

Bejoy Kumar Ukil Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: April 15, 1992

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (1992) 1 ILR (Cal) 417

Hon'ble Judges: Paritosh K. Mukherjee, J

Bench: Single Bench

Advocate: Anindya Mitra, Gour Roychowdhury, A.K. Ghosh and B.K. Jain, for the Appellant; Milan Chandra Bhattacharya, Kesabab Bhattacharya for Respondents 1 to 5, S.N. Chowdhury, P.S. Bose for Respondents 6 to 9, P.K. Das, Hirak Mitra, S.K. Deb and S.B. Sinha Roy, for the Respondent

Final Decision: Allowed

Judgement

Paritosh K. Mukherjee, J.

The present writ petition was moved on behalf of Bejoy Kumar Ukil and another, challenging, inter alia, a

report dated July 18/21, 1989, submitted by Shri N. Goswami, Liquidator, ARCO Co-operative Housing Society Ltd., and thereby not

recommending for rescinding the order of winding up of the Society. The said report has been annexed at pp. 105 to 116 of the present writ

petition.

2. Earlier, the Division Bench of this Court presided over by P.D. Desai, C.J. (as His lordship then was) sitting with Susanta Chatterji J. by Their

lordships" judgment dated April 5, 1989, had disposed of the appeal preferred by the State of West Bengal, through the Secretary, Department of

Co-operation, arising out of the judgment and order passed by a learned Single Judge of this Court, on the writ petition filed by ARCO Housing

Society Ltd.

3. It appears that by the said judgment the writ petition was also disposed of with following terms:

(a) The interim orders dated December 31, 1988, and February 3, 1989, are both vacated, the Special Officer (Sardar Amzad Ali) is discharged.

He is directed to hand over the possession of the disputed property to the third Appellant (Liquidator) without prejudice to the rights and

contentions of the parties to be ultimately decided in an appropriate proceeding as aforesaid;

(b) The original Respondents (writ Petitioners) will deposit a sum of Rs. 6,000 (Rupees six thousands only) per month, from month to month, on

and from current month, with the third Appellant to enable him to take all the necessary steps in the direction of the maintenance and preservation

of the disputed property including the posting of security guards to the extent necessary and to otherwise discharge his functions and duties as

Liquidator in connection with the said property. The deposit is subject to accounting by the third Appellant and to the right of the original

Respondents/writ Petitioners to claim refund, if ultimately it is found that any balance sum is left with the third Appellant after utilising the funds as

aforesaid. In case, of non-payment, the Liquidator will be at liberty to make an application to the Court seeking appropriate directions. The

amount, accordingly, deposited will be kept in a separate Bank account and will be withdrawn and utilised, in the first instance, for posting

adequate number of security guards from time to time.

(c) If and when an appropriate proceeding is instituted before a proper forum by any of the parties hereto to enable its/their rights, title and interest,

with respect to the disputed property, being declared and/or enforced, such authority will be free to decide such claim(s) without feeling in any

manner inhibited by any of the orders passed by this Court in the course of the proceeding out of which this appeal arises.

(d) The second Appellant (Registrar of Co-operative Societies, West Bengal) agrees and states through his Counsel that no formal order seeking

his leave to institute any proceeding against the third Appellant (Liquidator) by any of the parties hereto would be required to be obtained in terms

of Sub-section (3) of Section 134 of the West Bengal Co-operative Societies Act, so far as any claim with respect to the disputed property is

concerned, and that such leave may be deemed to have been granted by him by the statement herein recorded in terms aforesaid.

(e) The third Appellant (Liquidator) will convene a meeting of the members of the first Respondent ARCO Co-operative Housing Society (Ltd.)

(In liquidation) in terms of the direction issued on October 6, 1988, in Civil Order No. 4242 (W) of 1984 by this Court and he will take all other

and further actions in terms of the said order.

(f) The meeting will be convened on April 24, 1989, at 3 p.m. in the office of the second Appellant (Registrar of Co-operative Societies, West

Bengal). The notice of the meeting will be served by registered post with acknowledgement due by the third Appellant upon the members of the

Society whose list will be submitted to him by the second and third Respondents, after being satisfied that they are in fact members of the Society.

The list of creditors, if any, will also be supplied to him, if required, by those Respondents for service of notice or otherwise. In case the third

Appellant submits a report in favour of the cancellation of the winding up proceeding the second Appellant shall act upon such report in

accordance with law and pass appropriate orders in connection therewith within a period of fifteen days from the date of the submission of such

report.

4. It appears from the aforesaid judgment, as the appeal and the writ petition both were disposed of, no separate order was required to be passed

on the application by Their lordships.

5. In terms of the directions contained in the said judgment the Liquidator convened a meeting on April 24, 1989, at 3 p.m. and came to the

following conclusion with regard to item No. 1:

Shri Biswanath Banerjee, former Chairman of the Society who also happens to be the Petitioner No. 1 in the successive writ applications, was

repeatedly requested to hand over all the records and documents including the cash balance which he retained illegally but promised to hand over

them to my predecessor. He was also requested to meet me for discussions.

Vide Annexs. 1A and 1B.

All persuasive methods being found to be ineffective, the summons under No. A/16 dated 4.4.89 was issued upon Shri Biswanath Banerjee to

hand over the cash balance, and all records and documents numbering 14 main heads to give evidence on 25.4.89. Sri Banerjee had also been

directed by the said summons to render adequate explanation for absence or not making over of any one of the items mentioned in the summons

which was self-explanatory.

