



Dusane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11870 OF 2019

Mrs. Jyoti Sharadchandra Lohokare .Petitioner

V/s.

The Managing Committee, Shreeji Ville .Respondents
CHS Ltd. & Ors.

Mr. Butala i/b. M/s. S.S. Butala & Associates, Advocate, for the
Petitioner

Mr. Prashant P. Kulkarni, Advocate, for Respondent No.1

Mr. P.G. Sawant, AGP, for Respondent No.4 - State

CORAM : MADHAV J. JAMDAR, J.

DATE : 25.09.2023

ORAL JUDGMENT:

1. Heard Mr. Butala, learned Counsel appearing for the
Petitioner, Mr. Prashant Kulkarni, learned Counsel appearing for
Respondent No.1-Housing Society and Mr. Sawant, learned AGP
for Respondent No.4-State.

2. The Petitioner, by the present Writ Petition filed under
Article 227 of the Constitution of India is *inter alia* challenging
the legality and validity of the order dated 6th March 2019
passed by the learned Judge, Co-operative Court, Thane at Thane

below Exhibit 5 in Dispute No. CCT 22/2019 as confirmed by the Judgment and Order dated 10th June 2019 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai in A.O. No. 21 of 2019.

3. By the said Dispute, the Petitioner has challenged a Resolution passed in Annual General Meeting dated 11th November 2006 of the Respondent No. 1-Housing Society in respect of levying certain mandatory charges towards expenses for 'cultural activities'.

4. It is the contention of Mr. Butala, learned Counsel appearing for the Petitioner that Bye-Law No.148 of the *Model Bye-Laws of The Co-operative Housing Society* (hereinafter referred to as "**said Bye-Laws**") provides for appropriation of profits and as per Bye-law No. 148(b)(iii) the profit is to be allocated to a 'Common Welfare Fund' for furtherance of the objects specified in Bye-law No.5(d). He further submitted that Bye-law No. 65 provides for compulsory charges to be collected from the members and break-up of said charges of the society are provided in Bye-law No. 66. He submitted that the charges levied towards expenses for cultural activities are not included under Bye-Law 65 i.e. compulsory charges and therefore said 'cultural

charges' are illegally levied by Respondent No.1- Society. He therefore submitted that the impugned orders are liable to be quashed and set aside.

5. On the other hand, Mr. Prashant Kulkarni, learned Counsel appearing for Respondent No.1-Housing Society submitted that the Society has passed a Resolution in the Annual General Meeting dated 11th November 2006 in respect of charges for the purpose of cultural events. He states that the same is permissible as per law and therefore, no interference is warranted in the impugned orders.

6. Thus, the question to be decided in this Writ Petition is whether a Co-operative Housing Society can levy and collect charges towards expenses for 'cultural activities' and whether such an act of a Co-operative Housing Society is permissible in law.

7. For consideration of the above question, it is necessary to set out the various types of 'Societies' as contemplated under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "**said Act**"). Section 12 of the said Act provides that the Registrar shall

classify all societies into one or other of the classes of societies as defined in Section 2 of the said Act. Section 2 of the said Act contemplates following types of Societies:-

(i) **Agricultural Marketing Society** [(Section 2(1))]

Section 2(1):- *“agricultural marketing society” means a society -*

*(a) the object of which is the **marketing** of agricultural produce and the supply of implements and other requisites for agricultural production, and*

*(b) not less than three-fourths of the members of which are **agriculturists**, or **societies formed by agriculturists**;*

(ii) **Co-operative Bank** [Section 2(6), 2(10)]

Section 2(6):- *“Central Bank” means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies; but does not include the primary urban co-operative bank;*

Section 2(10):- *“Co-operative bank” means a society which is doing the business of banking as defined in clause (b) of sub-sections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function a Co-operative Agricultural and Rural Development Bank under Chapter XI;*

Section 2(10) (aii-1):- *“co-operative credit structure entity” means the **primary agricultural credit co-operative society**, the District Central Co-operative Bank or the State co-operative Bank;*

