



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.14480 OF 2024

Smita P. Dalvi

...Petitioner

Versus

The Deputy Registrar, Co-operative Housing ...Respondents
Society & Ors.

Mr. Brijesh Shukla, Advocate, for the Petitioner.

Ms. Varsha Sawant, AGP, for the Respondent No.1.

Ms. Kiran Paswan, Advocate, for the Respondent Nos.2 and 3.

CORAM: MADHAV J. JAMDAR, J.

DATED : 7th AUGUST 2024

P. C.:

1. By the present Writ Petition preferred under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of order dated 29th February 2024 passed by the Assistant Registrar, Co-operative Societies (East and West Suburbs), Slum Rehabilitation Authority, Mumbai in Application No. SRA/CO/OW/2024/1158 (Exh. A/Page 20 to 23 of the Writ Petition). By the said order, Recovery Certificate under Section 154B-29 of *the Maharashtra Co-operative Societies Act, 1960* (“**the MCS Act**”) has been issued for an amount of Rs.98,620/- in favour of the Respondent No.3-society and against the Petitioner.

2. On the earlier date, Mr. Shukla, learned Counsel appearing for the Petitioner raised several contentions including that the Assistant Registrar has no jurisdiction to deal with the Application for issuance of Recovery Certificate under Section 154B-29 of the MCS Act, as the alleged default is regarding the charges/penalty charges with respect to parking space. He submitted that proper remedy is to file dispute under Section 91 of the MCS Act. To substantiate said contention, he relied on Bye-Law No.174(B)(iv) of Model Bye-laws of the Co-operative Housing Society Limited ("**Model Bye-Laws**"). He further submits that another member Ms. Anita Madan is staying out of India and therefore, she has permitted the Petitioner to occupy the parking space allotted to her. It is his submission that the parking charges are also levied to said member-Ms. Anita Madan and as the Petitioner is occupying the parking slot allotted to said Anita Madan, the society is imposing penalty charges on the Petitioner. He submitted that the impugned order passed without taking into consideration these aspects is required to be quashed and set aside.

3. Although, Ms. Paswan, learned Counsel appearing for the Respondent Nos.2 and 3 raised the issue regarding maintainability

of the present Writ Petition on the ground that there is an alternate remedy of Revision under Section 154 of the MCS Act, however, as the issue regarding the jurisdiction of the Assistant Registrar is raised by the Petitioner, the same is required to be decided. Ms. Paswan, learned Counsel also raised some other contentions.

4. Ms. Sawant, learned AGP, supported the impugned order.

5. As the contention regarding availability of an alternate remedy of Revision as under Section 154 of the MCS Act is raised by learned Counsel appearing for the Respondent Nos.2 and 3 and as sub-Section (2A) of Section 154 of the MCS Act provides that 50% of amount as awarded in the Recovery Certificate should be deposited with the society, by order dated 24th July 2024, the Petitioner has been directed to deposit 50% amount with the Society as directed to be paid by the impugned Recovery Certificate. Mr. Shukla, learned Counsel appearing for the Petitioner states that the said order has been complied with.

6. It is necessary to consider the submission of Mr. Shukla, learned Counsel of the Petitioner that recovery proceedings under

Section 154B-29 of the MCS Act are not maintainable with respect to charges relating to parking and only recourse is to file dispute under Section 91 of the MCS Act. As already noted to substantiate said contention, Mr. Shukla, has relied on Bye-Law No.174(B)(iv) of the Model Bye-Laws.

7. Relevant portion of Bye-Law No.174 of the Model Bye-Laws is as follows:

“174. If the Member/Members are not satisfied by the decision of the Committee, or does not receive any communication from the committee within 15 days, the complainant Member may approach below mentioned Competent Authority.