Vide Annex. 1/C.

Most of the transactions on record, after careful examination were found to be highly illegal, irregular and motivated. Proceedings of the meetings

were not signed by the persons attending the meetings. A Preliminary Report on the affairs of the Society dealing with such matters had already

been submitted.

Vide Annex. 1/D.

In the face of the apparent illegalities and serious irregularities, it was considered necessary that Shri Biswanath Banerjee and some other persons

should be examined as witness to ascertain truth and to come to the final conclusion as to the Validity or illegality of the transactions or resolutions

of the Managing Committee and the general meeting. But Shri Banerjee virtually refused to comply with the directions of the summons to hand over

the property and documents and to appear to give evidence. He submitted an application dated 24.4.89 on 25.4.89 requesting to postpone the

hearing of the matter referred to the summons (No. A/ L6 dated 4.4.89) and to exempt him from personal appearance.
On the body of the office

copy of the application, he had been instantly advised again to hand over records on 29.4.89 and to appeal personally as witness on 24.5.89.

6. This writ petition was admitted by me on March 6, 1991, when Mr. Shaktinath Mukherjee appeared for the writ Petitioner and Mr. Milan

Chandra Bhattacharya for the Registrar of Co-operative Society. This Court had admitted the writ petition, which was moved challenging the

winding up order dated June 3, 1980, in respect of ARCO Co-operative Housing Society Ltd.

7. The present writ petition was finally heard in the presence of Mr. Anindya Mitra, Mr. Gour Roychowdhury, Mr. A.K. Ghosh and Mr. B.K. Jain

for the writ Petitioners and Mr. S.N. Chowdhury and Mr. P.S. Bose for the Respondents Nos. 6 to 9 and Mr. Milan Chandra Bhattacharya and

Mr. Keshab Bhattacharya for the Respondents Nos. 1 to 5 as also Mr. P.K. Das, Mr. Hirak Mitra, Mr. S.K. Deb and Mr. S.B. Sinha Roy for

the applicants, proposed to be added as party Respondents.

8. The writ Petitioners in the present writ petition, inter alia, prayed for writ in the nature of mandamus commanding the Respondents Nos. 1 to 4

and particularly the Respondent, No. 2 being the Registrar of the Co-operative Societies, West Bengal, to cancel, rescind and withdraw the

winding up order dated June 3, 1980, in respect of ARCO Co-operative Housing Society Ltd., in pursuance of the resolution dated April 24,

1989, as well as commanding the Respondents to forbear from giving any effect to the impugned report dated July 18/21, 1989, submitted by

Liquidator, being Respondent No. 3, which has been set out at p. 105 of the writ petition, referred to hereinabove.

9. The facts of the case stated in writ petition is as follows:

The ARCO Co-operative Housing Society Ltd. was registered on or about April 4, 1969, with the primary object of establishing residential

apartments on co-operative basis to meet the housing needs of its members. The said Society consisted of 11 members and its registered office

was situated at 107 Dr. Meghnad Saha Sarani, Calcutta. The said Society raised the funds to purchase a plot of land measuring approximately 20

cottahs at premises No. 9A, Judges Court Road, Calcutta, and it proposed to construct a housing complex thereon for the purpose of providing

residential accommodation to its members including the writ Petitioners. However, the construction of the proposed housing complex had to be

deferred due to the death of the main promoter, B.S. Dua.

10. It was stated in the writ petition that after the death of Sri B.S. Dua various sorts of confusion cropped up amongst the members of the

Society. In or about February 1979, the said Society through its Chairman decided to dispose of the said plot of land, but the agreement for sale in

respect thereof was not acted upon by the parties who are being represented by Mr. P.K. Das, in the application for addition of party.

11. Thereafter, at the General Meeting of the members of the Society held on February 2, 1979, a decision was taken for voluntary winding up of

the Society. But the said decision was not supported by the majority of the members and, as such, the same could not be carried out.

12. In the meantime, by the impugned order dated June 3, 1980, the Respondent No. 4, the Deputy Registrar of Co-operative Societies, Calcutta

Metropolitan Area (Housing), directed the winding up of the said Society, in exercise of the power conferred by Section 89(1) of the West Bengal

Co-operative Societies, Act, 1973 (hereinafter referred to as the Act of 1973). The said Respondent No. 4 also appointed Shri Narayan Chandra

Saha, Co-operative Development Officer, to be the Liquidator of the said Society u/s 90 of the Act of 1973.

13. It was further stated in the writ petition that since the majority members of the said Society never desired liquidation of the Society at any point

of time, unanimous resolution was passed at a meeting of the members of the said Society held on July 11, 1980, to oppose the winding up and

take steps for revival of the Society. As such, the majority members of the Society by an application dated July 22, 1980, requested the

Respondent No. 4 to rescind and/or withdraw the impugned winding up order. The Respondents Nos. 1 to 4, however, took no steps in respect

of the said application for revocation of the winding up order and for revival of the Society.

14. In such situation, Shri Biswanath Banerjee and Shri Chunilal Madan, the Respondents Nos. 6 and 7, moved a writ petition before this Court

being C.O. No. 12079(W) of 1981 and by an order dated October 11, 1982, this Court was pleased to direct the Respondent authorities to

dispose of the said pending application for revocation of the winding up order and the revival of the Society expeditiously. This Court further

directed the Respondent No. 3, the Liquidator, not to dispose of the assets of the Society.

