

Shri Yaduraj Singh vs District Asstt. Registrar Cooperative ... on 3 July, 2012

Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved

Court No. - 2

(1) Case :- WRIT - C No. - 6036 of 2009

Petitioner :- Shri Yaduraj Singh

Respondent :- District Assistant Registrar, Cooperative Societies and Others

Petitioner Counsel :- M.P. Gupta, R.K. Gupta, Ashok Kumar Lal, H.R. Mishra, Abhishek Mis

Respondent Counsel :- C.S.C., Rakes Kumar, S.P. Sharma

(2) Case :- WRIT - C No. - 6037 of 2009

Petitioner :- Shri Prem Singh (Thekadar)

Respondent :- District Assistant Registrar, Co-operative Societies and othe

Petitioner Counsel :- M.P. Gupta, R.K. Gupta, Ashok Kumar Lal, H.R. Mishra, Abhishek Mis

Respondent Counsel :- C.S.C., Rakes Kumar, S.P. Sharma

(3) Case :- WRIT - C No. - 3684 of 2009

Petitioner :- Smt. Laxmi Devi

Respondent :- District Assistant Registrar, Co-operative Societies and other

Petitioner Counsel :- M.P. Gupta, R.K. Gupta, Ashok Kumar Lal, H.R. Mishra, Abhishek Mis

Respondent Counsel :- C.S.C., Rakes Kumar, S.P. Sharma

(4) Case :- WRIT - C No. - 6038 of 2009

Petitioner :- Rakesh Kumar

Respondent :- District Assistant Registrar, Co-operative Societies and other

Petitioner Counsel :- M.P. Gupta, R.K. Gupta, Ashok Kumar Lal, H.R. Mishra, Abhishek Mis

Respondent Counsel :- C.S.C., Rakes Kumar

(5) Case :- WRIT - C No. - 6039 of 2009

Petitioner :- Bhupendra Singh

Respondent :- District Assistant Registrar, Co-operative Societies and other

Petitioner Counsel :- M.P. Gupta, R.K. Gupta, Ashok Kumar Lal, H.R. Mishra, Abhishek Mis

Respondent Counsel :- C.S.C., Rakes Kumar

(6) Case :- WRIT - C No. - 6040 of 2009

Petitioner :- Manvendra Singh

Respondent :- District Assistant Registrar, Co-operative Societies and other

Petitioner Counsel :- M.P. Gupta, R.K. Gupta, Ashok Kumar Lal, H.R. Mishra, Abhishek Mis

Respondent Counsel :- C.S.C., Rakesh Kumar

Hon'ble Sudhir Agarwal, J.

1. Heard Sri H.R. Mishra, Senior Advocate for the petitioner; Sri Rakesh Kumar for respondents no. 1 & 2 and Sri S.P. Sharma for respondent no. 3. As requested and agreed by learned counsel for the parties, the Court proceeds to decide the matter under the Rules of the Court at this stage.

2. The first two writ petitions were heard on 1.9.2011 and judgment was reserved. Before the judgment could be prepared and delivered, the other matters namely Civil Misc. Writ Petitions no. 3684 of 2009, 6038 of 2009, 6039 of 2009 and 6040 of 2009 came up for hearing on 21.3.2012 and since they also involved same questions of facts and law as in the earlier two writ petitions, learned counsel for parties not only adopted the arguments already advanced in earlier two writ petitions but made some further arguments and, therefore, judgment was reserved therein also so that all these matters may be decided by a common judgment and hence I proceed accordingly.

3. The factual and legal aspects in all the matters are similar and common and, therefore with the consent of learned counsel for parties, pleadings and facts of writ petition no. 6036 of 2009 are being discussed in this judgment treating it as leading case and same would apply to all other writ petitions.

4. The writ petitions are directed against the order dated 10.01.2007 passed by Additional District Co-operative Officer, Headquarters Agra as Sole Arbitrator in purported exercise of powers under Section 70 of U.P. Co-operative Societies Act, 1965 (hereinafter referred as the "Act, 1965"), declaring sale deed dated 8.6.1989, executed by respondent no.3 in favour of the petitioner(s), null and void. He has further directed respondent no.3 i.e., Sky Enclave Gramin Sahkari Awas Samiti Ltd., 60, Jaipur House Market, Agra (hereinafter referred to as "the Society") to refund price of land in question to the petitioner(s), and thereafter to allot land in question in accordance with U.P. Cooperative Societies Rules, 1968 (for short "Rules, 1968") to any other Member of the Society.

5. The aforesaid order has been affirmed in appeal vide order dated 15.10.2008 of District Assistant Registrar, Cooperative Societies, U.P. Agra. Both these orders are impugned in this writ petition.

6. The basic contention of learned Senior Counsel for the petitioner is that impugned orders are without jurisdiction. Respondent no. 2 had no jurisdiction to declare a sale deed, null and void since such an issue could have been raised in a court of law only by filing a civil suit. So far as the appellate order is concerned, it is submitted that the appellate authority has exceeded its jurisdiction in dismissing appeal inasmuch as, when the sole Arbitrator himself lacked jurisdiction, the Appellate Authority also could have no jurisdiction to entertain the appeal. Even otherwise, appeal involving the disputed amount exceeding Rs. 10,000/- is maintainable before U.P. Cooperative Tribunal, Lucknow, as per notification dated 4.3.1979 and hence appeal was not maintainable before the District Assistant Register (Co-operative Societies).

