

CASE NO.:
Appeal (civil) 3986 of 2004

PETITIONER:
Sumangalam Coop. Housing Society Ltd

RESPONDENT:
Suo Motu, High Court of Gujarat & Ors

DATE OF JUDGMENT: 03/01/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT
WITH
C.A. 3987/2004, 3988-3989/2004, 3990/2004,
3991/2004 AND 3992-3993/2004

Dr. ARIJIT PASAYAT, J.

Challenge in these appeals is to the judgment rendered by a Division Bench of the Gujarat High Court which suo motu registered a writ petition on the basis of the copies of documents purported to have been received from one Piyush Soni. It was alleged that there were several irregularities and illegalities in connection with the allotment of land to Sumangalam Co-operative Housing Society Ltd. The High Court entertained several other civil applications and passed the impugned judgment inter alia holding that there were several irregularities and illegalities committed in the allotment of land. The judgment of the High Court in SCA No. 10640 of 2000 is the subject matter of challenge in these appeals. Shri Altaf Ahmad, learned Senior counsel was appointed as Amicus Curiae.

We have heard learned counsel for the parties at length. It is relevant to note that since valuation of the property allotted was one of the major grounds which weighed with the High Court while dealing with the matter, therefore, on the suggestion of counsel for the parties, Dr. Roshan H. Namavati, an approved valuer was asked to determine the market value of the properties in question as on the date of allotment i.e. on 1.3.1990. It appears that High Court found that one Mr. H.K. Khan has disposed of a plot for Rs.22,00,000/-. According to the High Court same was the market price at which the plot in question could have been transferred by Ahmedabad Urban Development Authority (in short the 'AUDA') by applying the principle of 10% appreciation in market value. Calculated on that basis the High Court came to the conclusion that on the basis of the price of land allotted to Mr. H.K. Khan the allotment was made at an unreasonable rate.

Dr. Roshan H. Namavati has valued that property in question as follows:

"SUMMARY AND CONCLUSION:

The results obtained by me based on my inspection of properties under valuation as well as instances, the fair market value of F.P. No. 694, 695, 696 as on 1-3-1990 will be:

Based on H.K. Khans' (F.P. 695/17) sale of a of a

developed small commercial plot.
= Rs. 575/- ps.mt.

Based on instances of 3 residential plots in the the Bodakdev Scheme.
= Rs. 540/- p.s.mt.

Based on instances of F.P. 109 of Thaltej T.P. Scheme which is diagonally opposite to F.P. 694, 695 695 and 696.
= Rs. 480/- p.s.mt.

In the light of the above, I am of the opinion that fair market value of F.P. 694, 695 and 696 in an undeveloped stage, with encroachment, having residential as also commercial potential requiring infrastructure, earth fill as on 1.3.1990 will be 20,494 x Rs.540/- P.s.mt. = Rs.1,10,66,760/-"

The stand of the appellants is unanimous to the extent that they have all highlighted that the value at which transfer has been made is in no way less than the market price. Mode by which the High Court has made the valuation has practically no basis.

Broadly the issues addressed by the High Court in the impugned judgment are: (the parties are described as per their position in the High Court)

1. Mix-up of identities between Respondent No.2 and Respondent No.4.
2. Impersonation by the office bearers of Respondent No.2 as those of Respondent No. 4.

Suppression before the High Court in Special Civil Application Nos. 3082 and 3781 of 1991 culminating in the judgment dated 24.09.1991 of the fact that two other societies being Respondent nos. 2 and 3 existed and the land had been allotted by Ahmedabad Urban Development Authority (AUDA) to Respondent No.2 and not Respondent No.4

It may be noted that Respondent No.2 was called Sumangalam Cooperative Housing Society, Gandhi Nagar bearing registration No.9675 which was cancelled on 9.12.1996.

Respondent No.3 was called New Sumangal Cooperative Housing Society Ltd. Taluka Daskroy bearing registration No.13338 which also cancelled on 9.12.1996.

Respondent No.4 is called Sumangalam Cooperative Housing Society, Bodakdev and bears registration No.1492.

