



AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13546 OF 2023

**Creative Consumers Cooperative
Society Ltd.,** A society registered

under the MCS Act Registration
No.Bom/Con/481/80,
having office at Shop No.2,
Building No.4, Vhatuk Nagar,
Amboli, Andheri (W),
Mumbai 400 058.

Through its Authorised
Representative

Mr. Rakesh Ramchandra Mehata

... Petitioner

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V/s.

1. The District Collector, Nashik
Collector Office, Old CBS
Nashik 422 002.

2. The District Supply Officer
District Supply Officer, Nashik
Office of District Collector
(Supply Department) Nashik
Old Mumbai – Agra Road,
Near Bus Stand,
Tal. & District Nashik 422 002.

3. State of Maharashtra

...Respondents

**WITH
WRIT PETITION NO.14558 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.20869 OF 2024**

Ramesh Panchan Gada Shah
Age: 60 years, Occ; Business
Address office at Shop No.2, Building
No.4, Vahatuk Nagar,
Amboli, Andheri (W)
Mumbai 400 058.

... Petitioner

V/s.

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies and Consumer
Protection Department, Mantralaya,
Mumbai – 400 032.
2. The District Collector, Nashik
Collector Office, Old CBS
Nashik 422 002.
3. The District Supply Officer,
District Supply Officer, Nashik
Office of District Collector
(Supply Department) Nashik
Old Mumbai – Agra Road, Near Bus
Stand,
Tal. & District Nashik 422 002.
4. Chagan Bhujbal
At Post Yeola, Taluka Yeola
District Nashik
Also Dr. Dabholkar Marg, Malbar Hill
Mumbai 400 006.
5. Creative Consumers Cooperative
Society Ltd., (Society Registered u/s
MCS, Act)
Registration No.Bom/Con/481/80
having office at Shop No.2,
Building No.4, Vahatuk Nagar,
Amboli, Andheri (W),
Mumbai 400 058.

... Respondents

Mr. Anil Singh, Senior Advocate with Mr. Rohan Kadam i/by Siddharth R. Karpe and Mr. Ketan Joshi and Mr. Adarsh Vyas for the petitioner in WP/13546/2023.

Mr. Ravi Kadam, Senior Advocate with Mr. Rohan Kadam i/by Mr. Vishwajeet V. Mohite for the petitioner in WP/14558/2023.

Mr. Anil Singh, Senior Advocate with Mr. Rohan Kadam i/by Siddharth R. Karpe and Mr. Ketan Joshi and Mr. Adarsh Vyas for respondent No. 5 in WP/14558/2023.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for respondent Nos.1 to 3 in both matters.

**CORAM : DEVENDRA KUMAR UPADHYAYA,
CJ &
AMIT BORKAR, J.**

RESERVED ON : JULY 24, 2024

**PRONOUNCED : AUGUST 5, 2024
ON**

JUDGMENT: (Per Amit Borkar, J.)

1. Rule. By consent of counsel for the parties and at their request, both the writ petitions were taken up for final hearing.

2. Both these writ petitions have been set down for hearing together at the request of counsel as both involve common question of law and fact. In Writ Petition No.14558 of 2023,

which came to be argued as a lead petition, the petitioner seeks to challenge the decision dated 10 November 2023 cancelling agreement and tender process granting work order for transportation of ration food grains to fair price shops under the target-oriented public distribution system. Petitioner also seek a declaration that agreement dated 28 July 2023 entered into with the petitioner by the respondents is in force and a further direction to issue work order/delivery orders in pursuance of agreement dated 28 July 2023.

3. In Writ Petition No.13546 of 2023, the petitioner/society seeks relief in the form of a direction to Respondent Nos.1 and 2 to issue a work order as per representations dated 18 September 2023 and 16 October 2023.

4. In order to appreciate the factual background, some facts can be culled out from Writ Petition No.14558 of 2023. For the sake of convenience, the parties are referred to as they are arrayed in Writ Petition No.14558 of 2023.