7. The facts in brief, giving rise to the present dispute are as under.

8. The Society is a cooperative society registered under the Act 1965. It was constituted with the object of undertaking housing projects. In other words, it is a housing cooperative society. The society proposed a housing colony at Khasra No.171, village Pathauli, Plot No.1. After purchasing the said land, the Society made a plan of a housing colony on the said land. It sold a plot measuring 295.60 Sq. yards on a consideration of Rs. 7414.50 to the petitioner Yaduraj Singh vide sale deed dated 8.6.1989. At that time, it is alleged that proposed housing colony fell in rural area and beyond territorial jurisdiction of Agra Development Authority (hereinafter referred to as "A.D.A.") and it came within the territorial authority of A.D.A. in year 2002.

9. The Society filed an application before respondent no. 2 for arbitration under Rule 225 of the Rules for revocation of sale deed dated 8.6.1989 and for dispossession of petitioner(s) with the help of police, if so required, and also for damages. It pleaded that petitioner(s) ought to have made construction of residential house within three years but neither raised any residential accommodation nor sought extension of time and 16 years have passed since then. It is further said that in exercise of powers under Section 28 of the Act 1965 and paragraph 51 of the bye laws, the land allotted to petitioner(s) stood forfeited after refund of consideration received from them which was sent through a demand draft. In the leading case draft sent was in the name of the petitioner's brother Ranveer Singh though returned by Post Office with endorsement that addressee is not available despite frequent visits. A complaint was made against petitioner(s) before the Assistant Registrar under Section 70 of 1965 Act on 22.4.2004 whereupon Assistant Registrar vide order dated 28.4.2004 disposed of complaint directing Society to proceed in accordance with law. The Society accordingly allotted the land in question to other member(s) of Society. In leading case it has been sold to Sri Raj Kumar son of Om Prakash.

10. The petitioner in leading case however, forcibly entered the premises, took possession of land in question with the help of bad elements on 10.4.2004 and this act of petitioner also constitute an offence of Criminal Trespass under Section 447 IPC. The petitioner's alleged act has caused bad influence on other Members of the Society besides causing loss of reputation of Society itself.

11. The petitioner(s) were required to pay development fee by demand letters sent by registered post which returned unserved whereafter information was published in newspaper on 19.5.2004 but development charges have not been paid so far. The jurisdiction of respondent no. 2 for arbitration under Section 70 of Act 1965 has arisen for violation of conditions no. 2 and 5 of sale deed dated 8.6.1986 and para 51 of the bye laws. The matter is beyond jurisdiction of civil court.

12. It is said that cause of action arose in leading writ petition on 8.6.1992 initially when petitioner failed to make construction within three years and thereafter on 19.5.2004 when petitioner failed to pay development fee despite demand and violated condition no.5 of sale deed and on 10.4.2004 when he forcibly took possession of the land in question and constructed boundary wall.

13. The application filed by respondent no.3 was contested by the petitioner vide objections dated 20.3.2006. He said that constructions were raised long back. The entire activities of respondent no.3

are malicious. There is no violation of any condition of sale deed or bye laws. Respondent no.2 has no jurisdiction to revoke sale deed since such power vests in civil court only. It is also said that no objection certificate dated 17.7.2002 issued by Indian Air Force was revoked on 1.12.2003, hence, construction on the land in question was not permissible in law.

14. So far as the development charges are concerned, the petitioner(s) sought details of said charges which respondent no.3 failed to supply. Hence, no such charges are payable but still if there is any valid fee/charges payable by the petitioner he is ready to pay the same.

15. The application has been decided by respondent no.2 vide order dated 10.1.2007. He has held violation of conditions of sale deed as also bye laws of society and accordingly declared sale deed dated 8.6.1989, executed in favour of petitioner(s) by respondent no.3, a nullity. He has also permitted society to allot the plot(s), after refund of consideration received from the petitioner(s), to any other member(s). Against the said order the petitioner(s) preferred appeal before respondent no.1 which are dismissed by order dated 15.10.2008