Background facts vis-à-vis Respondent No.2 are relevant: On 16.07.1987 Respondent No.2 made an application for allotment of land admeasuring 6651 sq. mtrs. from F.P. No.707 TPS Bodakdev; 12514 sq. mtrs. land from F.P. No.695 TPS Bodakdev; 8693 sq. mtrs. of land from Survey No.189 and 190 from TPS Vastrapur, and 9208 sq. mtrs. from survey No.199 TPS Vastrapur. It was also requested to fix the rate of the land at Rs.300/- per sq. mtrs.

On 21.07.1987 Respondent No.2 made a modified application for allotment of land stating that "eventually about 150 Govt. employees of various categories would be members of the Society".

On 24.11.1987 Respondent No.2 indicated that T.P. Plot 695 is designated for neighbourhood garden, play ground, library etc. and further requested that they may be granted 4000 sq. mts. of this land on condition that part of this land will be used for purposes within the meaning of "neighbourhood centre" and assured AUDA that Respondent

No.2 was prepared to purchase land bearing survey Nos. 189 and 190 (Part) and survey Nos.199/1, 2, 3 of Vastrapur at the price indicated by AUDA.

On 09.12.1987 resolution was adopted by AUDA to allot lands to Respondent No.2 bearing Survey No. 189, 190 Paiki of Vastrapur admeasuring 8693 sq. mtr., Survey Nos.199/1/2/3 of Vastrapur admeasuring 9208 sq. mtr. And Bodakdev Final Plot No.694 admeasuring 2739 sq. mtr., F.P. No.695 admeasuring 12516 sq. mtr. And F. P. No.696 admeasuring 5239 sq. mtr. on lease for 90 years. The land was to be allotted subject to certain terms and conditions, and the price was to be determined by the Chief Town Planner. The decision was communicated to the President of Respondent No.2 Society vide letter No. Estate/Vashi/2267/16836 dated 10.12.1987.

On 16.07.1988 Respondent No.2 requested for the review of the price charged.

On 16.07.1989 Respondent No.2 paid Rs.6,65,000/-.

On 07.10.1989, by resolution No. 50 (89-90), AUDA resolved to refund the amount deposited by the Respondent No.2 and to dispose of the lands by public auction.

On 21.12.1989 Respondent No.2 claimed right to land.

Respondent No.2 Society, mentioning its registration No.9675/86 made an application on 21.12.1989 signed by S. Jagadeesan requesting to reconsider the price and allot the land in response to cancellation of allotment. It is further stated in the said letter that the Society bearing registration No.9675/86 has paid the amount of more than Rs.6 lakhs and, therefore, they have preferential right over the land.

On 19.01.1990 vide resolution No.63 AUDA reconsidered its earlier decision and decided to allot Plot Nos.694, 695 and 696 Bodakdev TP Scheme No.1/B, admeasuring 16,571 sq. mtr. Land to Respondent No.2 Society.

On 13.05.1990 Respondent No.2 paid Rs.1,03,85,000 to AUDA by Cheque No.1426322 of State Bank of Saurashtra and AUDA issued its receipt No.44414 dated 30.5.1990.

On 01.06.1990 Respondent No.2 took the possession of the land.

Similarly position vis-a-vis Respondent No.4 are relevant:

On 05.07.1990 Respondent No.4 came into being under Registration No.14292.

On 26.02.1991 AUDA passed a resolution in its 123rd meeting allotting 3923 sq. mtrs of land possession whereof was taken by Respondent no.4 after payment of price of Rs.26,70,600.

Respondent No.4 also took possession of 16571 sq. mtrs of land, possession of which had been given to Respondent No.2 and price of Rs.6,65,000 and Rs.1,03,85,000 had been paid by Respondent no.2 on 16.06.1989 and 30.05.1990 respectively.

From the above events the High Court in its impugned judgment has concluded that Respondent No.4 and its officers are guilty of having practiced fraud on AUDA as well as the High Court because -

(a) Respondent No.4 has impersonated as Respondent No.2

(b) Respondent No.4 has obtained possession of land on the basis of such impersonation from AUDA and for the price which had been paid by Respondent No.2 at the price prevailing the year 1987 much before Respondent No.4 was born.

(c) Respondent No.4 suppressed this fact in earlier proceedings before the High Court resulting in the judgment dated 24.09.1991 and thus secured the judgment by practising fraud on the court.

The High Court held that by impersonation office bearers

of Respondent No.4 brought about the following consequences:

(1) Respondent No.4 secured allotment of land at the price determined in 1987 while it actually came into existence on 5th July 1990.