(A) THE REGISTRAR

Complaints to Registrar

Complaints to be made to the Registrar, Matters pertaining to following issues :-

(i)

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(xxiv)

(B) CO-OPERATIVE COURT

Matters for Co-operative court

Disputes between the Members and/or the Members and Society, which fall under Section 91 of the MCS Act, 1960 such as:-

Disputes pertaining to:-

(i) Resolution of the Managing Committee and General Body,

- (ii) The elections of the Managing Committee, except the rejection of Nominations, as provided under section 152-A of the MCS Act, 1960,*
- (iii) Repairs, including major repairs, internal repairs, leakages,*
- (iv) Parking,***
- (v) Allotment of Flats/Plots,*
- (vi) Escalation of Construction Cost,*
- (vii) Appointment of Developer/Contractor, Architect,*
- (viii) Unequal water-supply,*
- (ix) Excess recovery of dues from the Members,*
- (x) Any other, like disputes which fall within jurisdiction of the Co-operative Court.*

(C) CIVIL COURT

Matters for Civil court

Disputes pertaining to:-

- (i) Non-compliance of the terms and conditions of the agreement, by and between the Builder/Developer, (specific performance),*
- (ii) Substandard constructions,*
- (iii) Conveyance deed in favour of the Society,*
- (iv) Escalation of construction cost,*
- (v) Any other, like disputes which fall within jurisdiction of the Civil Court.*

(D) MUNICIPAL CORPORATION/LOCAL AUTHORITY

Matters pertaining to :-

- (i)*
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- .*
- (iv)*

(E) POLICE

Matters for Police

Matters pertaining to:-

- (i)*
- .*

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(iii)

(F) GENERAL BODY MEETING

Matters for General Body

Matters pertaining to:-

(i)

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(vii)

(G) FEDERATION -DISTRICT/STATE

Matters for Federation

(i)

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(iv)

(Emphasis added)

Thus, what is contemplated by Bye-Law No.174(B)(iv) of the Model Bye-Laws is that disputes pertaining to parking between the members and/or the members and society shall be filed in Co-operative Court under Section 91 of the MCS Act.

8. In view of the provision of Bye-Law No.174(B)(iv), it is necessary to set out Section 154B-29 of the MCS Act, which reads as under:

“154B-29. Recovery of certain sums and arrears due to housing societies as arrears of land revenue

*(1) Notwithstanding anything contained in sections 91, 93 and 98, on an application made by a housing society for the recovery of its dues or for the recovery of its repairs and maintenance, construction cost and service charges, and on the housing society concerned furnishing a statement of accounts and any other documents as may be prescribed, **in respect of the arrears**, the Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears.*

Explanation.— For the purposes of this sub-section, the expression “repairs and maintenance and service charges” means such charges as are so specified in the by-laws of the concerned housing society.

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears, the Registrar may, on his motion, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

*(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, as arrears of land revenue. **A revision shall lie against such order or grant of certificate, in the manner laid down under section 154 and such certificate shall not be liable to be questioned in any court.***

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures in

accordance with the provisions of the Maharashtra Land Revenue Code, 1966 or any law or provisions corresponding thereto for the time being in force, until the arrears due to the concerned society, together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar.”

(Emphasis added)

Thus, Section 154B-29 of the MCS Act specifies that the same will apply notwithstanding contained in Section 91 of the MCS Act. Thus, Section 154B-29 of the MCS Act regarding recovery of certain sums and arrears due to housing societies is applicable notwithstanding anything contained in Section 91 of the MCS Act.

9. The Supreme Court in the decision in the case of *Iridium India Telecom Ltd. v. Motorola Inc.*¹ discussed the effect of the clause “Notwithstanding anything contained in” and has held in paragraph No.34 as follows:

“34. After noticing the observations made in Aswini Kumar Ghosh [(1952) 2 SCC 237 : 1953 SCR 1, p. 24 : AIR 1952 SC 369, p. 377] and Dominion of India v. Shrinbai A. Irani [(1955) 1 SCR 206 : AIR

1 (2005) 2 SCC 145

1954 SC 596] this Court in *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447, pp. 477-78, paras 67-68] observed thus, ***in the context of construction of a non obstante clause:***

*“67. A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum* [(1964) 4 SCR 280 : AIR 1964 SC 207] .*

68. It is well settled that the expression ‘notwithstanding’ is in contradistinction to the phrase ‘subject to’, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal.”

(Emphasis added)

10. Thus, it is clear that the clause beginning with the expression ‘notwithstanding anything contained in Sections 91, 93 and 98....’ as appearing in Section 154B-29 clearly shows that Section 154B-29 will have overriding effect over Section 91 of the MCS Act.