16. On behalf of respondents no.1 and 2 a separate counter affidavit has been filed through their Advocate Sri Rakesh Kumar. The affidavit has been sworn by Sri S.M. Tripathi, Additional District Cooperative Officer, Agra. Objections regarding maintainability, admissibility in respect to the present writ petition have been taken. It is said that petitioner Yadunath Singh earlier filed writ petition no. 3684 of 2009 in the capacity of pairokar of Mrs. Laxmi Devi, the petitioner of that writ petition. He had given his residential address therein as Village and post AFC Colony, Ratenara, Jodhpur, Rajasthan, but in the present writ petition (leading writ petition) he has mentioned his address of village and post Dhana Jivana, District Mathura. The petitioner is thus guilty of filing false affidavit which is an offence punishable under Section 193 IPC. Reference is made to Baban Singh Vs. Jagdish Singh AIR 1967 SC 68. It is further said that there is forgery inasmuch as at page 21 of writ petition, name of Yaduraj Singh has been removed and inserted by pen. Pages 21 to 24 of the writ petition does not bear signature of petitioner and on page 28 name of Yaduraj Singh has been removed and inserted with pen. Further the writ petition has rendered infructuous, since, after sole Arbitrator's award dated 10.01.2007, the Society has refunded money to the petitioner vide cheque no.107604 dated 1.5.2008 sent by speed post, and plot in question has been allotted to another member of society namely, Sri Laxmi Kant Upadhyay son of Sri Trilok Chand. The order impugned in the writ petition has already been given effect to. State of U.P. has not been impleaded, hence writ petition deserves to be dismissed for non-impleadment of necessary party. Reliance is placed on Apex Court's decision in Ranjeet Mal Vs. General Manager, NR, New Delhi and others AIR 1977 SC 1701 and Chief Conservator of Forest, Government of A.P. Vs. Collector and others (2003) 3 SCC 472. Then it is pleaded that petitioner himself preferred appeal before respondent no.1 but in writ petition has taken stand that appeal was not maintainable, hence contradictory stand taken by the petitioner justify dismissal of this writ petition. They have also disputed the assertion of petitioner that the housing colony proposed is now in urban area. The arbitration proceedings were initiated since the petitioner did not pay development charges of society. The society has undertaken development activities inasmuch as 6 ft. high boundary wall was constructed. The society paid a sum of Rs. 4,50,727/- to A.D.A. on 11.1.2007 and on demand made by the A.D.A., further remaining amount of development charges shall be paid. The Society is awaiting reply of its letter dated

17.12.2007 and 22.12.2008 whereby it had demanded plan and programme of execution of development for providing amenities to the proposed housing colony.

17. Interestingly the respondent no. 3, the Society is also represented by same counsel Sri Rakesh Kumar. The Society has also filed a separate counter affidavit though the pleadings are verbatim the same as are contained in the counter affidavit of respondent no. 1 and 2, hence I am not repeating the averments of counter affidavit of respondent no. 3.

18. It may however be pointed out that Sri Shankar Prasad Sharma, who is also an Advocate, has sworn the counter affidavit disclosing himself to be the President of Society and has appeared in person and advanced his arguments. He also represents respondents no. 1 and 2.

19. Before coming to other aspects of the matter, there are some trivial issues which have been stressed largely by Sri S.P. Sharma, appearing in person, which I propose to deal first.

20. It is contended that State of U.P. is a necessary and proper party in the matter and without its impleadment writ petition has to be dismissed. Reliance is placed on the Apex Court decision in Ranjeet Mal (Supra). I find it difficult to accept the submission. Despite repeated query, Sri Sharma appearing in person on behalf of respondent no. 3 could not tell as to how State of U.P. in the present case could be a necessary or proper party. No order of State of U.P. is under challenge. There is no question of any financial liability to be borne by the State of U.P. in respect to the dispute between the Members of Society (respondent no. 3), which is a private housing society. Respondents 1 and 2 have passed the orders exercising their statutory powers. At this stage, I am proceeding to assume that such power vests in them though this issue has also to be seen subsequently. They did not exercise the power, if any, in passing the order impugned in this writ petition being an instrumentality or Officer of State Government but as statutory authority they are conferred with certain powers by special statute which they have exercised.

21. In Ranjeet Mal (surpa) the incumbent was an employee of Railways and his termination was in question. Apex Court found that in case termination is set aside, financial implication would have to be borne by Union of India, therefore, it was a necessary and proper party. But that is not the case herein. Therein the Court found that relief was sought against State and it was financially or otherwise liable in case relief is granted to petitioner.

22. Similarly, the another decision relied on i.e. Chief Conservator of Forests, Government of A.P. Vs. Collector and others (2003) 3 SCC 472 also does not apply to the facts of present case. There was a dispute between two departments of Government, namely the Forest Department and Revenue Department. The Revenue Department treated the land as vested in State Government and liable for allotment to cultivators and executed lease in favour of certain persons while Forest Department claimed that land being a forest land, it could not have been given on lease to any individual. There was no dispute that the authorities of Government are necessary party in the matter. However, instead of impleading the State in the manner as provided in Section 79 of Code of Civil Procedure, impleadment was made of the official designation. While observing that State has to be impleaded as it is and not by the official designation of an authority, Apex Court further clarified in para 13 of

judgment as under:

"We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.

23. None of the aforesaid two judgements thus have any application in the case in hand. Objection raised on behalf of respondents is rejected.

24. Next question is that writ petition has been filed with certain forgery etc. inasmuch printed name has been erased and has been entered with the pen. The respondents 1, 2 and 3 could not tell as to what has been concealed or forged by the petitioner so as to obtain an order by playing fraud or misrepresentation with the Court. Whether the name is printed, typed or written by pen would make no difference. Similarly if one or two pages in the writ petition are not signed or omitted from being signed, that would also not be a substantiating cause justifying dismissal of writ petition if otherwise on merits petitioner had shown grave injustice and illegality on the part of respondents. I, therefore, proceed to consider the issues on merits.