15. Thereafter, several writ petitions were moved by the said private Respondents Nos. 6 and 7, challenging the validity of the winding up

proceedings and quashing of the order of liquidation.

16. In the writ petition being C.O. No. 4242(W) of 1984, moved by the said private Respondents, this Court by a judgment and order dated

October 6, 1988, delivered by Susanta Chatterji J. held as follows:

In view of the position of law as it stands the liquidation proceedings at the present stage cannot be quashed. The Liquidator may call for a meeting

of the members and creditors and consider the request of the members to cancel the winding-up proceedings and upon his report the Registrar

may consider to revoke the order of liquidation and/or winding up of the Society in accordance with law.

17. Thereafter, another writ petition was moved during the Christmas vacation being C.O. No. 13855(W) of 1988. Myself, having admitted the

writ petition by dispensing with the requirements of Rule 27 of the Rules relating to applications under Article 226 of the Constitution, appointed

Sardar Amjad Ali, an Advocate of this Court, as the Special Officer for taking charge of the immovable property of the said Society situated at 9A

Judges Court Road, Calcutta-27, and the Special Officer was further directed to take steps for proper maintenance of the said property and to

keep the same free from encroachment, by trespassers at the cost of the Petitioners.

18. The said writ petition was heard by Dilip Kumar Basu J. on January 31, 1989, February 1, 1989, and February 3, 1989, respectively, when

after considering the report filed by the Special Officer, His lordship directed the Special Officer to take steps for appointing security guards at the

said premises belonging to the said Society. Pursuant to the said order, the Special Officer took possession of the property of the said Society on

February 7, 1989.

19. An appeal being F.M.A.T. No. 404 of 1989 was preferred by the State of West Bengal before the Division Bench of this Court and the said

appeal came up for final hearing before P. D. Desai C.J. (as His lordship then was) and Susanta Chatterji J. on April 5, 1989. The Appeal Court

had disposed of the appeal as well as the writ petition by consent of parties, in the manner, quoted as aforesaid.

20. On the basis of the directions passed by the Court of Appeal on April 5, 1989, the Liquidator of the said Society convened a meeting of the

members and creditors of the said Society on April 24, 1989, for consideration of the request of the members to cancel the winding up

proceedings.

21. It appears that the writ Petitioners, along with Shri Biswanath Banerjee, Shri Satindra K. Kapoor and Shri S.R. Mehta, being the Respondents

Nos. 6, 8 and 9, duly attended the said meeting. In the said meeting which was convened in pursuance of the Appeal Court's order dated April 5,

1989, in F.M.A.T. No. 404 of 1989, the following resolutions were passed:

It is unanimously RESOLVED:

(1) That in the larger interest of the members, ARCO Cooperative Housing Society Ltd., (now in liquidation) be forthwith revived and the order of

winding up passed on June 3, 1989, be cancelled and the Registrar of Co-operative Societies, West Bengal, be forthwith requested to rescind the

steps taken by him in furtherance of the said order of winding up.

Further RESOLVED:

(2) That the Liquidator, Shri N. Goswami, be requested to submit a report to the Registrar of Co-operative Societies, West Bengal, and forward

the copy of this Resolution passed by the members for revival of the Society to enable him to pass necessary orders cancelling the said order of

winding up accordingly.

22. It was further stated that on the issue of revocation of the winding up order the members present in the meeting were unanimous, and there was

proper quorum of members in the meeting as required and the Resolution for rescinding the order of the winding up was approved. Subsequently,

a writ petition being C.O. No. 7801(W) of 1989 was moved on behalf of the private Respondents, before this Court and an order was passed on

July 12, 1989, giving liberty to the Petitioners to move the Hon'ble Court of Appeal, if the Petitioners were not satisfied with the conduct of the

Liquidator. Accordingly, an application was moved before the Court of Appeal for appropriate orders and/or directions in the disposal of the

Appeal.

23. At the hearing of the said application before the Appeal Court on September 20, 1989, the Liquidator, being the Respondent No. 3, filed his

impugned report dated July 18/21, 1989, referred to hereinabove.

24. In the meantime, the Division Bench consisting of Bhagabati Prasad Banerjee and Amal Kanti Bhattacharya JJ. finally disposed of F.M.A.T.

No. 404 of 1989 on February 12, 1992, with the following observations:

But If any party has got any grievance to the report submitted by the Liquidator in respect of the meeting held on April 24, 1989, pursuant to the

order passed by the Division Bench and on any other report in connection therewith, the correctness of the said report and/or objections in respect

of the said report could not be gone into by this Division Bench. But for the ends of justice and to avoid any complications in the matter, the parties

are given liberty to get their objections placed on affidavits in connection with the said Civil Rule where they will be at liberty to take all such points

and other parties will be at liberty to take objections in respect of the same. We make it clear that we have not adjudicated any of the points in the

application, reports, objections and counter-objections regarding the report which are left open to be decided by the learned trial Judge while

disposing of the writ application which was filed on March 6, 1991. The application is disposed of as above without any order as to costs.

25. Mr. Anindya Mitra, learned Advocate appearing in support of the present writ petition having challenged the impugned report of the Liquidator

dated July 18/21, 1989, submitted that the report of the Liquidator was perverse and mala fide, as the said Liquidator refused to recommend the

revival of the Society.