5. The petitioner is the Chairman of Respondent No.5 – cooperative society, who has filed the writ petition in a representative capacity on behalf of Respondent No. 5 – society. Respondent No.1 had published detailed guidelines

vide Government Resolution dated 15 November 2021 regarding a target-oriented public distribution system for transportation of ration food grains to fair-price shops. The resolution provides guidelines for conducting an online tender process for the allotment of work contracts for transporting such goods. Accordingly, Respondent No. 5 – society participated in the tender process and by Government Order dated 21 May 2023, Respondent No. 5 – society was declared L-1 bidder for District Nashik. Respondent No.1 vide letter dated 8 June 2023 informed Respondent No.5 accordingly and by communication dated 26 June 2023 called upon Respondent No.5 to comply with certain conditions such as furnishing bank guarantee, execution of agreement, etc. On 26 June 2023, the petitioner furnished bank guarantee to the tune of Rs.3,45,40,050/-. Respondent No.3, on 4 July 2023, informed the petitioner about executing the registered agreement. Accordingly, on 28 July 2023, Respondent No.2 executed an agreement with the petitioner in his capacity as Chairman of Respondent No. 5 – society.

6. Respondent No.5 – society, by communication dated 9 August 2023, requested Respondent No.2 to issue the work order in furtherance of the agreement dated 28 July 2023.

Respondent No. 5 – society on 24 August 2023 paid Rs.6,90,900/- towards stamp duty in pursuance of the order dated 17 August 2023 issued by the Collector of Stamps in respect of the agreement dated 28 July 2023. However, according to the petitioner, no work order was issued. Therefore, Respondent No.5 was constrained to file Writ Petition No.13546 of 2023 seeking relief of issuance of the work order in favour of Respondent No.5 – society.

7. During the pendency of the writ petition, the petitioner learnt about passing of the order of liquidation in the exercise of power under Section 102 of the Maharashtra Cooperative Societies Act, 1960 (MCS Act), which, according to the petitioner, was never served on the Respondent No. 5 Society. The petitioner, therefore, on 9 November 2023, preferred Appeal under Section 152 of the MCS Act bearing Appeal No.413 of 2023 and the appellate authority, by order dated 9 November 2023, granted a stay to the final order of liquidation passed by the District Registrar, K-West Ward, Mumbai till next date of hearing, i.e., 21 December 2023. However, before such an order was communicated to Respondent No.1, Respondent No.1, on 10 November 2023, decided to cancel allotment in favour of Respondent No.5 –

society unilaterally and further decided to cancel the entire tender process in District Nashik. The petitioner, therefore, filed Writ Petition No.14558 of 2023.

8. Respondent No.1 filed an affidavit-in-reply objecting to the maintainability of the writ petition on the ground of petitioner's locus to challenge the impugned decision in a representative capacity on behalf of Respondent No.5 – society. According to Respondent No.1, the petitioner cannot claim to have a separate identity and rights other than those of Respondent No.5 – society as regards the issue of tender, which is the subject matter of the writ petition. According to him, on the date of entering into an agreement with Respondent No.5 the interim order of liquidation was already passed on 9 June 2023, hence the agreement dated 28 July 2023 was executed by suppressing the fact of appointment of liquidator.

9. According to Respondent No.1, the liquidator went to the site of the society on 14 July 2023; however, the society refused to hand over books and property, which is evident from a letter dated 2 August 2023 addressed by the liquidator to the Deputy Registrar, Cooperative Societies. Therefore,

according to Respondent No.1, the fact of appointment of liquidator by interim order under Section 102(1) of the MCS Act was within the knowledge of Respondent No.5 on the date of entering into an agreement dated 28 July 2023, therefore, the writ petition is liable to be dismissed.

10. Mr. Kadam, learned Senior Advocate on behalf of the petitioner relying on Sections 102 to 106 of the MCS Act and Rules 87 and 89 of the Maharashtra Cooperative Societies Rules, 1961 (MCS Rules), submitted that in the absence of service of the order of appointment of liquidator on Respondent No.5 – society in the manner prescribed under Rule 87 of the MCS Rules and publication in the official gazette as required under Rule 89(1), the order of liquidation shall not come into effect in law.