(iii) **Consumer Society** [(Section 2(9))]

Section 2(9):- *“Consumer society” means a*

society, the object of which is -

*(a) the **procurement, production or processing, and distribution of goods** to or the performance of other services, for, its members as also other customers, and*

(b) the distribution among its members and customers, in the proportion, prescribed by rules or by bye-laws of the society, of the profits accruing from such procurement, production or processing and distribution;"

(iv) **Crop Protection Society** [(Section 2 (10-A)]

Section 2(10-A):- "Crop Protection Society" means a society, the object of which is protection of the crops, structures, machinery, agricultural implements and other equipment such as those used for pumping water on the land.

(v) **Farming Society** [Section 2(12)]

Section 2(12):- "farming society" means a society in which, with the object of increasing agricultural production, employment and income and the better utilization of resources; lands are brought together and jointly cultivated by all the members, such lands (a) being owned by or leased to the members (or some of them) or (b) coming in possession of the society in any other manner whatsoever;

(vi) **Housing Society** [Section 2(16)]

Section 2(16):- "housing society" means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services;

(vii) **Lift Irrigation Society** [Section 2(16-A)]

Section 2(16-A):- *"lift irrigation society" means a society, the object of which is to provide water supply by motive power or otherwise to its members, for irrigation and otherwise;*

(viii) **Processing Society** [Section 2(22)]

Section 2(22):- *"processing society" means a society, the object of which is the processing of goods;*

(ix) **Producers' Society** [Section 2(23)]

Section 2(23):- *"producers' society" means a society, the object of which is, the production and disposal of goods or the collective disposal of the labour of the members thereof;*

(x) **Resource Society** [Section 2(25)]

Section 2(25):- *"resource society" means a society, the object of which is the obtaining for its members of credit, goods or services required by them.*

(xi) **General Society** [Section 2(15)]

Section 2(15):- *"general society" means a society not falling in any of the classes of societies defined by the other clauses of this section."*

(Emphasis added)

8. For considering the question raised in the present Writ Petition, it is also necessary to set out definition of Society as provided by Section 2(27) of the said Act, which

reads as under :-

“2(27) “society” means a co-operative society registered, or deemed to be registered, under this Act which is an *autonomous association of persons*, united voluntarily to meet their *common needs and aspirations* through a jointly owned and *democratically controlled enterprise* and adhering to the *co-operative principles and values*”

(Emphasis added)

The Society, *inter alia*, means an autonomous association of persons formed to meet their common needs and aspirations through a democratically controlled enterprise, adhering to the co-operative principles and values. Thus, any Society is formed to meet common needs and aspirations of its Members.

9. The Supreme Court, in the decision of *Bengal Secretariat Coop. Land Mortgage Bank & Housing Society Ltd. v. Alope Kumar* [Civil Appeal 7261 of 2022] reported in *2022 SCC OnLine SC 1404* while examining the constitutional validity of the 97th amendment of the Constitution of India has discussed the nature of Co-operative Society. The relevant part of the said decision is set out herein below :-

“57. By now it is well established position that once a person becomes a member of

the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see : Daman Singh v. State of Punjab, reported in (1985) 2 SCC 670 : AIR 1985 SC 973). This view has been followed in the subsequent decision of this Court in the case of State of U.P v. Chheoki Employees Co-operative Society Ltd., reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision, this Court further observed that the member of a Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. This Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the Appellant Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the Respondent No. 1. He cannot be permitted to take a stand alone position but is bound by the majority decision of the General Body. Notably, the Respondent No. 1 has not challenged the Resolutions passed by the General Body of the Appellant Society to redevelop the property and more so, to appoint the Hi-Rise as the Developer to give him all the redevelopment rights.

58. ...

59. *The object of the provision has to be borne in mind. The entire legislative scheme goes to show that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with*

the Act, the Rules, and the bye-laws have to be respected and implemented. The Cooperative Movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great Co-operative movement.