(2) Out of 54 members who were allotted plots by Respondent No.4, 42 persons had also been allotted plots by Government at Gandhi Nagar.

(3) Respondent No.4 had taken possession of the land on the basis that it had 77 members while it had distributed plots only amongst 54 persons.

The credentials of the valuer Dr. Roshan H. Namavati are quite impressive. He is an approved valuer for more than five decades and is an author of several books on valuation. A few provisions of Gujarat Co-operative Societies Act, 1961 (in short the 'Act') were succinctly stated in Zoroastrian Cooperative Housing Society Ltd. and Another v. District Registrar, Cooperative Societies (Urban) and Others (2005(5) SCC 632) more particularly in paragraphs 11 to 13 and 15. They read as follows:

"11. Section 23 deals with removal of a member in certain circumstances. Section 24 speaks of open membership. Sub-Section (1) thereof, which is of immediate relevance, reads as follows:-

"24. Open membership. (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act, the rules and bye-laws of such society."

Be it noted that admission to membership could not be refused only to a person who was duly qualified therefor under the Act, the Rules and the bye-laws of such Society. In other words, the bye-laws are not given the go-by in spite of the introduction of the concept of open membership as indicated by the heading of the Section. Section 29 of the Act restricted the right of a member other than the State Government or a society to hold more than one fifth of the total share capital of the society. Section 30 places restriction on transfer of share or interest. It reads :-

"30. Restrictions on transfer of share or interest.- (1) Subject to the provisions of section 29 and sub-section (2) a transfer of, or charge on, the share or interest of a member in the capital of a society shall be subject to such conditions as may be prescribed.

(2) A member shall not transfer any share held by him, or his interest in the capital or property of any society, or any part thereof, unless.-

(a) he has held such share or interest for not less than one year;
(b) the transfer or charge is made to the Society, or to a member of the Society, or to a person whose application for membership has been accepted by the Society; and
(c) the committee has approved such

transfer."

It can be seen that a restriction is placed on the right of a member to transfer his share by sub-section (2) of Section 30 and the transfer could be only in favour of the society or to a member of the society or to a person whose application for membership has been accepted by the society and the committee has approved such transfer. Section 31 provides for transfer of interest on death of a member. Even an heir or a legal representative, had to seek and obtain a membership in the society, before the rights could be transferred to him. The section also leaves a right to the heir or legal representative to require the society to pay him the value of the share or interest of the deceased member, ascertained as prescribed. Section 32 of the Act provides that the share or interest of a member in the capital of a Cooperative Society is not liable to attachment. Under Section 36 of the Act, the society even has the power to expel a member and unless otherwise ordered in special circumstances by the Registrar, such expelled member does not have a right of re-admission to membership. Sections 44 to 46 place restrictions on transactions with non-members and the said transactions were to be subject to such restrictions as may be prescribed. Under Chapter V of the Act, any society duly registered under the Act would be entitled to State aid. Under Section 73 of the Act, the final authority of the society is to vest in the general body of the society, subject to it being delegated in terms of the bye-laws of the society. The powers and functions of the Committee in which the management of every society vested, are dealt with in Section 74 of the Act.

12. The Gujarat Co-operative Societies Rules, 1965 was framed in terms of the Act. Rule 12(2) provides that no Co-operative Housing Society shall, without sufficient cause, refuse admission to its membership, to any person duly qualified therefor under the provisions of the Act and its bye-laws, to whom an existing member of such society wants to sell or transfer his land or house and no such society shall, without sufficient cause, refuse to give permission to any existing member to sell or transfer his plot of land or house to another person who is duly qualified to become a member of that society.