11. Inviting our attention to the order of stay granted by the appellate authority on 9 November 2023 and the order dated 20 November 2023 recalling the order of interim liquidation, he submitted that the order of liquidation was not in force on the date of cancellation of the agreement. Moreover, while recalling the interim liquidation order, the Deputy Registrar recorded a finding that the order of interim liquidation was

passed without giving an opportunity of hearing to the petitioner, and that the liquidator did not communicate the fact of interim liquidation to the society. He submitted that the order further records a finding that the liquidator had not taken charge of the affairs of the society. He also invited our attention to the finding that the deficiencies recorded in the show-cause notice and interim order of liquidation are factually incorrect as necessary documents indicating compliance with the provisions of the MCS Act and MCS Rules were already submitted to the competent authority.

12. Relying on the judgments in **Punjab University v. V.N. Tripathi & Anr.**, reported in (2001) 8 SCC 179; **Nareshbhai Bhagubhai & Ors. v. Union of India & Ors.**, reported in (2019) 15 SCC 1; and **Dulu Devi v. State of Assam & Ors.**, reported in (2016) 1 SCC 622 it is submitted that the order of liquidation shall not come into effect unless such order was communicated to the petitioner in the manner prescribed under Rules 87 and 89 of the MCS Rules.

13. On the other hand, Mr. Sen, learned Senior Advocate appearing for Respondent No.1 contended that the petition is liable to be dismissed for suppression of material facts as the

petitioner has failed to disclose liquidation proceedings in Writ Petition No.13546 of 2023. According to him, the Deputy Registrar passed an interim order of liquidation on 9 June 2023. On 14 July 2023, the liquidator went for an official site visit to the office of Respondent No.5 to take possession of movable and immovable assets of Respondent No.5. However, they refused to hand over the record. Therefore, on 28 July 2023, Respondent No.5 was fully aware of the order of liquidation and, therefore, Respondent No.1 was within his right to recall the order of execution of the agreement in favour of Respondent No.5 – society and cancellation of the tender process for District Nashik. He submitted that against the order of recalling the interim order of liquidation, one society has filed a revision which is pending before the revisional authority. He, therefore, urged that the writ petitions are liable to be dismissed.

14. In order to appreciate the controversy, it would, in our view, be necessary to advert to the Clause that empowers Respondent No.2 – Collector to terminate the agreement dated 28 July 2023, which reads as under:

“VIII. Summary Transactions:

a) In the event of the contractor having been adjudged insolvent or going into liquidation or winding up his business or making arrangements with his creditors or failing to observe any of the provisions of this contract or any of the terms and conditions governing the contract, the District Collector, NASHIK has liberty to terminate the contract forthwith without prejudice to any other rights or remedies under the contract and law and to get the work done for the unexpired period of the contract at the risk and cost of the contractor and to claim from the contractor any resultant loss sustained or costs incurred by District Collector, NASHIK."

15. The said Clause empowers the Collector in the event the contractor goes into liquidation or winding up his business to terminate the contract forthwith. On perusal of the record, the reason for the termination of the contract appears to be liquidation of Respondent No.5 – society. It is, therefore, necessary to adjudicate the issue as to when the order of interim liquidation of the Cooperative Society becomes effective. For the said purpose, the statutory scheme contained in Chapter X of the MCS Act and MCS Rules needs examination. Relevant provisions of the MCS Act and MCS Rules are extracted as below:

"102. (1) If the Registrar;—

(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 [or 89A] or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which —

(i) Has not commenced working, or

(ii) Has ceased working, or

(iii) Possesses shares or members deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye-laws,

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society [and to the creditors of the society, if any,] of being heard, may issue a final order, vacating or conforming the interim order.