*60. The basic principles of co-operation are that the members join as human beings and not as capitalists. The Co-operative Society is a form of organization wherein persons associate together as human beings on the basis of equality for promotion of economic interest of its members. This movement is a method of doing the business or other activities with ethical base. "Each for all and all for each" is the motto of the co-operative movement. This movement not only develops latent business capacities of its members but produces leaders; encourages economic and social virtues, honesty and loyalty, becomes imperative, **prospects of better life, obtainable by concerted effort is opened up**; the individual realises that there is something more to be sought than mere material gains for himself. So, in fact, it being a business cum moral movement, and the success of the Co-operative Society depends upon the reality with which one of the members work for the achievement of its objects and purpose. The Committee on*

*Co-operation in India emphasized the moral aspect co-operation, to quote the words:— “The theory of co-operation is very briefly that an isolated and powerless individual can, by association, with others and by moral development support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the Union of forces, material advancement is secured and by united action self reliance is fostered and it from the inter-action of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better arming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism. Cooperation in actual practice must often fall short of the standard aimed at and details inconsistent with co-operative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express that it is the true co-operation alone, that is, to a co-operation which recognises the moral accept of the question that Government must look for the amelioration of the masses and not to a pseudo co-operative edifice, however imposing, which is built in ignorance of co-operative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. Pages 5 and 6 of Theory and Practice of Co-operation in India and Abroad by Kulkarni, Volume 1. **Co-operation is a mode of doing business, is at present applied as the solution of many***

economic problems. Co-operation is harnessed to almost all forms of economic activity. Though co-operation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in a wide range of activities such as production, distribution, banking, supply, marketing, housing and insurance. See Theory and Practice of Co-operation in India and Abroad by Kulkarni Volume 1 Page 2.”

(Emphasis added)

Thus, it is settled legal position that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. The above observations of the Supreme Court are squarely applicable to the Societies registered under the provisions of the said Act.

10. At this stage, only it is required to be noted that out of 100 members of the Respondent No. 1 – Society, only 1 member i.e. Petitioner has challenged Resolution passed by the Respondent No. 1 – Society by majority to create ‘cultural funds’

11. A perusal of the objects of various Societies as

contemplated under the said Act clearly shows that there is a distinction between '**Housing Societies**' and '**other Societies**'. As far as Societies concerning agricultural operations viz. Agricultural Marketing Society, Crop Protection Society, Farming Society, Lift Irrigation Society are concerned, the object *inter alia* is enhancement of income of the agriculturists. The object of Consumer Society *inter alia* is distribution of goods to the members. The objects of Co-operative Bank/Credit Co-operative Society are banking and related activities. Thus, the basic objects of all these Societies are related to augmentation of income of its member or providing credit and banking activities. Thus, in a way all such other Societies are concerned with commercial aspects and financial gain/support with respect to their Members.

12. However, it is required to be noted that the nature of a '**Co-operative Housing Society**' is entirely different from that of other Societies as contemplated under the provisions of the said Act. Sub-Section 16 of Section 2 defines 'housing society' as a society, the object of which is to provide its Members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its Members common amenities and services. The housing societies

are societies where, in these flats, Society Members along with their family members reside. Therefore, Model Bye-laws of Co-operative Housing Society *inter alia* provides in its objects in Bye-Law No.5 as follows :-

“(b) To manage, maintain and administer the property of the Society;

(c) To raise funds for achieving the objects of the Society;

(d) To undertake and provide for, on its own account or jointly with a co-operative or other institution for social, cultural or recreative activities;

(e) To provide Co-operative Education and Training to develop Co-operative skills to its Members, Committee Members, Officers and employees of Society.

(f) To do all things, necessary or expedient for the attainment of the objects of the Society, specified in these Bye-Laws.”

(Emphasis added)

It is undisputed that the said Model Bye-laws have been adopted by Respondent No.1-Housing Society. Thus, one of the objects of the housing society is to undertake social, ‘cultural’ or recreational activities. The Bye-Law No.5(f) provides that to do all things, necessary or expedient for the attainment of the objects of the Society, specified in these Bye-Laws is an object of the Society.

