APPELLATE CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

THE WORKERS CO-OPERATIVE GARDENING & MIXED-FARMING SOCIETY LTD.,—*Appellant.*

versus

THE STATE OF DELHI AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 89-D of 1958.

1964

April, 6th

Bombay Co-operative Societies Act (VII of 1925) as extended to Delhi—S. 57—Power of Registrar to order winding up of a Co-operative Society—Whether constitutional—Classification of Societies—How to be determined—Order under S. 47—Whether quasi-judicial—Failure to hear affected party—Whether violates the order—Judicial control of administrative justice—Principles to be observed by concerned officers stated.

Held, that section 47 of the Bombay Co-operative Societies Act, 1925, read in the light of section 43 to 46-A of the Act, clearly envisages a reasonable and proper limitation on the Registrar in forming his opinion as to the desirability of winding up a society and if he travels outside the statute, the order would obviously be in excess of power and, therefore, liable to be struck down. It is clearly not open to the Registrar at his whim or private opinion or pleasure to order winding up of a society or to answer to some call or motive foreign to or outside the statutory scheme. Thus construed, section 47 is *intra vires* and constitutional. It does not give arbitrary power to the Registrar to order the winding up of a society. It is well to remember that a statute is passed as a whole for the purpose of effectuating the legislative scheme, each section to some extent, taking colour and content from its associate sections. And then, respect due to the wisdom,

integrity, patriotism and loyalty to the Constitution on the part of the legislative body requires an initial presumption in favour of validity of statutory provisions and also calls for a construction if the language permits, to restrict its operation within constitutional bounds to avoid challenge of unconstitutionality.

Held that in the determination of the category of a Society, it is the main and dominant object or purpose of forming the society which is the determining factor and not its incidental objects.

Held, that an order directing the winding up of a co-operative society under section 47 is a quasi-judicial act of which proper notice should be biven to the society for showing cause against the proposed action.

Held, that when an act partakes of an administrative character, if it carries with it a determination on a consideration of facts which prejudicially affect valuable rights of citizens, the recent trends of authoritative judicial opinion in this Republic tends to clothe such determination with *quasi-judicial* robes. The whole substance of judicial control of administrative justice is that to allow a drastic power affecting valuable rights of citizens without hearing the victim thereof must inevitably shock Judges in a system like ours, for, in the very conception of democracy based on Rule of Law, one sees a moral aspect. It is, therefore, a sound rule of law and of public administration that drastic power should be exercised only with due consideration for those who may suffer, in that, it is calculated to improve the technique of decision by the Government departments and to help them avoid the temptation to overlook or ignore the other side of the case.

Held, that failure to give a proper hearing may, from one point of view, properly be regarded as one of the varieties of abuse or excess of power, and exercise of power would accordingly seem to be unauthorised or

illegal when the person who will suffer has not been fairly heard in his own defence. It would not be an overstatment to point out that no man in this Republic is high enough to be above the law and not even an officer of the law can be permitted with impunity to defy that law; all Government Officers, irrespective of their position or status in the hierarchy, are under a solemn obligation to obey and not merely feign or pretend to obey the law, for, not only are they its creatures but law alone is the supreme power and source of authority is our set-up. Government under the law really means that the Government is obliged to keep both the governed and itself under the law and this seems not only to distinguish a civilized Government from tyranny bit also serves to keep the individual content with the State. The principle just stated, unless enforced, would be meaningless. In view of this and in view of our heritage from the past few centuries, as also of our day-to-day experience of the working of the democracy under the Rule of Law, the horizon of judicial control in our set-up must inevitably be and is being broadened, for it is only through such control judiciously exercised that the Rule of law, which is one of the main pillars of our system, can be sustained and vitalised and without which our infant democracy may tend to drift towards athoritarianism. Democracy in our Republic appears to be somewhat tampered with the traditional and instinctive authoritarianism; this factor may at times tend to tempt the over-zealous administrator owing exclusive allegiance to administrative policy and convenience to ignore and overlook the judicious dictates of the Rule of Law, a tendency which once allowed to grow unchecked, may ultimately root out democracy itself. The cause of democracy under the Rule of Law would thus seem to be better served and promoted by reasonably liberal than by unduly restricted judicial control of administrative justice, for the administrator who is conscious of his being liable to justify the legality of his action before an impartial tribunal will perhaps make a more just and responsible official or at least would endevavour in his own interest to do so.