25. Now the first question is whether respondents 1 and 2 while entertaining inter se dispute between Society and its members have power to nullify an instrument of title executed between the parties or such power is vested only with the Civil Court. This issue is capable of going to the root of the matter, therefore, has to be dealt with at the outset.

26. Two provisions have been cited by the parties which need consideration i.e. Sections 70 and 128 of Act, 1965. They read as under:

"70. Disputes which may be referred to arbitration.- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises-

(a) among members, past members and person claiming through members, past members and deceased members ; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee ; or

(c) between, the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between a co-operative society and any other co-operative society or societies;

such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:

Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.

(2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely -

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety and amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not ;

c)a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and

(d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

"128. Registrar's power to annul resolution of a co-operative society or cancel order passed by an officer of a co-operative society in certain cases- The Registrar may-

(i) annul any resolution passed by the Committee of Management, or the general body of any co-operative society; or

(ii) cancel any order passed by an officer of a co-operative society; if he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the society, or is in contravention of the provisions of this Act, the rules or the bye-laws of the society, whereupon every such resolution or order shall become

void and inoperative and be deleted from the records of the society:

Provided that, the Registrar shall, before making any order, require the Committee of Management, general body or officer of the co-operative society to reconsider the resolution, or as the case may be, the order, within such period as he may fix but which shall not be less than fifteen days, and if he deems fit may stay the operation of that resolution or the order during such period."

27. It is contended that the question whether there is a violation of conditions of sale deed or bye-laws justifying nullification of sale deed is a question relating to the business of the Co-operative Society and therefore it was referable to arbitration under Section 70. It is contended that respondents 1 and 2 rightly entered the dispute after being satisfied that petitioner has violated the terms of sale deed as also the bye-laws and have rightly declared sale deed dated 8.6.1989 registered on 29.12.1989 a nullity. They were well within their jurisdiction in passing such order. Reliance is placed on Smt. Kiran Devi Vs. Sahayak Awas Ayukat Evam Sahayak Nibandhak U.P. Awas Evam Vikas Parishad 1991 ALJ 904.

28. Per contra, Sri H.R. Mishra, learned counsel for petitioner contended that a sale deed after its registration transfers the title to the purchaser. It is complete as soon as it is executed by the vendor. The transaction of transfer of immovable property is complete by executing a registered document subject to other conditions being fulfilled as mentioned therein. Once the title is passed after registration is given effect to, it is complete and cannot be questioned. He contended that declaration of a sale deed nullity is nothing but a claim for cancellation of sale deed and power to declare a sale deed ineffective, illegal or to cancel is not vested with Registrar under Section 70 of Act, 1965. The only remedy lies in common law by filing a civil suit. He contended that business of Society was for providing housing accommodation to its members. The Society had not to provide the constructed accommodation but only open land for construction of residential accommodation by the Members of Society. That business was complete when the Society allotted a particular plot to petitioner(s) and executed sale deed. Thereafter if there is any dispute regarding the compliance of bye laws etc. that may be matter which can be seen by the Registrar as an Arbitrator under Section 70 of the Act, 1965 but he cannot look into the question of cancellation of sale deed or set aside a sale deed already executed by Society to one of its members.

29. From the rival facts and pleadings as also the arguments advanced by learned Counsel for parties one thing is not in dispute that a particular piece of land belong to Society i.e. respondent no. 3 was allotted and sold to petitioner by executing a sale deed which was also registered under the provisions of Registration Act, 1908. The date of execution of sale deed being 8.6.1989 is not in dispute. Copy of sale deed has been placed on record as Annexure 16 to counter affidavit of respondents no. 1 and 2 in leading writ petition. It says that the land in question was purchased by Society from its erstwhile owner so as to plan a housing (residential and commercial) colony and to sell the land by dividing it into smaller plots to cater the need of its members. The copy of proposed plan was submitted to A.D.A. and sanction was obtained. The Society is member of Apex Society namely U.P. Co-operative Housing Federation Limited, Lucknow. The core relevant conditions in the sale deed are those which impose certain restrictions on the transaction of sale. The sale deed

was executed subject to these conditions:

^^1- ;g fd mDr Hkw[k.M vkoklh; Hkou fuekZ.k gsrq iz;ksx esa yk;k tk,xkA 2- ;g fd mDr Hkw[k.M ij Hkou dk fuekZ.k rhu o"kZ dh vof/k ds vUnj iw.kZ djuk vfuok;Z gksxkA 3- ;g gS fd ;fn fdUgha vko';drk vuqHko djsa] rks ,slh fLFkfr esa fodz; vkfn djus ls iwoZ lnL; dks lfefr dks izcU/k desVh dh vuqefr ysuk vfuok;Z gksxkA 4- ;g gS fd ;fn Hkw[k.M dk ekSds ij {ks=Qy de ;k T;knk gksrk gs] rks mldk ewY; nksuksa i{kksa dks ;Fkkuqlkj fodz;nj ls ns; gksxkA 5- ;g fd lfefr us Hkw[k.M ds ewY; fu/kkZj.k esa Hkwfe dk dz; ewY; fy;k gSA vr% mDr Hkw[k.M dks fodflr djus esa vkUrfjd ,oa okg~; izLrkfor fodkl O;; ¼ftlesa lM+d] lhoj ykbu] ikbi ykbu] ikdZ ukyh vkfn ds izkfo/kku gSa½ fuf'pr gksaxs mUgsa mDr lnL; Hkw[k.M ds {ks=Qy ds vuqikr ls lfefr dks ekaxus ij rqjar Hkqxrku djsxkA vU;Fkk lfefr dks vf/kdkj gksxk fd Hkw[k.M dk jftLV~h jn~n dj nsA 6- ;g fd lnL; lkoZtfud fgr dks /;ku esa j[krs gq, gh vius Hkou dk fuekZ.k dj;sxk rkfd vU; lnL;ksa dks vlqfo/kk u gksA 7- ;g fd Hkw[k.M ij fufeZr Hkou ;k IyKV ij tks Hkh ljdkjh VSDl vkfn gksaxs mls lnL; Lo;a ogu djsxkA** English Translation by the Court:

1. That the said plot will be used for the construction of a residential building.
2. That it will be mandatory to complete the construction of the building on the said plot within a period of three years.
3. That if, in any expedient circumstances, a member (purchaser) feels the necessity of sale, etc. of the said plot, he will have to obtain permission from the management committee of the Society prior to such sale, etc.
4. That if the area of the plot is found to be short or surplus on its location, either party, as the case may be, will have to pay price thereof as per the rate of sale.
5. That since the Society has taken into consideration the cost price of the land in the determination of price of the plot, hence internal and external proposed development expenses (which includes provisions for road, sewer line, pipe line, park, drainage, etc.) for developing the said plot will be fixed; hence, the said member will have to immediately pay the same on demand to the society in proportion to the area of the plot : failing which the Society will have the power to cancel the registry of the plot.
6. That a member will get the building constructed by keeping the public interest into consideration, so that other members may not face any inconvenience.
7. That a member will have to bear all government tax etc. whichever is payable on the building or plot built on the said land.

30. A perusal of the above would show that it was compulsory for the purchase of land to make house within three years. The price paid by Member of Society as consideration of land under transaction only reflect the cost on which the Society purchased the land from its erstwhile owner but for subsequent development of land in question whatever expenses will have to be borne by the Society, the same shall be paid in proportion of area of the land in question to the Society on demand by the Members failing which the Society shall have right to cancel sale deed(s).

31. Therefore one of the conditions subject to which sale deed was executed conferred a right upon Society itself to cancel registration of plot in question meaning thereby the transaction of land by registered sale deed by itself was not made absolute and unconditional but encumbered by certain conditions violation whereof could have resulted in loss of land to the Member of Society.

32. The business of Society includes making of housing accommodation available to its members and in furtherance thereof when a sale deed in respect to a vacant plot is executed to one of the Members with condition of construction of house within a specified time, a dispute whether such condition is complied or not ex facie would be within the precincts of the words "business of the Society". The term "business of the society" is much wider inasmuch some illustrations which would constitute the part of term "business of the Co-operative Society" have been referred to in Sub-section 2 of Section 70. The same are inclusive and not exhaustive. In fact Sub-section 2 of Section 70 provides for such cases which may or may not have been included within the term "Constitution, Management or the business of the Society" and therefore by a deeming clause, legislature has made it clear that those aspects shall constitute and form part of the term "constitution, management or business of the Society" but that would not mean to confine business only to these aspects but since it is inclusive, the words "business of the society" therefore is unrestricted and wider enough to cover a dispute between the members of a Co-operative Society about a subject matter which relates to business of society. I need not go into further detailed discussion on this aspect since I am fortified by a direct decision of an Hon'ble Single Judge in Smt. Kiran Devi (surpa) wherein this Court has held that a sale deed also can be cancelled by the Arbitrator to whom the dispute is referred under Section 70 of the Act, 1965 or the Appellate Authority to whom the appeal lie against the order of Arbitrator. It is not necessary to approach the Civil Court for the said purpose. In para 12 of the judgment the Court said:

"12. It was secondly argued that the sale-deed could not be cancelled by the appellate authority, it can be cancelled only by the Civil Court. In my opinion, this contention also is misplaced. If the sale-deed as a matter of fact was held to be illegal, bad or in violation of the provisions of law, the appellate authority non est. If such a finding was returned, cancellation of the sale-deed would be implicit in such a finding. What the appellate authority actually means to say is that the sale-deed is illegal, inoperative or non est as against the interest of the society and would confer no benefit on the petitioner and if he declares the sale-deed as cancelled no fault can be found in that finding. His order, if not set aside in the writ petition has to be recorded in the Sub-Registrar's register. Therefore, it is not correct to suggest that after having declared the sale deed illegal, the respondent society should resort to a civil litigation for getting the sale-deed cancelled. This would only multiply the litigation and would

be futile type of litigation. The contention of the learned counsel for the petitioner in this regard, is, therefore, overruled."