The Bye-Law No. 5(c) provides that to raise funds for achieving the objects of the Society is also one of the objects of the Society. Thus, to raise funds to undertake Social, Cultural or recreational activities itself is one of the objects of the Housing Society.

13. It is to be noted that such type of activities are required as Society Members along with their family members reside in such housing societies. It is also important to note that the definition of "society" under Section 2(27) of the said Act specifies the same as an autonomous association of persons, united voluntarily to meet their common needs and aspirations through a jointly owned and democratically controlled enterprise and adhering to the co-operative principles and values. It is well established that human being is a social animal. Hence, it is important for the housing Societies to organise and conduct Social, Cultural or Rerecreational activities.

14. It is necessary to consider the submissions of Mr. Butala, learned counsel appearing for the Petitioner in the above background. Mr. Butala has relied on Bye-law Nos.65 and 66. Apart from these two Bye-laws, Bye-law No.67 is also important. All these three Bye-laws are set out herein below for ready

reference.

"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.***

66. Break-up of Service Charges of the Society

The Service charges of the Society referred to at 65 (g) above shall include the following:

(a) Salaries of the office staff, liftmen, watchmen, malis and any other employees of the Society.

(b) Where the Society has independent Office, the property taxes, electricity charges, water charges etc.

(c) Printing, Stationery and Postage,

(d) Travelling allowance and conveyance charges to the staff and the Members of the Committee of the Society.

(e) Sitting fees paid to the Members of the Committee of the Society,

(f) Subscription to the Education Fund of the Maharashtra Rajya Sahakari Sangh Ltd.

(g) Annual Subscription of the Housing Federation and any other co-operative institution to which the Society is affiliated.

(h) Entrance fees for affiliation to the Housing Federation and any other co-operative institution.

(i) Audit Fees for Internal, Statutory and Reaudit, if any.

(j) Expenses incurred at meetings of the General Body, the Committee and the Sub-Committee, if any.

(k) Retainer fees, legal charges, statutory enquiry fees.

(l) Common electricity charges.

(m) Any other charges approved by the General Body at its Meeting. However such charges should not contradict the provisions of the Act, Rules and Bye-laws of the Society.

67. Sharing of the Society's charges by the Members

(a) The Committee shall apportion the Share of each Member towards the charges of the Society on the following basis:

(i)	<i>Property taxes</i>	: <i>As fixed by the Local Authority.</i>
(ii)	<i>Water Charges</i>	: <i>On the basis of total number and size of inlets provided in each flat.</i>
(iii)	<i>Expenses on repairs and maintenance of the building/buildings of the Society</i>	: <i>At the rate fixed at the general body from time to time, subject to the minimum of 0.75 per cent per annum, of the construction cost of each flat for meeting expenses of normal recurring repairs.</i>
(iv)	<i>Expenses on repairs and maintenance of the lift, including charges for running the lift</i>	: <i>Equally by all the Members of the building in which lift is provided, irrespective of the fact whether they use the lift or not.</i>
(v)	<i>Sinking Fund</i>	: <i>As provided under the bye-law No. 13(c).</i>
(vi)	<i>Service Charges</i>	: <i>Equally divided by number of flats.</i>
(vii)	<i>Parking Charges</i>	: <i>At the rate fixed by the General Body of the Society at its meeting under the Bye-law No. 83/84.</i>
(viii)	<i>Interest on the delayed payment of Charges :</i>	: <i>At the rate fixed under the Bye-law No. 71 to be recovered from the defaulter Member.</i>
(ix)	<i>Repayment of the installment of the loan and interest</i>	: <i>The amount of each instalment with interest fixed by the financing agency.</i>
(x)	<i>Non-occupancy charges</i>	: <i>At the rate fixed under the Byê-law No. 43(c).</i>
(xi)	<i>Insurance Charges</i>	: <i>The built up areas of each flat, provided that if there is increase in the insurance premium due to storing any specific goods in any flat, used for commercial purposes, the extra burden of insurance premium shall be shared by those who are responsible for such increased premium in proportion of the built-up areas to their flats.</i>
(xii)	<i>Lease Rent</i>	: <i>The built-up area of each flat.</i>
(xiii)	<i>Non-Agricultural tax</i>	: <i>The built-up area of each flat.</i>
(xiv)	<i>Education & Training Fund</i>	: <i>Rs. 10 per Flat/unit per month.</i>
(xv)	<i>Election Fund</i>	: <i>Equally by the members and as prescribed by the election authority in the Rules made thereof and as decided by the General Body Meeting of the Society.</i>
(xvi)	<i>Any other charges</i>	: <i>As may be decided by the General Body Meeting of the Society</i>