103. *(1) When an interim order is passed under the last preceding section or a final order is passed under that section, for the winding up of a society, the Registrar may, in accordance with the rules appoint a person to be Liquidator of the society, and fix his remuneration.*

(2) On issue of the interim order, the officers of the society shall hand over to the Liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled, of all books records and other documents pertaining to the business of the society and, shall have no access to any of them.

(3) When a final order is passed confirming the interim order, the officers of the society shall vacate their offices, and while the winding up order remains in force the general body of the society shall not exercise any powers.

(4) The person appointed under this section as Liquidator shall, subject to the general control of the Registrar, exercise all or any of the powers mentioned in section 105. The Registrar may remove such person and appoint another in his place, without assigning any reason.

(5) The whole of the assets of the society shall on the appointment of Liquidator under this Section vest in such Liquidator, and notwithstanding anything contained in any law for the time being in force, if any immovable property is held by a Liquidator on behalf of the society, the title over the land shall be complete as soon as, the mutation of the name of his office is effected, and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

(6) In the event of the interim order being vacated, the person appointed as Liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done, and the proceedings taken by liquidator, shall be binding on the society, and such proceedings shall, after the interim order has been cancelled under the preceding section, be continued by the officers of the society.

104. Appeal against order of winding up.—

[(1) The committee, or any member, of the society, ordered to be wound up may prefer an appeal against the final order of winding up within two months from the date of the issue of the order made under section 102, —

(a) If made by the Registrar, or the Special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government;

(b) If made by any person other than the Registrar, or the Special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar:

Provided that no appeal shall lie against an order issued under sub-clause (i), (ii) or (iii) of Clause (c) of sub-section (I) of section 102].

(2) No appeal from a member under this section shall be entertained unless it is accompanied by such sum as security for the costs of hearing the Appeal, as may be prescribed.

106. Effect of order of winding up.—

After expiry of the period for Appeal against the order made under sub-section (1) of section 102 or where the Appeal has been dismissed, the order for winding up shall be effective and shall

operate in favour of all the creditors and of all the contributories of the society, as if it had been made on the joint petition of creditors and contributories. When a winding up order becomes effective, the Liquidator shall proceed to realise the assets of the society by sale or otherwise, and no dispute shall be commenced or, if pending at the date of the winding up order, shall be proceeded against the society except by leave of the Registrar and subject to such terms as the Registrar may impose. The Registrar, may of his own motion however, entertain or dispose of any dispute by or against the society.

Rule 87 and 89(1) of the MCS Rules,1961

"87. Mode of communication of an interim order under Section 102

An interim order under Clause (a) or sub-clause (iv) of Clause (c) or sub-section (I) of Section 102 shall call upon the society in respect of which the order is made to submit its explanation to the Registrar within one month from the date of issue of such order and shall be communicated by registered post (with acknowledgement due) to the society by the Registrar.

89. Appointment of Liquidator and the procedure to be followed and powers to be exercised by him

The following procedure shall be adopted for the appointment of the Liquidator and for the exercise of his powers, namely:—

(1) The appointment of the Liquidator shall be notified by the Registrar in the Official Gazette

....."

16. Upon a thorough examination of the aforementioned provisions in the context of the issues raised in the instant writ petitions, it is apparent that the Maharashtra Cooperative Societies Act envisage two types of orders that may be issued by the Registrar concerning liquidation of a cooperative society. Pursuant to the conditions stipulated under subsection (1) of Section 102, the Registrar is authorized to issue an

interim order of liquidation. Sub-section (2) provides that the Registrar shall communicate this interim liquidation order to the society in the prescribed manner, requiring the society to provide its explanation within one month from the date of issuance of the order. Following this, the Registrar, after affording an opportunity of hearing to the society and its creditors, if any, is empowered to issue a final order either vacating or confirming the interim order. The term "in the prescribed manner" occurs in Section 102(2) thus Rule 87 necessitates that the interim liquidation order has to be sent to the society via registered post with acknowledgement due. Additionally, sub-rule (1) of Rule 89 requires the appointment of a liquidator to be notified by the Registrar in the official gazette. Subsection (1) of Section 103 grants the Registrar the authority to appoint a liquidator and determine his remuneration. Sub-section (2) of Section 103 imposes a duty on the officers of the society to transfer to the liquidator, upon the issuance of the interim order, the custody and control of all property, actionable claims, books, records, and other documents related to the society's business. However, subsection (3) of Section 103 stipulates that the officers of the society are required to vacate their offices only upon

issuance of the final liquidation order, confirming the interim order. Thus, it is evident that the obligation for the officers to vacate their offices arises only after the final order is issued.