33. Moreover, once it is held that dispute relating to business of Society can be settled by resorting to the machinery prescribed in the Act, 1965, the necessary component of this conclusion would be that a Civil Suit shall not lie. A civil suit lie but not when by express or necessary implication it is barred. When a special adjudicatory forum is provided in the statute for settlement of a dispute, the necessary implication is that the settlement of such dispute and the procedure prescribed in common law is barred. The Apex Court in Ghaziabad Zila Sahkari Bank Vs. Addl. Labour Commissioner 2007 (11) SCC 756 has also held that U.P. Act, 1965 is a special Act dealing with the matters relating to Co-operative Society. It also held that special statute shall override and prevail over the general provisions.

34. In Punjab State Electricity Board and another Vs. Ashwani Kumar 1997 (5) JT 182 with reference to a similar question arising out of Electricity (Supply) Act, 1948 and Regulations framed therein, the Apex Court said when a machinery for settlement of a dispute is provided under the Regulations framed under 1948 Act, the common law remedy of filing civil suit under Section 9 would be barred. The Court in Ashwani Kumar (supra) said:

" It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implications, the cognizance of the civil cause has been excluded. As a consequence, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time as stated above."

35. I therefore have no hesitation in rejecting the contention of petitioner(s) that respondents 1 and 2 have no jurisdiction to entertain dispute in question with respect to violation of conditions of sale-deed, bye laws and the Rules of Co-operative Society and to consider the consequences thereof on the sale deed(s) executed between the petitioner(s) and respondent no. 3 and to pass consequential order accordingly. The jurisdiction of respondents 1 and 2 to arbitrate in these matters is thus upheld.

36. Now comes the second question, whether respondent no. 3 has proved violation of condition of sale deeds about non construction of house by petitioner(s) at the premises in question, conditions of non payment of development charges justifying cancellation of sale deed; and, right of re-entry of Society on the land in question treating the land free and vacant and available for allotment to any other member.

37. The complaint filed by Society, copy whereof has been filed as Annexure 2 to writ petition, show that mainly the ground for cancelling sale deed claiming re-entry is that petitioner did not make

construction on the land in question within three years, also did not get any extension of period and failed in payment of development charges. Hence Society has re-entered the land by exercising power under Section 28 read with Schedule 51 of Act, 1965.

38. The objection filed by petitioner is Annexure 3 to writ petition wherein he has said that construction made on the premises by him is still existing. The averments to this effect has been made in para 3 and 8 to the objection, Annexure 3 to writ petition.

39. Another application was filed by petitioner on 25.6.2005, Annexure 4 to writ petition, before the Arbitrator wherein he has referred the nature of construction on the land in question i.e. boundary wall and it is claimed that its demolition may result in loss to petitioner for an amount not less than Rs. 50,000/-.

40. It is thus evident that on the plot(s) in question, the only kind of construction claimed to have been raised was a boundary wall and not a house. Obviously a boundary wall would not constitute and mean the "construction of house". Under the terms of sale deed petitioner(s) were to construct a house and not to raise only boundary wall around the plot. But that itself would not make any difference for the reason that before claiming failure of the Member in construction of a house, it has to be seen by Society that the construction of house would have been lawful since all other requirements of Statute(s) had already been fulfilled by Society. Thereafter the member(s) of Society have to simply apply the competent authority for sanction of map, if any, and subject to compliance of other statutory requirements applicable to area in question, the member of Society can proceed to make construction.

41. In the present case, it appears that Society and its members both initially proceeded to defraud the State revenue and thereafter with the passage of time, the hike in prices of land must have accelerated multi fold kind of disputes which gave rise to this matter also.

42. In the sale deed the Society has specially asserted that it has obtained sanction on map of housing plan from A.D.A. The averments in the sale deed reads as under:

^^pwwWafd lfefr us vkxjk fLFkfr Hkwfe vius lnL;ksa dks vkoklh; Hkw[k.M forj.k gsrq HkwLokh ls dz; dj yh Fkh] ftldks lfefr us vkoklh; ,oa O;olkf;d Hkw[k.Mksa esa ckWaV dj mldk uD'kk cuok;k ,oa vkxjk fodkl izkf/kdkj.k vkxjk ls lfefr dks iFkkSyh fLFkfr Sub-Div. Plan, Part Khasra No. 171, Village Patholi dkyksuh dk ekufp= Lohd`r dj;k;kA^^ English translation by the Court:

"Insofar as the Society had purchased Agra-situated land from the land owner for distribution of residential plots to its members, hence the Society, after dividing the land into residential and commercial plots, got their maps prepared and got the map of the colony at Sub-Div. Plan, Part Khasra No. 171, Village Patholi approved."

43. In the entire counter affidavit, there is no averment that the plan of housing colony was sanctioned by A.D.A. and if so when. On the contrary, petitioner himself has stated in para 7 of writ

petition that in 1989 when the Society purchased land, it was beyond the territorial jurisdiction of A.D.A. and lay in rural area. In para 8 of writ petition, it says that housing colony of Society in question came within the statutory control of A.D.A. in 2002 only. In para 13 of counter affidavit of respondent no. 3, it says that Society is still in rural area. Again in para 14 of counter affidavit, it says that the Society was never brought in urban area and the averments made in para 8 of writ petition are false.