11. In any case, it is clear that Bye-Law No.174 and Section 154B-29 operates in different spheres.

12. As far as Section 154B-29 is concerned, an application made by a housing society for the recovery of its dues or for the recovery of its repairs and maintenance, construction cost and service charges, the Application for recovery of the same will lie before the Registrar of the Co-operative Societies. Sub-Section (3) of Section 154B-29 provides that a certificate granted by the Registrar under sub-Section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, as arrears of land revenue. It further provides that a Revision shall lie against such order or grant of certificate, in the manner laid down under section

154 and such certificate shall not be liable to be questioned in any Court. Thus, Section 154B-29 is a self contained Code.

13. Perusal of Model Bye-Law No.174 particularly, clause No.(B) (iv) of the same clearly shows that what is contemplated by said Model Bye-Law No.174 (B)(iv) is that if the dispute is there regarding parking, then recourse can be taken to Section 91 of the MCS Act. However, as far as parking charges are concerned, certainly society can file Application seeking certificate under Section 154B-29 of the MCS Act and the same is the only mode available under MCS Act.

14. In this context, it is also required to note that Bye-Law No.65 regarding composition of charges of the society and the same reads as under:

***“65. Composition of the Charges of the Society
The contribution to be collected from the Members
of the Society, towards outgoings and establishment
of its funds, referred to in these Bye-laws as the
'charges' may be in relation to the following:
(a) Property Taxes, (b) Water Charges, (c) Common
Electricity Charges, (d) Contribution to Repairs and
Maintenance Fund, (e) Expenses on repairs and
maintenance of the lifts of the Society, including
charges for running the lift, (f) Contribution to the
sinking fund, (g) Service Charges, (h) Car Parking***

Charges, (i) Interest on the defaulted charges, (j) Repayment of the instalment of the loan and interest, (k) Non-occupancy charges, (l) Insurance Charges, (m) Lease rent, (n) Non-agricultural tax, (o) Education and Training Fund, (p) Election Fund, (q) Any Other Charges.”

(Emphasis added)

Thus, it is clear that the car parking charges are the charges of the society. If any penalty is charged regarding car parking, the same will also be covered by the expression “Car Parking Charges” as appearing in Bye-Law No.65.

15. Thus, it is clear that parking charges and even penalty charges pertaining to the same are the charges of the society and therefore, they are covered under Section 154B-29 of the MCS Act. Thus, the contention raised by the Petitioner that the proceedings taken out for issuance of Recovery Certificate under Section 154B-29 by the society concerning parking charges/penalty charges, the same are not maintainable and therefore, the Assistant Registrar has no jurisdiction to decide the Application filed by the Society under Section 154B-29 of the MCS Act is misconceived. It is very clear that the Assistant Registrar has powers under Section 154B-29 of the MCS Act to deal with an Application for recovery of parking charges/penalty concerning parking charges.

16. However, it is required to be noted that it is the contention of learned Counsel appearing for the Petitioner that parking slot is occupied by the Petitioner as he has been permitted by the member Anita Madan to occupy the parking slot allotted to her. It is also admitted position that in this society every member is having one parking slot. It is submitted by the Petitioner that the Society has levied parking charges on said Anita Madan and also levied penalty on the Petitioner. He states that at the most NOC charges can be levied by the society.

17. Perusal of the impugned order shows that various contentions raised by the Petitioner have not been taken into consideration by the Assistant Registrar in the impugned order.

18. Accordingly, the impugned order dated 29th February 2024 passed by the Assistant Registrar, Co-operative Societies (East and West Suburbs), Slum Rehabilitation Authority, Mumbai in Application No. SRA/CO/OW/2024/1158 is quashed and set aside and the said Application is remanded back to the Respondent No.1 or to the concerned Assistant Registrar.

19. Parties to appear before the Respondent No.1 or the concerned Assistant Registrar on 2nd September 2024 at 11:00 a.m. The Respondent No.1 or concerned Assistant Registrar to decide the schedule of the hearing on that date.

20. The Petitioner as well as the Respondent No.3 are at liberty to file additional affidavits/rejoinders etc.

21. The Respondent No.1 or the concerned Assistant Registrar to decide the said Recovery Application on or before **31st December 2024**.

22. It is clarified that this Court has not considered the merits regarding the parking charges and the penalty charges and all contentions in that behalf are expressly kept open.

23. Accordingly, the Writ Petition is disposed of with no order as to costs.

[MADHAV J. JAMDAR, J.]

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