26. Mr. Mitra, appearing in support of the writ Petitioners, submitted that the report of the Liquidator reveals extreme bias. Mr. Mitra submitted

that the Respondents Nos. 1 to 4 are bound by the said consent order dated April 5, 1989, passed by the Hon"ble Appeal Court in F.M.A.T.

No. 404 of 1989 and order dated October 6, 1989 in C.O. No. 4242(W) of 1984.

27. He further submitted that the directions given by the Appeal Court to the Liquidator to hold a meeting of the members of the Society was

enough to reveal the true spirit of the order, which supports in the revival of the Society and not in its liquidation.

28. It was further submitted by Mr. Mitra that the members of the said Society, including the writ Petitioners, had been deprived of their legal right

as to the revival of the said Society. In this context, he has stressed on the fact that in the meeting which was held on April 24, 1989, a unanimous

resolution for revival of the Society was duly taken, but the Liquidator, being Respondent No. 3, has acted contrary to the order of the Court of

Appeal dated April 5, 1989.

29. Mr. Mitra further submitted that the impugned report of the Liquidator was also beyond the scope of the order of the Court of Appeal.

30. It was also contended that Section 99(4) of the West Bengal Co-operative Societies Act, 1973, and Section 93 of the West Bengal Co-

operative Societies Act, 1973, gives power to the Registrar, who may at any time cancel the winding up proceedings.

31. The said provisions of Section 93 and Section 99(4) of the West Bengal Co-operative Societies Act, 1973, are set out hereinbelow:

Section 93: Inquiry by Registrar-(1) The Registrar may, at any time of his own motion, hold by himself or by any person authorised by him by

order in writing an inquiry into the constitution, working and financial condition of a co-operative society or into any specific matter relating to the

affairs of a co-operative society.

(2) An inquiry under Sub-section (1) may also be held by the Registrar or by any person authorised by him by order in writing on the application of

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(a) the financing bank, if any, of which the Co-operative society is a member or a debtor ;

(b) the majority of the directors of the board of the cooperative society ;

(c) one-third of the members of the co-operative society each of whom has been a member for not less than six months immediately preceding the

date of application and who have deposited such security for costs, if any, as the Registrar may direct ;

Provided that in the case of a Co-operative society having more than one thousand and five hundred members, an application under this Sub-

section may be made by the delegates elected in the prescribed manner ;

(d) the creditors, representing not less than one-half of the borrowed capital of the co-operative society, who have deposited such security for

cost, if any, as the Registrar may direct.

(3) The Registrar shall communicate the report of an inquiry under this section or a summary thereof to the co-operative society and to the

applicant who made the application under Sub-section (2).

Section 99(4): If, however, the Registrar is of opinion that a co-operative society which has been directed to wound up under Sub-section (1) or

Sub-section (2) should continue to function, he may, with the prior approval of the State Government, cancel such order for winding up.

32. Mr. Mitra also referred to Rule 150 of the West Bengal Co-operative Societies Rules, 1974, which is set out below:

Rule 150:

Meetings of members at the conclusion of liquidation proceedings-(1) At the conclusion of the liquidation proceedings the Liquidator shall call a

general meeting of the members at such time and place and in such manner as he thinks fit and place before such meeting -

(i) a summary of his proceedings ;

(ii) a report of the causes of the failure of the society.

(2) The members at such meeting, after due consideration of the report placed by the Liquidator, may, by a resolution, request the Registrar to

cancel the registration or the order for the winding-up of the Society, as they think fit.

(3) When no general meeting of members can be held, the Liquidator shall report the fact to the Registrar, and the Registrar may, for reasons to be

recorded in writing, dispense with the provisions of Sub-rule (1) and Sub-rule (2).

33. Mr. Milan Chandra Bhattacharya, the learned Advocate appearing for the State Respondents, including the Liquidator, contested the writ

petition by filing affidavit-in-opposition affirmed by Arjun Kumar Mandal on March 9, 1992. Mr. Bhattacharya has placed the following facts from

para. 3 and its sub-paragraphs of the affidavit-in-opposition which are set out hereinbelow:

(a) That ARCO Cooperative Housing Society Ltd., now under liquidation (hereinafter referred to as the said Society), was registered on or about

4th April, 1969 with the office of the Assistant Registrar of Co-operative Societies, Calcutta, under the provisions of the Bengal Co-operative

Societies Act, 1940, and the rules framed thereunder and having its registration No. 100/Cal. of 1969-70 with area of operation as Calcutta

Corporation Area and that its membership was open to the officers of the American Refrigeration Company residing in the area of operation of the

Society.

(b) The Deputy Registrar of Co-operative Societies in exercise of the powers conferred u/s 89 of the West Bengal Co-operative Societies Act,

1973 by an order dated 3rd June, 1980 directed the Society to be wound up and appointed Shri Narayan Chandra Sana, Cooperative

Development Officer, as Liquidator of the Society.

(c) Shri Biswanath Banerjee and Shri Chunilal Madan being Respondents Nos. 6 and 7 respectively to the present writ application moved an

application under Article 226 of the Constitution of India on 28th Sept. 1981 being aggrieved by alleged non-action of the State Respondents in

the matter of application made for rescinding the liquidation order being C.O. 12079(W) of 1981 which was subsequently disposed of on Oct. 11,

1982, directing inter alia for disposal of the pending application preferably within 3 months and further directed that the assets should not be

disposed of in the meantime.