Committee to fix Society's Charges in respect of every flat

(b) The Committee shall fix in respect of every flat the Society Charges on the basis laid down as under the Bye-law No. 66 (a)."

(Emphasis added)

15. It is clear that Bye-law No.65 provides that the contribution can be collected from the Members for the day to day functioning of the Society and establishment of its funds. The charges which can be collected from the members *inter alia* includes 'any other charges'. Bye-law No.66(m) provides that 'any other charges' should be approved by the General Body at its meeting. It further provides that such charges should not contradict the provisions of the Act, Rules and Bye-laws of the Society. Bye-law No.67 is regarding sharing of the Society's Charges by the Members and provides that as far as 'any other charges' are concerned, the same may be decided by the General Body of the Society.

16. Thus, it is very clear that the Model Bye-laws provide for collection of charges from the members as provided in Bye-law No.65. Bye-law No.65(q) provides that 'any other charges' can be collected from the members of the Society. Bye-law No.66(m)

provides that such 'any other charges' should be approved by the General Body of the Society and such charges should not contradict the provisions of the Act, Rules and Bye-laws of the Society. Bye-law No.5(d) specifically provides that the object of a Co-operative Housing Society *inter alia* is to undertake and provide for, on its own account or jointly with a co-operative or other institution for 'social, cultural or re-creative activities'.

17. As per Resolution dated 11th November 2006 passed by the General Body of the Respondent No.1-Housing Society, a resolution has been passed *inter alia* to set up a cultural fund and an amount of Rs.70/- per flat per month towards the said cultural fund was approved to be collected from the Members for undertaking various cultural activities/events and annual gathering and further that this amount would be included in monthly bills. Bye-law No.67(a)(xvi) provides that the Committee shall apportion the share of each Member with respect to any other charges as may be decided by the General Body of the housing Society.

18. It is one of the contentions of Mr. Butala, that Bye-law No.148(b)(iii) provides for allocation to a Common Welfare Fund, such part of the profit as the General Body may determine to be

utilised in furtherance of the objects specified in the Bye-law No.5(d). Therefore, it is his submission that such an amount can be utilised only if the housing Society earns a profit. However, if the objects of the housing Society are seen, then it is not a profit making body, but the charges are levied for the purpose of collecting funds for the objects of the society and one of the objects of the society is to undertake social, 'cultural' or re-creative activities. Bye-law No.148 cannot be interpreted in such a manner that there is a restriction on the Society to set up a cultural fund and collect the contribution for such a fund and that such a fund to be created only from profit earned by Society. The only prohibition for levy and collection of charges is that it should be approved by the General Body and said charges should not contradict the provisions of the Act, Rules and Bye-laws of the society. As Bye-laws of the Respondent No.1-Housing Society specifically provide for undertaking social, 'cultural' or recreational activities, and as the charges towards 'cultural fund' are approved by the General Body of the Respondent No.1-Housing Society, the challenge to the impugned order fails.

19. It is unfortunate that out of 100 members of Respondent No. 1-Housing Society, only 1 member i.e. the Petitioner has challenged the legality and validity of the

Resolution, by which the Respondent No. 1-Housing Society has decided to set up a 'cultural fund' for the purpose of undertaking various cultural activities/events and annual gathering.

20. Therefore, no interference is warranted under the jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly the Writ Petition is dismissed.

(MADHAV J. JAMDAR, J.)