17. Furthermore, Section 106 of the Maharashtra Cooperative Societies Act (MCS Act) stipulates that the winding-up order becomes effective and operates in favor of all creditors and contributors of the society after the expiration of the appeal period against the order issued under Section 102(1) or the dismissal of such an appeal. It also authorizes the liquidator to commence the process of releasing the society's assets. Section 106 further bars initiation or continuation of any proceedings against the society as on the date of the winding-up order, except with the Registrar's leave, after the expiration of the appeal period under subsection (1) of Section 102 or the dismissal of such an appeal.

18. However, it is crucial to notice the inconsistency which has resulted on account of the amendment of Section 104 through Maharashtra Act 7 of 1997, which extinguished the right to appeal against an interim liquidation order, without simultaneously amending Section 106. Although Section 106

refers to the expiration of the appeal period against an order issued under subsection (1) of Section 102, the amended subsection (1) of Section 104 provides for an appeal solely against the final winding-up order under subsection (2) of Section 102. The proviso to Section 104 explicitly states that no appeal shall lie against an order issued under sub-clauses (i), (ii), or (iii) of clause (c) of subsection (1) of Section 102. Sub-section (1) of Section 104 restricts appeals against final winding-up orders under subsection (2) of Section 102 of the MCS Act. However, Section 106 specifies that the order of the liquidator's appointment becomes effective only after the expiration of the appeal period against the order issued under subsection (1) of Section 102 of the MCS Act.

19. The principles of statutory interpretation are well established. When the words of a statute are clear and unambiguous, they should be given their plain and ordinary meaning without adding or omitting any words. Deviating from the literal rule by altering the structure or substituting words in a clear statutory provision under the guise of interpretation poses significant risks, as such changes may not align with the legislature's intent. The Courts cannot replace legislative wisdom with their own views. The Supreme

Court, in a different context, in the case of **Shri Mandir Sita Ramji v. Lt. Governor of Delhi**, (1975) 4 SCC 298, p. 301, para 6 has observed thus :

"When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser."

20. There is, however, an exception to this general rule. When the words used in a statutory provision are vague or ambiguous, or when their plain and ordinary meaning leads to confusion, absurdity, or inconsistency with other provisions, courts may resort to interpretative tools to rectify the situation by adding, omitting, or substituting words in the statute. In dealing with an apparently defective provision, courts prefer to assume a drafting error rather than conclude that the legislature deliberately introduced an absurd or irrational provision. Departing from the literal rule is warranted only in exceptional cases where literal compliance would result in anomalies that are impossible, absurd, or impractical, thus defeating the provision's purpose. Purposive interpretation to avoid absurdity is more commonly applied to procedural provisions than to substantive ones.

21. Maxwell on Interpretation of Statutes (12th Edn., p.

228), under the caption "Modification of the Language to Meet the Intention" in the chapter on "Exceptional Construction," states:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience, absurdity, hardship, or injustice, a construction may be adopted which modifies the meaning of the words and even the structure of the sentence. This may involve departing from grammatical rules, giving unusual meanings to particular words, or rejecting them altogether, on the grounds that the legislature could not have intended what its words signify, and that the modifications made are mere corrections of careless language and truly reflect the intended meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in cases of necessity or absolute intractability of the language used."

22. The Supreme Court approved and adopted this approach in **Tirath Singh v. Bachittar Singh** (AIR 1955 SC 830).

23. In the case of **Seaford Court Estates Ltd. v. Asher** reported in (1949) 2 KB 481 (CA), Lord Denning observed as under:

"If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which it is woven, but he can and should iron out the creases."