Regular Second Appeal Under Section 41 Act VI of 1918 *(Punjab Courts Act), from the decree of Shri Jasmer*

Singh, Additional Senior Sub-Judge, Delhi, dated the 18th February, 1958, confirming that of Shri Gian Chand Jain, Sub-Judge, 1st Class, Delhi, dated 21st March, 1956, and dismissing the appeal, as withdrawn with costs.

Dua, J.

M. R. SHARMA, ADVOCATE, for the Petitioner.

S. N. SHANKER, ADVOCATE, for the Respondent.

Judgment

DUA, *J.*—Facts giving rise to this regular second appeal may, so far as relevant for our purposes, be briefly stated. The appellant-society was formed sometime in May, 1950. Soon after its formation, an area of 35 acres is stated to have been allotted to it. In February, 1951, the society is stated to have been asked to amend its by-laws and in September, 1951 lay-out of some area allotted to it was approved. In March, 1952, it is stated that some enquiry was made from the society to which it sent suitable reply. In October and November, 1952, steps are stated to have been taken to cancel the allotment of land in favour of this society and the allotment was actually cancelled in that period. In July, 1953, the suit out of which the present appeal arises was instituted for a declaration that the plaintiff-appellant-society was in lawful possession of the land allotted to it by the defendants (the State of Delhi and Union of India) under the Gandhi Nagar Occupational Colony Scheme and for issue of a permanent injunction restraining the defendants from interfering with its possession. In December, 1953, an interim stay is stated to have been granted to the plaintiff-society. In May, 1954, the society was

ordered to be wound up by the Registrar, Co-operative Societies and in June, 1954, a liquidator appointed. The liquidator, Shri Sukhbir Singh, on 29th June, 1954, applied to the trial Court under Order 23, Rule 1, Civil Procedure Code, for withdrawing the suit alleging that the plaintiff-society had been wound up by the Registrar under section 47 of the Bombay Co-operative Societies Act, 1925, as extended to Delhi and the applicant, who is liquidator, was entitled to take over the conduct of the suit and after examing the records and other circumstances, he had decided to abandon the suit. The plaintiff-society through its Secretary contested this application, the pleas raised by the society being that the liquidator had no *locus standi* to apply for the withdrawal of the suit as he was no party to the proceedings and also because there was no legal and operative order of the winding up of the society. In addition, it was urged that in case there was any such order, it had been made *mala fide*, without jurisdiction and was, therefore, void and inoperative conferring no authority on the liquidator to withdraw the suit by himself. On the pleadings of the parties the Court framed the following three issues:—

(1) Whether the liquidator has *locus standi* to file the application under Order 23, Rule 1, of the Code of Civil Procedure ?

(2) Whether the Registrar has exceeded his authority in winding up the society ? If so, its effect ?

(3) Whether the liquidator can act singly?

The Trial Court by an Order dated 21st March, 1956, determined all the issues in favour of the

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liquidator-applicant and allowing his prayer dismissed the suit as withdrawn with costs. An appeal taken by the Society to the lower appellate Court was similarly dismissed with costs by a learned Additional Senior Subordinate Judge, Delhi, with enhanced appellate powers.

Second appeal to this Court was initially heard by my learned brother D. K. Mahajan, J, who on 23rd May, 1961, directed the appeal to be disposed of by a larger Bench because the matters involved were of great importance including constitutional questions.

On behalf of the appellant, to begin with, the constitutional validity of section 47 of the Bombay Co-operative Societies Act, 1925; as extended to Delhi (hereinafter called the Act) has been challenged. This section is in the following terms:—

> "47. Winding up.—If the Registrar, after an inquiry has been held under section 43 or after an inspection has been made under section 44 or on receipt of an application made by three-fourths of the members of a society, present at a special or general meeting, called for the purpose or of his own motion, in the case, of a society that has not commenced working, or has ceased working, or possesses shares of a members' deposits, not exceeding Rs. 500, is of opinion that society ought to be wound up he may issue an order directing it to be wound up, and when necessary, may appoint a liquidator for the purpose and fix his remuneration."