(d) By order and judgment dated 4.10.83, the Deputy Registrar of Co-operative Societies, in compliance of the order of the Hon"ble Court,

rejected the application for revival of the Society.

(e) Another writ application was moved on behalf of the Respondents Nos. 6 and 7 being C.O./C.R. No. (?) of 1983 which was disposed of by

the Hon"ble Court on 10.2.84 inter alia directing the Registrar personally to give hearing to the Petitioner and decide the application. It was further

directed that orders passed by Hon"ble Mr. Justice R.N. Roy will continue, till disposal of the application by Registrar.

(f) That Registrar of Co-operative Societies by his order and judgment dated 7th March, 1984, held inter alia that the revocation of the liquidation

order would not be justified under the facts and circumstances of the case.

(g) Shri Biswanath Banerjee and Shri Chunilal Madan, Respondents Nos. 6 and 7 herein, moved another writ application challenging inter alia the

order of Registrar of Co-operative Societies dated 7.3.84 being C.O. 4242(W) of 1984 before Hon"ble Mr. Justice A.K. Janah on 17.4.84 when

His lordship granted an interim order as prayed for. This matter came up on 14.5.84 before Hon"ble Mr. Justice A.K. Sengupta when His lordship

passed direction for affidavits and. Interim order already granted was extended till disposal of the application. The writ application was finally

disposed of by order and judgment dated 6.10.88 by Hon"ble Mr. Justice Susanta Chatterji. The Hon"ble Court did not find any infirmity in order

of liquidation but vacated all the interim orders and the same has been set out in Annexure "B" to this writ application.

(h) After the receipt of the copy of the order and judgment dated 6.10.88 the Deputy Registrar of Cooperative Societies (Housing) appointed Shri

Nityananda Goswami, C.D.O., as Liquidator of the Society vide his order dated 30.12.88.

(i) On 11.1.89, a letter dt. 9.1.89 from Shri D. Mukherjee, learned Advocate, was served on Registrar of Co-operative Societies forwarding

therewith a copy of the order passed on a fresh writ application by Shri Biswanath Banerjee and Shri C.L. Madan being Respondents Nos. 6 and

7 herein before Hon"ble Mr. Justice Paritosh Kr. Mukherjee. It appears from the order a writ application was moved on 31.12.88 when the

Hon"ble Court was pleased to pass an order inter alia appointing Shri Amjad Ali, learned Advocate, as Special Officer to take charge of the

properties and to take other steps. The Hon"ble Court was pleased to pass certain other orders. This petition was numbered as C.O. 13855(W)

of 1980.

(j) On 3.2.89 the matter was considered by Hon"ble Mr. Justice D.K. Basu and his lordship was pleased to modify the order dt. 31. 12. 88

directing, inter alia, the Special Officer to take necessary steps for protection of property by appointing Security Guards.

(k) Being aggrieved and/or dissatisfied with the orders passed by the Hon"ble Court on 31. 12. 88, 3. 2. 89, 6. 2. 89 the State respondents filed

an appeal being F.M.A.T. No. 404 of 1989 and moved a stay application which was finally heard on 5th April 1989 and the Hon"ble Division

Bench was pleased to dispose of the writ petition out of which the appeal arose as also the appeal itself by inter alia vacating the interim order

dated December 31, 1989 and February 3, 1989, passed by the Hon"ble trial Bench and the Special Officer was discharged.

(l) Another writ application was filed before Hon"ble Mr. Justice Paritosh Kumar Mukherjee being C.O. 7801(W) of 1989 by Shri Biswanath

Banerjee and Shri C.L. Madan being Respondents Nos. 6 and 7 herein when Hon"ble Court declined to pass any order as prayed for observing

that Petitioner should make the application before the Hon"ble Appellate Bench, if they are not satisfied about the conduct of the proceedings by

the Liquidator. It is pertinent to mention here that the present writ Petitioner being Respondent in that writ application the orders of the Hon"ble

Court are binding upon them.

(m) Shri Biswanath Banerjee and Shri C.L. Madan filed another application before the Hon"ble Division Bench in F.M.A.T. 404 of 1989 praying

inter alia for clarification of the orders dated 5th April, 1989, passed by the Hon"ble Division Bench. On various occasions several affidavits were

filed by different parties and the reports of the Liquidator showed that the present writ Petitioners as well as the Respondents 6, 8, 9 have

committed serious irregularities including preparing forged share certificates. The Liquidator, as would be apparent from the reports, came to the

conclusion that the Society cannot be revived. On February 1, 1990, the Division Bench directed the applicants therein i.e. the Respondents Nos.

6 and 7 to file affidavits identifying the handwriting and signatures of the share certificates and the authority under the share certificates had been

signed.

34. On the basis of the aforesaid stand taken in the affidavit-in-opposition, Mr. Bhattacharya submitted that five members were not eligible and for

the purpose of quorum there must be one-third members present, in the meeting and, according to him, four members could not form the quorum.

35. He submitted that the share certificates and membership certificates of the Society were not genuine, as found by the Liquidator. In this

context, he was drawn the attention of this Court to the order passed by P.D. Desai C.J. (as His lordship then was) and Susnata Chatterji J. in

F.M.A.T. No. 404 of 1989 whereby the application for clarification was disposed of by the Division Bench.