24. In **Shamrao V. Parulekar v. District Magistrate, Thana** [(1952) 2 SCC 1 : AIR 1952 SC 324 : 1952 Cri LJ

1503], the Supreme Court reiterated Maxwell's principle, stating:

"If one construction leads to an absurdity while another gives effect to what common sense shows was obviously intended, the construction defeating the ends of the Act must be rejected, even if the same words used in the same section, and even the same sentence, must be construed differently. Indeed, the law sometimes requires courts to modify the grammatical and ordinary sense of the words to avoid absurdity and inconsistency" (AIR p. 327, para 12).

25. In **Molar Mal v. Kay Iron Works (P) Ltd.** [(2000) 4 SCC 285], the Supreme Court affirmed that while courts should follow the rule of literal construction, an exception arises when such literal construction leads to absurdity or inconsistency. The Court stated:

"That exception comes into play when the application of literal construction of the words in the statute leads to absurdity, inconsistency, or when it is shown that the legal context in which the words are used, or by reading the statute as a whole, requires a different meaning" (SCC p. 295, para 12).

26. In **Mangin v. IRC** [1971 AC 739 : (1971) 2 WLR 39 : (1971) 1 All ER 179 (PC)], the Privy Council held:

"... the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If a literal interpretation would produce such a result, and the language admits of an interpretation avoiding it, then such an interpretation may be adopted" (AC p. 746 E).

27. A classic example of correcting a legislative drafting

error is found in **Salem Bar (II)** [(2005) 6 SCC 344], where the Supreme Court substituted the words "defendant's witnesses" for "plaintiff's witnesses" in Order 7 Rule 14(4) of the Code. The relevant portion of the decision states:

"Order 7 relates to the production of documents by the plaintiff, whereas Order 8 relates to production by the defendant. Under Order 8 Rule 1-A(4), a document not produced by the defendant can be confronted with the plaintiff's witness during cross-examination. Similarly, the plaintiff can confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses,' the words 'plaintiff's witnesses' were mentioned in Order 7 Rule 14(4). To avoid confusion, we direct that till the legislature corrects the mistake, 'plaintiff's witnesses' shall be read as 'defendant's witnesses' in Order 7 Rule 14(4). We hope the mistake will be expeditiously corrected by the legislature" (SCC pp. 368-69, para 35).

28. Justice G.P. Singh, in his treatise "Principles of Statutory Interpretation" (12th Edn., 2010, Lexis Nexis, p. 144), outlines following four conditions, from the House of Lords' decision in *Stock v. Frank Jones (Tipton) Ltd.* [(1978) 1 WLR 231 : (1978) 1 All ER 948 (HL)], that justify departing from the plain words of a statute:

1. *There is a clear and gross balance of anomaly.*
2. *Parliament, the legislative promoters, and the draftsman could not have envisaged or accepted the anomaly in the interest of a supervening legislative objective.*
3. *The anomaly can be obviated without detriment to the legislative objective.*
4. *The statute's language is susceptible to the modification required to obviate the anomaly.*

29. While it is true that under the guise of judicial interpretation the court cannot supply *casus omissus*, it is equally true that the courts in construing a statute must always try to give effect to the intention of the legislature. The Legislature's omission to amend a related provision has resulted in significant challenges in statutory interpretation. One of which concern the interpretation of Rule 89 of Order 21 of the Code of Civil Procedure following the amendment of Article 127 of the Limitation Act, 1963, by Act 104 of 1976. Rule 89 of Order 21 stipulates that if any person, having an interest in the property sold in execution of a decree, applies to set aside the execution sale and deposits, within thirty days from the date of the sale, five percent of the purchase money for payment to the purchaser and the amount payable to the decree-holder for recovery of which the sale was held, "the court shall make an order setting aside the sale." Prior to its amendment by Act 104 of 1976, the period of limitation for applying under Rule 89 to set aside the sale was also thirty days under Article 127 of the Limitation Act, 1963. The amendment extended this period from thirty days to sixty days. However, Parliament did not amend Rule 89 of Order 21 correspondingly to extend the period for making the deposit