The basis of the challenge is that the power conferred by this section on the Registrar for ordering the society to be wound up is arbitrary, being completely unfettered and is, therefore, violative of the fundamental rights guaranteed by the Constitution. The argument, as put, is attractive on the surface, but if we look at the scheme of the Act and particularly sections 43 and 44 occurring in chapter VII headed "Inspection of Affairs" to which reference has been made in section 47, it would be obvious that the power is not truly as uncontrolled and unfettered as is suggested. Section 43 envisages enquiry by the Registrar into the constitution, working and financial condition of a co-operative society. The result of that enquiry has to be communicated to the society whose affairs are inspected. Section 44 provides for inspection of books of indebted societies and here too, the Registrar has to communicate the result of any such inspection to the creditor who has involved this section. Under section 46-A, the result of enquiry under section 43 and inspection under section 44, if it discloses defects in the working of a society, has to be brought to the notice of the society; the Registrar may also direct the society or its officers to take such action as may be specified for remedying the defect within a specified time. A right of appeal is also given to the aggrieved society from the order made by the Registrar under section 46-A (1). If we read section 47 in the light of these provisions, it is clear that the power is not as wide as is suggested. Section 47 clearly envisages a reasonable and proper limitation on the Registrar in forming his opinion as to the desirability of winding up a society and if he travels outside the statute, the order would obviously be in excess of power and, therefore, liable to be struck down. It is clearly not open to the Registrar at his whim or private

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opinion or pleasure to order winding up of a society or to answer to some call or motive foreign to or outside the statutory scheme. Thus constructed, section 47 would seem to me to be *intra vires* and constitutional. It is well to remember that a statute is passed as a whole for the purpose of effectauting the legislative scheme, each section, to some extent, taking colour and content from its associate sections. And then, respect due to the wisdom, integrity, patriotism and loyalty to the Constitution on the part of the legislative body requires an initial presumption in favour of validity of statutory provisions and also calls for a construction if the language permits, to restrict its operation within constitutional bounds to avoid challenge of unconstitutionality.

The next contention urged on behalf of the appellant is that the Registrar has exceeded his authority in ordering the winding up of the appellant-society. According to him, there was no enquiry held as envisaged by section 43: at least, so contends the counsel in the alternative, the appellant was given no opportunity to show cause. Nor was any defect disclosed as a result of the enquiry pointed out to the society with an opportunity for remedying the defect. Our attention has been drawn to Exhibit P. 2, the inspection note dated 28th July, 1952 of Mr. H. S. Lather, Assistant Registrar, Co-operative Societies. In this note, it is mentioned that enquiry under section 44 should be expedited. This observation would clearly negative the contention that no enquiry as a matter of fact was ever held. It is, however, stressed by the learned counsel that the appellant was never associated in any such enquiry and the order of the Registrar Exhibit D. 7, according to the submission, also does not show that the appellant was ever associated in such an enquiry.

Reference has also been made to the testimony of Shri S. V. Bedi, Chairman of the society, P.W. 1, in support of the contention that no notice regarding enquiry by the Registrar was ever given to the appellant nor was the appellant ever asked to remove any defects disclosed as a result of the enquiry,

Another contention most seriously pressed on behalf of the appellant is that no intimation was ever given to the appellant even before passing an order winding up the society. Intimation regarding winding up was undoubtedly given as per Exhibit D. 9, but this was after the society had been ordered to be wound up and it was mere intimation that the Society had been ordered to be wound up and Shri Sukhbir Singh, Inspector had been appointed liquidator to wind up its affairs. This Exhibit is undated, but at the bottom, copies of this order are stated to have been forwarded to the Inspector. Co-operative Societies, and the Manager, the Delhi Province Central Co-operative Bank Ltd., on 4th June, 1954. This order, it may also be observed, purports to have been signed by H. S. Lather, Assistant Registrar, Co-operative Societies on whom by virtue of a notification dated 10th March, 1950, powers of Registrar under section 47 amongst others were conferred.

Arguments have also been addressed by the appellant on the contention that the order winding up the society is *mala fide* having in reality been passed for an ulterior purpose of utilising the land allotted to the society for some other purpose. In support of this contention, reference has been made to Exhibit P. 3, dated 11th July, 1952 and the inspection note by the Rehabilitation Ministry which suggests that this land should be utilised for land

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and housing scheme; to Exhibit P. 4, dated 9th October, 1952 which is a letter from the Rehabilitation Department to Shri Lather inviting report regarding land allotted to the society; Exhibit P. 5, dated 20th November, 1952, which is a letter from Delhi State Development Authority to the Development Officer, Delhi, conveying the Chief Commissioner's view to cancel the appellants' lease and inviting report that this view was carried out. The liquidator, so continues the counsel, was also permitted by Shri Lather himself to withdraw the suit. In this background it is contended that the winding up was really resorted to for the purpose of defeating the suit instituted by the appellant and a fortiori for the purpose of by-passing the Court of justice which was properly seized of the matter which it should have adjudicated according to law.