13. A peep into the history of the legislation brought in to govern the co-operative movement in the country seems justified. The real first legislation touching the co-operative movement was the Co-operative Credit Societies Act, 1904. When that Act came into being, there was no other Act in force under which an association or a society could be formed for the purpose of promoting the economic interests of its members in accordance with the well recognized co-

operative principles, though a co-operative society could be organized under the Indian Companies Act, 1882. Lacuna was found in the working of that Act especially in the development of rural credit. To remove the same, the Cooperative Societies Act, 1912 was enacted. Under Section 4 of that Act, a society which had as its object, the promotion of economic interests of its members in accordance with economic principles, could be registered under the Act. Under Section 6, no society could be registered which did not consist of at least 10 persons above the age of 18 years and where the object of the society was the creation of funds to be lent to its members unless such persons either resided in the same town or village or in the same group of villages or they were members of the same tribe, class, caste or occupation unless otherwise directed by the Registrar of Co-operative societies. Section 14 placed restrictions on the transfer of share or interest by a member and the transfer could be made only to the society or to a member of the society. What is relevant for our purpose is to notice that normally, the membership in a society created with the object of creation of funds to be lent to its members, was to be confined to members of the same tribe, class, caste or occupation. The Co-operative Societies Act, 1912 continued in force until the concerned States enacted laws for themselves. It was, thus, that the Bombay Co-operative Societies Act, 1925 was enacted. We have earlier noticed some of the relevant provisions of the Act and it is not necessary to repeat them here. Under Section 72 of the Act, a society registered either under the Co-operative Credit Societies Act, 1904 or the Co-operative Societies Act, 1912 was to be deemed to be registered under the Act. What is required to be noticed is that in this Act also, when the object of the society was the creation of funds to be lent to its members, the membership had to be confined to persons belonging to the same town or village or same group of villages or they had to be members of the same tribe, class (originally it was caste) or occupation unless the Registrar ordered otherwise. It was this Act, under which the present appellant Society got itself registered, though it later came to be governed by the Gujarat Co-operative Societies Act which was subsequently enacted. We have already adverted to the general provisions thereof but it may be relevant to notice here that under Section 6, no society other than a federal society, could be registered unless it consisted of at least 10 persons belonging to different families and who resided in the area of operation of the society and no society with unlimited liability could be registered unless all persons forming the society, resided in the same town or village or in the group of villages. Section 24 of the Act put restrictions in respect

of membership. Section 30 restricted the right of transfer and Section 31 the right of inheritance. Thus, running right through the relevant enactments, is the concept of restricted membership in a co-operative society. The concept of open membership referred to in Section 24 of the Act has, therefore, to be understood in this background, especially when we bear in mind that it only placed an embargo on refusal of admission to membership to any person duly qualified therefor under the provisions of the Act, the Rules and the bye-laws of the society.

15. The cooperative movement, by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. No doubt, when it gets registered under the Cooperative Societies Act, it is governed by the provisions of the Cooperative Societies Act and the Rules framed thereunder. In *Smt. Damyanti Naranga v. The Union of India and Ors.* [1971 (1) SCC 678], this Court, discussing the scope of the right to form an association guaranteed by Article 19(1)(c) of the Constitution of India, stated that the right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. Based on this decision, it is contended on behalf of the Society that its members have the right to be associated only with those whom they consider eligible to be admitted and the right to deny admission to those with whom they do not want to associate, cannot be interfered with by the Registrar by imposing on them a member who according to them was not eligible to be admitted. The argument on this basis is sought to be met on behalf of the respondents by reference to another decision of this Court in *Daman Singh and Ors. v. State of Punjab and Ors.* [1985 (2) SCC 670]. Therein, their Lordships, after referring to *Damyanti's* case (*supra*), held that that decision had no application to the situation before them. The position was explained in the following words:-

"That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The

whatever to the situation before us.

It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The

composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed. The Act was, therefore, struck down by the Court as contravening the fundamental right guaranteed by Art. 19(1)(f). In the cases before us we are concerned with co-operative societies which from the inception are governed by statute. They are created by statute, they are controlled by statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association."

The history and nature of co-operative movement have been projected in very clear terms in the judgment. For the purpose of the present case, Sections 17, (Amalgamation, transfer, division or conversion of Societies), 20 (Cancellation of registration), 23 (Removal from membership in certain circumstances), 24 (open membership are relevant. Additionally, no member of respondent Nos.2 and 3 societies has made any complaint against respondent No.4 or its office bearers. That has significant impact on the controversy. The valuation done by Dr. Roshan H. Namavati demolishes the basis of the conclusion by the High Court regarding undervaluation.

The appeals are, therefore, allowed. The observations made against various officials are uncalled for and have to be treated to have been deleted.

The appeals are accordingly allowed with no orders as to cost. We record our appreciation for the fair and able assistance rendered by Mr. Altaf Ahmad, learned Amicus Curiae.