from thirty days to sixty days. The Statement of Objects and Reasons for the Bill that became Act 104 of 1976 indicated that the period was extended to sixty days because thirty days was considered too short a period for making the deposit, often causing hardship. In light of this purpose, a two-judge bench of the Supreme Court in **Basavanatappa v. Gangadhar Naryana Dharwadkar** reported in (1986) 4 SCC 273 held that the period for making both the application to set aside the sale and the deposit under Rule 89 was implicitly extended from thirty to sixty days. However, this view was not accepted by a three-judge bench in **P.K. Unni v. Nirmala Industries** reported in (1990) 2 SCC 378, which reasoned that the court could not remedy Parliament's omission to amend Rule 89. Subsequently, a five-judge bench in **Dadi Jagannadham v. Jammulu Ramulu** reported in (2001) 7 SCC 71 overruled **Nirmala Industries**. Although the bench acknowledged that the court cannot fill gaps left by the legislature, it emphasized that the court should strive to harmonize conflicting provisions. Based on this reasoning, the Supreme Court held that Rule 89 does not prescribe any limitation period and merely directs that the court must set aside the sale if the deposit is made within thirty days,

without preventing the deposit from being made later. Thus, it held that, if an application to set aside the sale is made within sixty days and the deposit is also made within sixty days, although beyond thirty days, the court retains discretion to set aside the sale.

30. In light of the established principles of statutory interpretation, we have scrutinized Section 106, which addresses the effect of a winding-up order. A close reading of Section 106 of the Maharashtra Cooperative Societies Act, 1960 (MCS Act), in conjunction with other provisions of Chapter-X, elucidates that the intent behind postponing the effect of a winding-up order until after the expiration of the appeal period under subsection (1) of Section 102, or the dismissal of an appeal, is to ensure that affected parties have a reasonable opportunity to exercise their right to appeal. Section 152 of the Act provides for appeals related to orders enumerated therein within two months from the date of communication of the decision or order. Section 154 of the Act provides for remedy of revision against orders passed by the specified officers within two months from the date of communication of the decision or order. This period is intended to prevent hasty enforcement of a liquidation

decision and to allow affected parties time to challenge the order if they believe it to be legally unsound. Considering the significant consequences of liquidation for a cooperative society, its members, creditors, and contributors, this time gap is essential. It ensures that the decision to liquidate is scrutinized by an appellate authority, guaranteeing that the interim liquidation order is legally sound. This provision seeks to balance the enforcement of the MCS Act's provisions with the rights of cooperative societies and their members to seek redress, ensuring that decisions are made in accordance with the law.

31. The evident contradiction and absurdity introduced by the amendment of Section 104 must be rectified by considering the Legislature's primary objective of providing a time gap for the expiration of the appeal period. The two-month period for filing an appeal against an order under Section 102(1) should be interpreted as a two-month period for filing revision from the date of communication of the decision or order. To resolve this inconsistency, expiry of the two-month period for an appeal arising from an order under Section 102(1) of the MCS Act should be understood to mean that the interim liquidation order shall take effect after two

months from the date of communication of the interim liquidation order in accordance with the Rules, or the dismissal of a revision application under Section 154 of the Act.

32. It is therefore necessary to determine whether Respondent No. 5 – society, or the petitioner, was served with or communicated the interim liquidation order as required by the Rules. As previously indicated, Respondent Nos. 1 to 4 have not provided any material to conclude that the interim liquidation order was communicated to the society by registered post (acknowledgement due) as mandated under Rule 87. Additionally, no material has been brought on record before the Court by the respondents to indicate that the order appointing the liquidator was published in the official gazette. Furthermore, a review of the agreement dated 28 July 2023 shows that it was executed between Respondent No. 1 and the petitioner in his capacity as Chairman of Respondent No. 5. Therefore, in our view, on the date of the agreement dated 28 July 2023, Respondent No. 5 was not communicated the interim liquidation order in the prescribed manner under the Rules. Consequently, in the absence of knowledge of the

interim liquidation order, it cannot be conclusively held that the petitioner misrepresented Respondent Nos. 1 and 2 while entering into the agreement without disclosing the interim liquidation order.