Another argument which has been advanced in support of the appeal is based on section 53 of the Act which, *inter alia*, lays down that where the society, directed to be wound up, is a housing society, its assets, both movable and immovable, shall, for the purposes of winding up or dissolution of the society, jointly vest in two persons of whom one shall be nominated by the Registrar and the other by the said society in the general meeting specifically called for the purpose. It is contended that this society has been formed with the object of providing its members with dwelling houses and, therefore, falls within the definition of "Housing Society" contained in section 3(h)(4) In this connection, stress has also been laid on the fact that it was during the pendency of the controversy in the Court of first instance on 7th August, 1954 that the Registrar classified this society as "General Society", so as to defeat the appellant's

objection. "General Society", it may be observed, is defined in section 3(h)(5) to mean a society not falling under any of the four classes mentioned earlier. The other four classes are "Resource Society", "Producer Society", "Consumer Society" and "Housing Society". There being only one liquidator appointed by the Registrar, this appointment is described to be outside the statute and, therefore, unauthorised.

The respondents' learned counsel Shri Shanker has in reply contended that the original allotment was not by an authorised person nor was it in accordance with law. It has been emphasised that 30 acres were allotted to the society for agricultural purposes and five for residential purposes; this, according to the counsel, clearly shows that the society was not formed with the object of providing its members with dwelling houses but the residential purposes were obviously incidental to the main purpose which was agricultural. It is, therefore, contended that the society is in fact a "General Society" which does not fall within the four classes mentioned in clauses 1 to 4 of section 3(h). The mere fact that the Registrar had chosen to formally classify it as a "General Society" on 7th August, 1954 pending the controversy would not by itself deprive the society of the character of a "General Society" if it really is one and on this account it cannot become a "Housing Society", and it is argued that ignoring the classification by the Registrar, the position remains the same, namely, the appellant society is a "General Society". This contention appears to me to be fully justified and agreeing with it, I need not say anything more on this aspect. Suffice it to point out that it is the main dominant object or purpose of forming a society which is the determining factor and not its incidental objects. The appellant has failed to

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convince us that the main or principal object of forming the society falls within the definition of "Housing Society".

Reverting to the contention that the original allotment purporting to be by Major Ram Chander, who was incharge of the execution of Gandhi Nagar Occupational Colony Scheme, had not been made in accordance with law and that the letter relied upon by the appellant-society had been written by him in his private capacity, in my opinion, it is unnecessary to go into this aspect in view of our opinion on the other points expressed hereafter.

The learned counsel did not contest, as indeed it seems to me to be incontestable, that the order directing the appellant-society to be wound up under section 47 is a quasi-judicial act of which proper notice should have been given to the society for showing cause against the proposed action. A bench of five Judges of the Supreme Court in *Board of High School and Intermediate Education* v. *Ghanshyam Das Gupta, etc.* (1) after reproducing a passage from *Province of Bombay* v. *Khushaldas S. Advani* (2) and referring to four later decisions of the same Court, made the following weighty observations:—

> "The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights effected, the manner of the disposal

(1) A.I.R. 1962 S. C. 1110.
(2) A.I.R. 1960 S. C. 222.

provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arsie in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively."

These observations have been respectfully followed in a number of decisions by various Benches of this Court. I too had occasion to deal with this aspect at some length in my separate but concurring observations (sitting in Division Bench) in *Satya Dev* v. *State of Punjab and another* (3). If the action contemplated by section 47 is *quasi*-judicial as indeed it is not disputed that it is, then the rule of natural justice expressed in the sacred maxim *audi alteram partem* which embraces the whole notion of fair procedure and is almost of universal validity would clearly, and, again, indisputably, be attracted. Even when an act partakes of an administrative character, if it carries with it a determination on a consideration of facts which prejudicially affect valuable rights of citizens, the recent trend of authoritative judicial opinion in this Republic tends to clothe such determination with *quasi*-judicial robes. The whole substance of judicial control of administrative justice, as I understand it, is that to allow a drastic power affecting valuable rights of citizens without hearing the victim thereof must inevitably shock Judges in a system like ours for in the very conception of democracy based on Rule of Law, one sees a moral aspect. It is, therefore, a sound rule of law of public administration that drastic

(3) I.L.R. 1964 (1) Punj. 878=1964 P.L.R. 381.

