 1989 and for the default in payment thereto by the said resolution, the petitioners have been expelled from the membership and that, therefore, in the pending proceedings, the High Court directed stay of the expulsion on 19-9-1991. The High Court was not justified in dismissing the writ petition on the ground that the petitioners were not willing to deposit the entire dues with interest up to date. We find no force in the contention. It is seen that the petitioners have not challenged the resolution of expulsion passed by the general body and approved by the Registrar. Therefore, it is not necessary for the High Court to go into the question of expulsion. What the High Court had stated was that before considering the case of the petitioners on the ground of default in paying the instalments, the High Court seems to have given an opportunity to the petitioners to deposit the arrears with interest up to that date so that it could give suitable directions to the Society. Since the petitioners were not prepared to deposit the amount, the court was not inclined to give the relief in that behalf. However, the High Court has upheld the validity of Section

34. In view of the fact that Po arguments have been addressed before us on the question of the validity of Section 34 or the refusal to pass an order under Section 32 of the Act for appointment of an Administrator, it is not necessary for us to go into those questions. Since the expulsion of the petitioners was not the subject-matter of the writ petition, we are not permitting the petitioners to argue in that behalf. The special leave petition is dismissed.

7. It is prayed that the Society may be directed to refund the amount which each of the petitioners had deposited and is stated to be Rs 40,400. We cannot give any such direction in the absence of the Society. However, it is open to the petitioners to make the representation to the Society and the Society would dispose of the representation in accordance with law for the refund of the amounts.