33. Moreover, in recalling the interim liquidation order, the Deputy Registrar recorded a categorical finding that the interim order dated 9 June 2023 was not communicated to the society, and the liquidator appointed under the interim order had not assumed the charge. Furthermore, the interim liquidation order was issued on 9 June 2023, and the agreement in question was executed on 28 July 2023, which is within two months of the date of the interim liquidation order, i.e., before the interim liquidation order became effective. Therefore, in our opinion, in absence of any evidence indicating service of the interim liquidation order in the manner prescribed under Rules 87 and 89 of the MCS Rules and considering the language of subsection (3) of Section 103, which requires society officers to vacate their offices only after a final order confirming the interim order is issued, the petitioner, in his capacity as Chairman of the society, was within his rights to enter into the agreement with

Respondent No. 2 for the transportation of food grains as per the tender conditions.

34. Therefore, in our considered opinion, Respondent No. 1 acted contrary to the provisions of the liquidation scheme under the MCS Act by canceling the allotment in favour of the petitioner and Respondent No. 5 – society.

35. Mr. Sen, learned Senior Advocate on behalf of Respondent No. 1, also objected to the maintainability of the petitions filed by the petitioner as Chairman of Respondent No. 5 – society, on the ground that the tenderer was the cooperative society, which is a distinct legal entity. We find no merit in this submission, considering the resolution of express ratification placed on record by way of an affidavit dated 23 July 2024 by the Managing Committee of Respondent No. 5 – society, expressly ratifying the petitioner, as Chairman of the society, to institute and continue with the writ petition. Moreover, it is necessary to note that the agreement cancelled by the impugned order was executed by the petitioner in his capacity as Chairman of Respondent No. 5 – society. The act of filing petition by the Chairman of the cooperative society challenging a decision which is against the interest of the

society cannot be deemed a void act. Such an act of filing proceedings on behalf of the society in the enforcement of its rights can, at most, be considered voidable, and such voidable acts can always be ratified by the society through the passage of a valid resolution.

36. Accordingly, we find that any alleged irregularity regarding the Chairman filing the petition on behalf of the cooperative society is remedied by the ratification resolution submitted by Respondent No. 5 in its affidavit. We, therefore, dismiss the objection raised by Respondent No. 1.

37. Mr. Sen, learned Senior Advocate representing Respondent No. 1, further argued that the petitioner's operational area was restricted to the District of Mumbai, and thus Respondent No. 5 – society was not authorized to submit a tender for work outside its operational area. However, Mr. Kadam, learned Senior Advocate, drawing our attention to the application submitted by Respondent No. 5 in 2020, contended that since the Registrar, exercising power under Section 13 of the MCS Act, 1960, failed to communicate any refusal within two months as required by subsection (1) of Section 13, the amendment in the bye-laws extending

Respondent No. 5 – society's operational area to the entire State of Maharashtra is deemed registered under subsection (1A) of Section 13. No evidence has been presented by the respondents indicating that the extension of Respondent No. 5 – society's operational area to the entire state of Maharashtra contravenes any provisions of the Act. Therefore, Respondent No. 5 – society is entitled to the benefits of the deeming fiction under subsection (1A) of Section 13.

38. For the aforementioned reasons, we find that the action of Respondent No. 1 in cancelling the agreement dated 28 July 2023 is unsustainable. Consequently, we pass the following order:

- a) Rule is made absolute in terms of prayer clauses (a) and (b) in Writ Petition No.14558 of 2023;
- b) In view of relief granted in terms of prayer clauses (a) and (b) in Writ Petition No.14558 of 2023, no relief needs to be granted in Writ Petition No.13546 of 2023;

39. Rule is made absolute in above terms. No costs.

40. The interim application stands disposed of.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)