44. That being so, the Court fails to understand, what prompted the Society to mention in its sale deed executed as long back as in 1989 that it has got the map prepared for approval from A.D.A. in respect to housing colony in question. It also stated that such map has been sanctioned. It appears that for the purpose of execution of sale deed, for payment of stamp duty in 1989, the Society and its members both reported that land being in rural area its market value is much cheaper and accordingly paid stamp duty on rural rates but subsequently in order to gain the benefit of development of area, having the effect of augmenting the prospects of housing colony and amenities and facilities to the residents, the jurisdiction and authority of A.D.A. has not been disputed and on the contrary the Society has submitted map to A.D.A. for sanction. Some amount towards development charges have also been paid but not all or the entire amount.

45. From the counter affidavit of respondent no. 3, it is also evident that Society has deposited Rs. 4,50,727/- vide cheque no. 0706767 dated 11.1.2007 to A.D.A. A photo copy of the said cheque has been filed as CA-11 to the counter affidavit of respondent no. 3. This is also reiterated in its letter dated 11.1.2007 (Annexure CA-11A to counter affidavit of respondent no. 3). With respect to development activities, the averments are made in para 30 of counter affidavit of respondent no. 3 and there also this fact has been admitted.

46. The Court really find it strange that on the one hand respondent no. 3 pleads that land in question is still in rural area and beyond the jurisdiction of A.D.A. but simultaneously it has applied to A.D.A. on its own for sanction of map and has also deposited some amount towards development charges. This contradictory stand speaks volumes about conduct of Society in question. In the impugned order passed by Arbitrator (Annexure 6 to writ petition), it has also been reiterated that Society has submitted a map plan to A.D.A. for its sanction. The averments contained in the very first paragraph of order dated 10.1.2007 reads as under:

^^Jh ;nqjkt flag iq= Jh :ifd'kksj xzke o iksLV /kkuk thouk] ftyk eFkqjk us oknh lfefr ds izLrkfor dkyksuh lc fMohtu Iyku [kljk uao 171 ,ch xzke iFkkSyh fLFkr Hkw[k.M la[;k 1] jdck 295-60 oxZ xt cSukek fnukad 08-06-89 dks eqofyx :o 7414-50 :i;s /ku tek djkdj dj;kA fodz; ewY; esa fodkl 'kqYd lfEefyr ugha FkkA foi{kh us fodz; i= dh 'krZ la[;k&5 dks Lohdkj djrs gq, lfefr ds ekWaxus ij fodkl O;; ds Hkqxrku djus dk ok;nk fd;k FkkA oknh lfefr }kjk vkxjk fodkl izkf/kdj.k esa Lohd`r gsrq Hkw&foU;kl ekufp= izLrqf fd;k x;k ftlds ifjizs{; esa ekuuh; mPp U;k;ky; ds vkns'kkuqlkj lfefr dks :o 3 yk[k unx o :o 15 yk[k dh cSad xkjUVh izkf/kdj.k esa tek djkus ds funsZ'k fn, x, ftlds vk/kkj ij oknh lfefr }kjk fnukad 01-12-2003 dks izfroknh dks 1]92]800@& :o lfefr esa tek djkus dks iathd`r i= }kjk ekWax dh xbZ ysfdu izfroknh us fodkl O;; tek ugha fd;kA** English Translation by the Court:

"Sri Yaduraj Singh son of Sri Roop Kishore R/o Village and Post Dhana Jivana, District Mathura, after depositing Rs. 7414.50, got the sale deed executed in his favour on 08.06.89 in respect of the proposed colony of the Society at Sub-Div. Plan, Khasra No. 171 AB Village Patholi located plot no. 1, area 295.60 sq. yards. The defendant had promised to pay the development charge on demand to the society, accepting Condition No. 5 of the sale deed. The map was presented for approval at the Agra Development Authority by the plaintiff Society. In pursuance thereof, the Society was directed to pay Rs. 3 lakh in cash and to give a bank guarantee of Rs. 15 lakh to the Authority under the orders of the Hon'ble High Court. On the basis thereof, a registered letter had been sent by the plaintiff Society on 1.12.2003 requiring the defendant to pay Rs. 1,92,800/- but the defendant did not deposit the development expenses."

47. When a question is raised that member of Society has not raised construction of house on the land allotted to him, the necessary incidental question would be whether member of Society could and would have legally raised such construction or not. This question ought to have been considered by Arbitrator as a preliminary issue as to whether the member of Society against whom complaint for non construction of house has been made was entitled and able legally to raise such construction or not. Society has nowhere pleaded and also not borne on record that its plan was duly sanctioned by competent authority enabling the members of Society to raise construction of a house on the land in question. On the contrary, the order passed by Addl. District Co-operative Officer that the map was submitted to A.D.A. for sanction of plan by Society itself means that the very factum mentioned in the sale deed that map plan of society of land in question was already sanctioned by A.D.A. was false and incorrect. The Society misrepresented to its members while executing sale deed. In such a case so long as this statutory requirement of sanction of plan of housing colony and other conditions are fulfilled, no blame can be put upon a member of Society that he/she has not raised construction within the time prescribed in the sale deed. Every stipulation and condition of sale deed, which forms contract between the parties, would have to be read in consonance with each other and also consistent with various local and other statutory laws which govern the nature of contract and conditions thereof namely applicability regarding the construction of a building in a particular area. The Arbitrator has miserably failed to consider that in absence of discharge of its own obligations of paving the way clear to the members of Society with regard to construction of house, a Society cannot blame a member of Society for not raising construction of house when itself has committed default in getting statutory clearance applicable with regard to construction of building.