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power should be exercised only with due consideration for those, who may suffer, in that, it is calculated to improve the technique of decision by the Government departments and to help them avoid the temptation to overlook or ignore the other side of the case. I am not unaware of some judicial thinking presumably inspired by the trend of some observations in a few recent decisions of English Courts apparently influenced by the complete supremacy of the British Parliament and the doctrine of ministerial responsibility in that country where there is no written Constitution but such judicial thinking does not, in my view, appropriately serve as a clear beacon-light or a sure guide-post for adequately enforcing Rule of law in this Republic. Every country has its own peculiar problems to solve, and we in India cannot with any sense of safety ignore the complex problems created by the past historical events and somewhat unfortunate political phases through which our nation had to pass during the past few centuries, which have largely influenced the people's outlook and behaviour towards society and the State. In this Republic the Constitution alone is Supreme and it is only the Constitution to which each one of the three wings of our Government must look for the extent and limit of its authority and power. Judicial control in our country is based on the fundamental principle inherent in our system that power can be validly exercised only within true limits and if the authority exceeds or abuses its power, the Court can, in the absence of a valid law to the contrary, quash it, declaring it invalid.

Failure to give a proper hearing may from one point of view properly be regarded as one of the varieties of abuse or excess of power; and exercise

of power would accordingly seem to be unauthorized or illegal when the person who will suffer has not been fairly heard in his own defence. It would not be an overstatement to point out that no man in this Republic is high enough to be above the law and not even an officer of the law can be permitted with impunity to defy that law; all Government Officers, irrespective of their position or status in the hirarchy, are under a solemn obligation to obey and not merely feign or pretend to obey the law for, not only are they its creatures but law alone is the supreme power and source of authority in our set-up. Government under the law really means that the Government is obliged to keep both the governed and itself under the law and this seems not only to distinguish a civilized Government from tyranny but also serves to keep the individual content with the State. The principle just stated, unless enforced would, in my opinion, be meaningless. In view of this and in view of our heritage from the past few centuries, as also of our day-to-day experience of the working of democracy under the Rule of Law, the horizon of judicial control in our set-up must inevitably be and is being broadened, for, it is only through such control judiciously exercised that the Rule of law, which is one of the main pillars of our system, can be sustained and vitalised .and without which our infant democracy may tend to drift towards authoritarianism.

Democracy in our Republic appears to be somewhat tempered with the traditional and instinctive authoritarianism; this factor may at times tend to tempt the over-zealous administrator owing exclusive allegiance to administrative policy and convenience to ignore and overlook the judicious dictates of the Rule of law, a tendency which once allowed to grow unchecked, may ulti-

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mately root out democracy itself. The cause of democracy under the Rule of law would thus seem to be better served and promoted by reasonably liberal than by unduly restricted judicial control of administrative justice, for the administrator who is conscious of his being liable to justify the legality of his action before an impartial tribunal will perhaps make a more just and responsible official, or at least would endeavour in his own interest to do so.

Considering the case in the light of what has just been stated, it is not shown by the respondents' learned counsel from the record that any notice was given by the Registrar to the appellant for showing cause against the proposed winding up order; nor was the step contemplated by section 46-A taken so as to enable the society to remedy the defect within the specified time. It does appear from Exhibit P. 2., the inspection note under section 44, that an enquiry had been ordered by the Registrar under section 43 but without intimating the result of the enquiry and pointing out the defect to the society, the order for winding up appears to have been passed virtually behind the back of the society. The judments of the two Courts below disclose a somewhat superficial and unsatisfactory approach to the question involved. The manner in which the trial of the suit on the merits was sought to be throttled, does seem to demand from the Courts below greater attention than appears to have been devoted. It does seem to us that the vital question relating to the validity and *bona fides* of the winding up order, on which depends the *locus standi* of the liquidator to withdraw the suit instituted by the appellant-society, has not been fairly and properly tried, and indeed the pivotal question has been missed by the Courts below. In our view, the cause of justice demands

that it should be properly tried after affording to both the parties fuller opportunity to plead and place before the Court their respective contentions.

As a result of the foregoing discussion, I have no hesitation in allowing this appeal which I hereby do, and after setting aside the judgments and decrees of the two Courts below direct that the application of the liquidator be heard afresh and decided after properly and more fully adjudicating upon the objections raised by the plaintiff-society. The society would be entitled to amend its objections, if it so desires, in order to amplify the grounds on which the legality of the order of winding up is questioned. The liquidator would of course be entitled to put in a rejoinder in accordance with law. The parties are directed to appear in the Court of the learned Senior Subordidate Judge on 27th April, 1964 when the case will be marked to a competant Subordinate Judge for further proceedings in accordance with law and in the light of the observations made above. There would be no order as to costs of the proceedings in this Court. Other costs would be costs in the cause.

D. K. MAHAJAN, J.—I agree.

R.S.

REVISIONAL CRIMINAL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

HOSHIAR SINGH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 214-D of 1963.

1964

April, 14th

Punjab Police Rules—Rule 16.38—Scope of—Sanction of District Magistrate for prosecution of a police officer