36. It appears that the Division Bench has taken into consideration the 11 share certificates of ARCO Co-operative Housing Society. The learned

Advocate was directed to file a list of certificates, so produced. A sum of Rs. 25 was directed to be deposited so as to enable xerox copy of the

said share certificates being taken out and supplied to him after certification by the Court. The original share certificates were directed to be given

to the Liquidator who should keep them in safe custody. The applicants were directed to file affidavit(s) of persons competent to do so, identifying

the hand-writing and signatures of the share certificates. The names of the scribe and the persons who have appended the signature was directed to

be mentioned in the affidavit.

37. It was also directed that it should also be clarified as to by what authority and by virtue of what position lawfully held the share certificates

were signed as purported to be signed by them. The facts were essential to be brought on record in order that the present application taking

exception to the report of the Liquidator could be decided.

38. Mr. Bhattacharya submitted that apart from the impugned report dated July 18/21, 1989, there are altogether four reports, submitted by the

self-same Liquidator. The first report is the impugned report dated July 18/21, 1989, which has been submitted by Sri N. Goswami, the

Liquidator, which has been impugned in the instant writ petition. Second report is dated November 2/4, 1989, submitted by the Liquidator, which

has been disclosed in P. 82 of affidavit-in-opposition. The third report is dated February 15, 1990, submitted by the self-same Liquidator and

disclosed in p. 92 of the affidavit-in-opposition and the fourth report is dated February 17, 1990, which has been disclosed in p. 96 of the

affidavit-in-opposition.

39. Mr. Bhattacharya further submitted that the writ petition at this stage is premature, as no steps have been taken by the statutory authorities, in

terms of the report for cancellation of the winding up of the Society by reviving the same. According to Mr, Bhattacharya, there cannot be any

housing scheme under the said Co-operative Society.

40. Mr. Bhattacharya has further drawn the attention of this Court to the advertisement of the Society attracting the public, from p. 132 of the writ

petition, wherein the proposed housing scheme has been advertised. Relevant portion of the said advertisement is set out below:

The Society intends to construct a residential housing complex at the said plot of land comprising an area of 1289.6 sq.mtrs. (i.e. 19 K-4 Ch.-16

sq.ft) more or less where the road width in front of the premises is 20 mtrs. and permissible Floor Area Ratio (F.A.R) i.e. Total Covered area of

all Floors-Land Area as per Calcutta Municipal Corporation Act, 1980, will be 3.143 by which permissible built up area on the said plot of land

can be 4053.2 sq.mtr. (i.e. 43612 sq. ft.)

The Society has made a plan to lay out eight (8) flats in each floor consisting of flat area varying from 1000 sq.ft. to 1500 sq.ft. more or less

taking into consideration all amenities as would be necessary for human habitation.

41. Mr. Bhattacharya then drawn the attention of this Court to the various provisions of the West Bengal Co-operative Societies Act, 1983. He

referred to the provisions of Section 99 which provides for winding up of Co-operative Society, Section 101 which provides for the powers and

obligation of Liquidator, Section 103 which provides for power of Registrar to cancel registration of Co-operative Society.

42. According to Mr. Bhattacharya in all the reports, the Liquidator has referred to different observations about the liquidation proceedings and, as

such, the impugned report dated July 18/21, 1989, is not conclusive and no decision could be taken by this Court on the basis of the said

impugned report and the writ Petitioners are not entitled to any relief whatsoever in the instant writ petition.

43. Mr. P.K. Das, learned Advocate appearing in support of the application for addition of parties filed on behalf of Sm. Lakshmi Sivaraman and

ten others, submitted that his clients were necessary and proper party, as would be evident from the earlier proceedings. He has drawn attention of

the Court to the judgment delivered by me on July 12, 1989, which has been made Annex. "F" to the petition.

44. In internal P. 10 of the said judgment, it was recorded that Mr. P.K. Das filed an application for intervention on behalf of his clients Sm.

Lakshmi Sivaraman and ten others, for intervening and he submits that he has instruction to oppose the prayers made in the writ petition. After

hearing all the parties, this Court was of the view that the writ petition was not maintainable at the said stage and the application for addition of

parties also treated as disposed of, but liberty was given to the applicants to apply before the Court of Appeal for being added as party

Respondents, if any appeal is preferred.

45. In view of the above observations made by me, Mr. Das submitted, that his clients were necessary and proper parties. Mr. Das has also

referred to the judgment delivered by Susanta Chatterji J. on October 6, 1988, in C.O. No. 4242(W) of 1984, wherein the appearance of Mr.

P.K. Das has been recorded as "for Added Parties". He also submits that his clients have been made parties in C.O. No. 4242(W) of 1984 and

the writ Petitioners were although been aware that the premises had been sold in favour of his clients as per agreement dated February 13, 1979,

and, as such, his clients were proper and necessary party in this writ petition.

46. Mr. S.N. Chowdhury appearing with Mr. P.S. Bose on behalf of the private Respondents Nos. 6 to 9 has, in fact, supported the writ

Petitioners.