48. Further the Arbitrator has said in the operative part of its order that real dispute relates to non payment of development charges. On the contrary the complaint made by Society to the Arbitrator i.e. respondent no. 2 shows that the real complaint was about non construction of house within three years as contemplated in the sale deed. This is evident from para 1, 2 and 3 of complaint which reads as under:

^ ^ 1- izfroknh 1/4foi{kh 1/2 us fodz; i= dh rkjh[k ls rhu o" kZ ds vUnj Hkou fuekZ.k dk izrhKk djrs gq, lfe fr dh izLrkfor dkWyksuh lc fMohtu Iyku esa Hkw[k.M la[;k&1 ,fj;k 195-60 oxZxt dk cSukek fnukad 08-06-89 dks dj;k; k ftldk mYys[k fodz; i= ds 'krZ la[;k

nks esa of.kZr gSA ¼layXu&1½ 2- izfroknh us u rks rhu o"kZ ds vUnj Hkou dk fuekZ.k dj;k vkSj u gh le; c<+kus ds fy, dksbZ vkosnu i= fn;kA tcfD 16 o"kZ dk le; chr pqdk gSA 3- ,slh ifjLFkfr esa lfefr us vf/kfu;e dh /kkjk 28 mi fof/k ds vuqPNsn 51 }kkjk iznRr vf/kdkjks dk iz;ksx djrs gq, izfroknh dks izfrnku nsdj mldk Hkw[k.M tCr dj fy;kA** English translation by the Court:

"1. The defendant got executed a registry dated 08.06.1989 of Plot No. 1, area 195.60 square yard promising the construction of building within a period of three years from the date of sale-deed which is detailed under Condition No. 2 of the sale deed (Annexure-1).

2. The defendant neither constructed the building within three years nor submitted any application seeking extension of time, even after a lapse of 16 years.

3. In this circumstance, the Society, in exercise of powers conferred under Section 28 of the Act and Article-51 of of the Bye-law, may seize the land allotted to defendant after giving him compensation for the same."

49. In the entire complaint dated 27.6.2005 (Annexure 2 to writ petition) submitted by respondents this Court finds no mention of the fact that the real dispute was only with respect to non payment of development charges. There is only one paragraph 11 in the complaint dated 27.6.2005 wherein it is said that a registered letter was sent to petitioner-opposite party for payment of development fee which was returned unserved and thereafter an information was published in Newspaper dated 19.5.2004. It further appears that in the subsequent documents it was shown that by letter dated 1.12.2003 Society required the petitioner to deposit Rs. 1,92,800/- for which published notice was also issued in Newspaper but petitioner did not make the aforesaid payment. When the Society itself had deposited only Rs. 4,50,000/- and odd in A.D.A. and that too on 10.1.2007, this Court find it difficult to understand as to what was the occasion to raise such a huge demand in December 2003. Whether any details with respect to the aforesaid demand was furnished to petitioner or it was a figure taken by the Society from its hat is also not clear. While considering a dispute like the present one under Section 70 of Act, 1965 the Arbitrator is also entitled and obliged to examine whether the demand, if any, made by Society from its member was justified or not. Unfortunately this aspect also the Arbitrator has proceeded in a slip shod manner. Petitioner's appeal has also been rejected by the appellate authority by order dated 15.10.2008 referring to certain procedural irregularities and simultaneously in just two lines in the last paragraph, it has recorded its conclusion that petitioner has also failed to pay development charges despite notice and therefore has violated the conditions. The approach of appellate Authority is also very casual and murky.

50. Further the fact that respondents 1 and 2 represented before this Court not by learned Standing counsel but by one and the same private Advocate, i.e. Sri S.P. Sharma; their counter affidavit are verbatim same; and in fact, Sri S.P. Sharma, claiming himself President/ Secretary of Society, has filed his written argument on behalf of all the respondents show that there is an unholy nexus between the respondents so as to give an arbitrary authority to Societies' office bearers enabling them to meddle with the land already allotted to the members and proceed to achieve its illegal and

arbitrary objectives in an uncontrolled and unrestricted manner.

51. In the circumstances orders impugned in this writ petition cannot sustain.

52. In the result, all the writ petitions are allowed. Impugned orders dated 10.1.2007 and 15.10.2008 (Annexures 6 and 10 respectively in all the writ petitions) are hereby quashed.

53. Matter is remanded to respondent no. 2 to re-consider complaint of respondent no. 3 and pass a fresh order in the light of observations made above and in accordance with law.

54. Petitioner(s) shall also be entitled to cost which I quantify to Rs. 30,000/- for each set of writ petition equally divided against all the three respondents. It shall be paid to petitioner(s) by respondents within two months from today failing which on an application submitted by petitioner's counsel before the Registrar General, he shall issue a certificate so that the said amount may be recovered as arrears of land revenue from the concerned respondents.

Dt. 3.7.2012 Akn/PS