

CASE NO.:
Appeal (civil) 5130 of 2007

PETITIONER:
Veena Kumari Tandon

RESPONDENT:
Neelam Bhalla and others

DATE OF JUDGMENT: 02/11/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 5130 OF 2007
(Arising out of SLP (C) No. 525 of 2005)

S.B. SINHA, J.

1. Leave granted.

2. Interpretation of Section 27 of the Maharashtra Cooperative Housing Societies Act, 1960 (1960 Act) vis-a-vis Bye Laws of the Merry Niketan Co-operative Housing Society Ltd. is in question in this appeal which arises out of a judgment and order dated 30th April, 2004 passed by a Division Bench of the Bombay High Court whereby the writ petition filed by the respondents herein declaring that each member of the society will have a separate vote was allowed.

3. Respondent No.17 is a Group Housing Cooperative Society. Contesting parties hereto are its members. Some of the members of the said Group Housing Cooperative Society are members of the same family. They were, however, admitted to the membership of the Society without any reservation whatsoever.

4. The dispute which arose amongst the members of the Society started with preparation of voter list. A provisional list of voters was published by the Managing Committee of the Society on 22nd January, 2004 showing the names of 35 members. However, a resolution was adopted by the Managing Committee to prepare a final list of members eligible to vote on the purported basis of bye-laws 8(a), 9(a) and 9(b) of the Bye Laws of the society meaning thereby that member holding more than one flat or membership in the name of his/her family members will be eligible to one vote only. On the said basis a final list of members was published. Objections thereto were submitted. Respondent No. 1 besides other members filed nomination for contesting the election. The same was rejected whereagainst appeals were preferred under Section 152(A) of 1960 Act by respondent Nos. 1, 3 to 5, and 7 to 11 herein. The said appeals were dismissed by the Deputy Registrar of Cooperative Societies H/West Division, Mumbai on 17th March, 2004.

5. A writ petition was filed thereagainst. Some interim orders were passed by the High Court directing the votes of the members, whose names had been excluded in the final voter list on the ground that they are members of the same family, to be kept in a separate sealed cover. Indisputably in the final voters list which was prepared showing only one member of the family to be a voter, despite the fact that more than one member of the same family had been allotted more than one flat.

6. The High Court by reason of its impugned judgment, on interpretation of Section 27 of the 1960 Act, opined that each member

of the Society is entitled to cast his/her vote despite the definition of 'family' contained in Bye-Law 3(xxv) of the Bye-Laws of the Society.

7. Mr. P. Shah, learned counsel appearing on behalf of the appellant inter alia submitted that the High Court committed a manifest error in so far as it failed to take into consideration that the provisions of the 1960 Act are required to be read alongwith the Bye-Laws framed by the Society. In a Group Housing Cooperative Society, the learned counsel would contend, a family may be allotted more than one flat but, however, with a view to seeing that members of the same family by reason of having been allotted more than one flat do not constitute majority, a formula has been adopted in the Bye-Laws, namely 'one family one vote'.

8. Relevant part of Section 27 of the 1960 Act reads as under :-

"27. Voting powers of members :- (1) Save as otherwise provided in sub-sections (2) to (7), no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally, and not by proxy :

Provided that, in the case of an equality of votes the Chairman shall have a casting vote."

Section 73(H) of the 1960 Act reads as under :-

"73H - Responsibility of committee to hold election before expiry of term

(1) It shall be the duty of the committee of every society to arrange for holding the election of its members before the expiry of its term.

(2) Where there is a wilful failure on the part of the committee to hold the election to the committee before the expiration of its term, the committee shall cease to function on the expiration of its term and the members thereof shall cease to hold office and the Registrar may himself take over the management of the society or appoint an Administrator (who shall not be from amongst the members of the committee the term of which has so expired) and the Registrar or Administrator shall hold election within a period of six months and the committee shall be constituted before the expiration of that period."

9. The Society has framed its own Bye-Laws. A 'flat' has been defined under Bye-Law 3(vi) to mean :

" 'Flat' means a separate and self contained set of premises used or intended to be used for residence, or office, or show-room or shop, or godown and includes a garage, or dispensary, or consulting room, or clinic, or flour mill, or coaching classes, or palnaghar, beauty parlour, the premises forming part of a building and includes an apartment; "

'Family' has been defined in Bye-Law 3(xxv) to mean :

" 'Family' means Group of persons which includes husband, wife, father, mother, sister, brother, . Son , daughter, son-in-law, brother-in-law, sister-in-law, daughter-in-law, grandson/daughter; "

Bye-Law 19 provides for the 'conditions for membership', clause (iii) whereof reads as under :-

"19.(A) An individual who is eligible to be the member and who has applied for membership of the society in the prescribed form, may be admitted as member of the committee on complying with the following conditions :-

(iii) he has given the application, as prescribed the particulars in regard to any house, plot or flat owned by him or any of the members of his family, anywhere in the area of operation of the society."

Bye-Law 62 provides for holding of flat by members in the following manner :-

"62. Individual member of the Society may hold more than one flat, in the buildings of the Society in his name or in the name of any of the members of his family."

Bye-Law 107 reads as under :-

"107. At a general body meeting of the society, every member of the society, and in his absence, his associate member shall have one vote only. In case of equality of votes, the Chairman of the meeting shall have a casting vote."

10. Bye-Laws of the Society provide for different kinds of membership. Whereas a full fledged member would be entitled to vote, an Associate Member may not be.

11. It is now a well settled principle of law that a Legislative Act shall prevail over the subordinate legislation. Bye-Laws must, therefore, conform to the provisions of the Act and cannot act in derogation thereof.

12. Section 27 of 1960 Act in no unmistakable terms provides for one member - one vote. It is one thing to say that the object behind the slogan 'one family one vote, may be otherwise laudable, but what is necessary to be seen is as to whether the said concept has any root in the Act. If, the Legislative Act provides for the concept of 'one person one vote', no bye-law can create another concept so as to defeat the legislative object. Bye-law provides for a member's right to be allotted flats in the name of his family members; but the same would not mean that under no circumstances more than one member of a family cannot become member of the society. A difference between ownership of flat and membership must be kept in mind. When one member of the family within the meaning of Bye-Law 19 (iii) applies for allotment of another flat, he/she may be asked to disclose the details in regard to allotment of flat in favour of any other member of the family. But if the members of the family have been allotted flat or admitted to the membership of the Society, for the purpose of exercising the right to vote the statutory provisions shall apply.

13. Submission of learned counsel that the Society must act in terms of Bye-Laws as has been observed by this Court in A. Jithendernath vs. Jubilee Hills Cooperative House Building Society and another : (2006) 10 SCC 96 para 54 is undoubtedly correct but the same would not mean that invalid bye-law shall be permitted to operate and that too in derogation to the legislative act.

14. Section 27 of the 1960 Act is absolutely clear and unambiguous. It does not admit of two meanings. If the literal rule of

interpretation is to be applied and there is no reason as to why it should not be, all members of the family who have been admitted to the membership of the Society would be entitled to vote. The bye-law, it would bear repetition to state, cannot prevail over the statutory provision.

15. We, therefore, do not find any infirmity in the impugned judgment of the High Court. This appeal is accordingly dismissed with costs. Counsel's fee assessed at Rs.10,000/- (Rupees ten thousand only).

JUDIS