47. In reply to the submission made on behalf of the State Respondents, Mr. Anindya Mitra, learned Advocate for the writ Petitioners, submits

that the instant writ petition is not barred by the principle of res judicata, because the prayers made therein are not identical to that of the earlier

writ petition. He added that the instant application related to subsequent events, inasmuch as the cause of action arose after the meeting dated April

24, 1989, which was held pursuant to the direction given by the Division Bench by judgment dated April 5, 1989. According to Mr. Mitra, in view

of the unanimous resolution dated April 24, 1989, it was incumbent upon the Respondent authorities to effect immediate revival of the said Society

by cancelling and/or rescinding the winding up order dated June 3, 1980, and all proceedings relating thereto.

48. He submitted that the Liquidator in the aforesaid circumstances had no reason to file the impugned report dated July 18/21, 1989. Not only

that, the Liquidator had filed several other reports dealing with matters which are not at all relevant or germane for the purpose of revival of the

Society.

49. He further submitted that the impugned report dated July 18/21, 1989 is perverse and mala fide. In this connection he referred to the

submission made in para. 45 of the writ petition. He further submitted that the Liquidator had no jurisdiction to question the bona fide of

membership at this stage.

50. On the point of intervention by Mr. P.K. Das, Mr. Mitra submits that the application is not maintainable and should be dismissed in limine. He

further submits that it cannot be a ground for being added as party Respondents simply because of the fact that his clients were made party

Respondents in some earlier proceedings. Mr. Mitra submits that the situation has completely changed as a result of the order of the Appeal Court

dated April 5, 1989, inasmuch as Mr. Das's clients having agreed to move before an appropriate forum, they are not entitled to intervene in the

instant writ petition. He submitted that the alleged agreement for sale dated July 13, 1979 did not create any interest in the land concerned and, in

any event, no right could survive in terms of the said purported agreement of 1979 in the year 1992.

51. He added that having realised that there was no valid claim against the Society, a belated attempt was made to overcome the law of limitation.

Mr. Mitra further continued that Mr. Das's clients were not necessary or proper parties, to decide whether the Society should be revived or not.

52. In support of this branch of submission, Mr. Mitra placed strong reliance on the decision of the Supreme Court in the case of Ramesh

Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, of the said judgment it has been observed as follows:

Sub-rule (2) of Rule 10 gives discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the Plaintiff to

bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which

provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A

proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the

question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion

which has to be exercised in view of all the facts and circumstances of a particular case.

Further, in para. 14 of the said judgment, it has been observed by the Supreme Court as follows:

The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has

relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest

in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to

make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a

question in the action which cannot be effectually and completely settled unless he is a party. Therefore, on the basis of the aforesaid submission, it

has become necessary for this Court to decide whether Mr. Das's clients are necessary and proper party in the instant writ petition.

53. In my view, Mr. Das's clients are neither necessary nor proper party if the principle laid down by the Supreme Court in the case of Ramesh

Hiranand Kundanmal v. The Municipal Corporation of Greater Bombay (Supra) is applied in the present case, as by reason of entering into an

agreement as far back as in 1979 and without taking any steps in furtherance of the said agreements, the applicants cannot be treated as necessary

and proper party" and, as such, under the estimation of this Court has no locus standi to intervene.

54. Accordingly, the application for intervention is rejected.

55. Therefore, it has now become necessary for this Court to decide whether in the facts and circumstances of the case it was incumbent upon the

Liquidator to take immediate steps for revival of the said Society by recommending the cancellation of the order of winding up dated June 3, 1980,

and further this Court has to consider whether the impugned report of the Liquidator dated July 18/21, 1989, should be quashed on the ground of

perverse and mala fide.

56. The writ Petitioners had challenged the impugned report of the Liquidator on the ground of perversity and mala fide and not to follow the

directions passed by the Court of Appeal on April 5, 1989.

57. After going through the detailed report, this Court has come to the following conclusion:

Shri N. Goswami, the Liquidator, has gone beyond his jurisdiction and competence to investigate into the nature of membership although the Court

of Appeal directed to convene a meeting on April 24, 1989, at 3 p.m. in the office of the Registrar, Co-operative Societies. The Court of Appeal

further directed that the notice of the meeting will be served by registered post with acknowledgement due by the Liquidator upon the members of

the Society whose list would be submitted to him by the Registrar and the liquidator, after being satisfied that they are in fact members of the

Society. The list of creditors, if any, would be supplied to him for service of notice or otherwise.

58. It was further directed by the Court of Appeal that in case the Liquidator submits a report in favour of the cancellation of the winding up

proceeding, the Registrar shall act upon such report in accordance with law.

59. It appears from the impugned report at internal p. 7 that the Liquidator came to the following conclusion:

Five gentlemen claiming to be members and one as representative of the creditor attended the meeting on 14.4.89. Affairs of the Society, specially

the problem in getting the records relating to membership, cash balance, accounts etc. were explained to them. Representation received from M/s.

Khaitan and Co., on behalf of their clients, namely Smt. L. Sivaraman and others and the claim of the American Refrigerator Co. Ltd. were

pointed out to them. They absolutely maintained silence on those problems or issues. There was no discussion or even whisper in the meeting that

they were interested in building any house. So there was no submission or discussion of any plan or programme of the Society to solve their

housing problem, if any. In internal p. 8 of the report it was observed as follows: All the gentlemen present by a resolution requested the Registrar

of Co-operative Societies to rescind the order of winding up passed and demanded revival of the Society in the larger interest of its members. Shri

Rajib Biswas, who represented the American Refrigerator Company Limited attended the meeting and put the demand for payment of money

advanced by it for purchase of land of the Society. Demand was not quantified and the records called for were not submitted.

60. As mentioned earlier, the gentlemen attending the meeting submitted xerox copies of their share certificates as only document in support of their

membership. A summary of these copies is given below:

Sl.	Name of the	Date of Ref.	Certificate	Remarks
-----	-------------	--------------	-------------	---------

No.	Certificate issue	No.	signed by
-----	-------------------	-----	-----------

holder

1. Mr. B. 10.4.69 4 B. Banerjee

Banerjee and S.A.

Shah

2. Mr. S.K. 27.10.789 do. Words "Housing Society
--

Chowla Ltd. were penned through

in the middle portion.

3. Mr. S.R. 10.4.69 5 do. Words "hundred each"
--

Mehta and "Arco Cooperative

Housing" were penned

through in the middle

portion.

4. Mr. S.K. 27.10.7811 do. Words "one hundred

Kapoor each" and "Arco

Cooperative Housing"

were penned through.

5. Mr. B.K. 27.10.7812 do. Words "Arco

Ukil Cooperative Housing,

Society were penned

through.

61. After referring to the aforesaid candidatures the Liquidator came to the conclusion that these certificates do not conform to the purported

resolution of the Managing Committee, although there was no material before the Liquidator to arrive at such a conclusion.

62. In conclusion, at internal p. 12 of the report, the Liquidator did not find any ground to make any report recommending for rescinding the earlier

order of winding up.

62A. In my opinion, impugned report of the Liquidator cannot and should not be taken into consideration for the purpose of considering the revival

of the Society.

63. Further, in my view, the report of the Liquidator is perverse, inasmuch as, in spite of the positive assertions having been made in a duly

constituted meeting for the revival of the Society, there was no justification on the part of the Liquidator, to rely on extraneous and superfluous

facts, which are not germane to the main issue of revival of the Society.

64. In my view, the Liquidator has not also considered the vital fact that the members, who could not attend the meeting on April 24, 1989,

pursuant to the order of the Court of Appeal, have subsequently filed affidavits clearly expressing their willingness for revival of the Society and

have unequivocally supported to the resolution adopted in the said meeting.

65. Upon careful consideration of the pleadings, as well, as the relevant provisions of law applicable to the facts of the instant case, this Court is of

the view that it was incumbent upon the Liquidator to recommend the cancellation of the order of winding up of the Society particularly when a

unanimous resolution for the revival of the Society was passed in the meeting dated April 24, 1989, and that none of the members of the Society"

opted for the continuation of the liquidation proceeding.

66. In my view, the Liquidator or the Registrar is incompetent and cannot proceed to liquidate the Society, when all members of the Society are

willing to implement the housing project, as envisaged in the objects of the Society. The bona fide of the intention of the members of the Society

would appear from the fact that they were very keen to embark upon the residential housing project and for that purpose they are desirous of

submitting a building plan and the scheme for the proposed residential housing complex at 9A Judges Court Road, Alipore, Calcutta, is lying ready.

67. In the report, the Liquidator has pointed out certain technical irregularities against the Society and its members in the matter of maintenance of

records prior to placing the Society under liquidation by the Deputy Registrar on June 3, 1980. Such technical irregularities, in my view, are by all

means curable and/or capable of being rectified, once the Society is revived.

68. The very idea and concept of co-operative movement is impregnated with the idea of public interest and promotion of the Co-operative

Societies in pursuance of the policy of the Government of India. In order to remove all bottlenecks, in the way of development of co-operative

movements in the country various State Legislatures have introduced the provisions regarding reorganisation, merger and amalgamation of Co-

operative Societies, in the public interest, as well as in the interest of the co-operative movement.

69. Having regard to the relevant statutory provisions, including the provisions of Sections 93 and 99(4) of the said Act. quoted as aforesaid, it has

become crystal clear before this Court that the impugned report submitted by Shri N. Goswami. the Liquidator dated July 18/21, 1989, is "a

perverse report" and the same should not be allowed to be acted upon in the matter of revival of the said ARCO Co-operative Society, in terms

of the provisions of Sections 93 and 99(4) of the said Act.

70. The impugned report of the Liquidator dated July 18/21, 1989, is accordingly quashed.

71. The earlier order of winding up of the Society dated June 3, 1980, is also quashed by issuing a writ in the nature of certiorari.

72. The Registrar, Co-operative Societies, is also directed to act upon on the basis of the unanimous resolution for revival of the Society dated

April 24, 1989, referred to in this judgment, as in my opinion, in view of such unanimous resolution for revival, the said ARCO Co-operative

Society is entitled to be revived.

73. Accordingly, the said Society shall stand revived with immediate effect and shall be entitled to take steps to implement housing project at its

property situated at 9A. Judges Court Road, Calcutta-27.

74. After revival of the said ARCO Co-operative Society, the said Co-operative Society will be entitled to hold meeting in accordance with law.

75. The writ petition is allowed to the extent indicated above.

76. There will be no order as to costs.

77. Parties will be entitled to xerox copy of this judgment on their usual undertaking to apply and obtain certified copy of this judgment.

78. Prayer for stay of operation of this judgment made by Mr. Milan Chandra Bhattacharya, learned Advocate, is considered, but refused in the

facts of the present case.