

99 CWN 166 : (1994) 2 ILR (Cal) 209

Calcutta High Court

Case No: First Miscellaneous Appeal No. 1412 of 1992 (Arising out of Civil Order No. 2239 (W) of 1991)

State of West Bengal

APPELLANT

Vs

Bijoy Kumar Ukil

RESPONDENT

Date of Decision: Aug. 5, 1994

Citation: 99 CWN 166 : (1994) 2 ILR (Cal) 209

Hon'ble Judges: B.P. Banerjee, J; A.K. Chakraborty, J

Bench: Division Bench

Advocate: Milan Bhattacharjee, for the Appellant; Saktinath Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

B.P. Banerjee, J.

This is an appeal against the judgment and order dated April 15, 1992, passed by the learned trial Judge in Co. No.

2239(W) of 1991. By that order, the learned trial Judge quashed the report of the Liquidator dated July 18/21, 1989 and also the earlier order

dated June 3, 1980 passed by the Deputy Registrar of Co-operative Societies, for winding up of "Arco-Co-operative Housing Society Ltd."

(hereinafter referred to as "the Society"). The learned trial Judge also directed the Registrar, Co-operative Societies, to act upon the unanimous

resolution dated April 24, 1989 for the revival of the Society and accordingly the said society was directed to be revived with "immediate effect.

The facts, of this case, are briefly as follows:

On or about April 9, 1969, the Arco Co-operative Housing Society Ltd. was duly registered with the primary object of establishing residential

apartments on co-operative basis to meet the housing needs of its members. The said co-operative society, thereafter, raised funds and purchased

a plot of land at premises No. 9A Judges Court Road, Calcutta for, the purpose of constructing a residential housing complex thereon for its

members. But, the proposed scheme for construction of the housing complex had to be deferred due to the death of the chief promotor, B.S. Dua,

who was then in charge of the development of the said premises. After the death of the said chief promotor, B.S. Dua, various confusions cropped

up amongst the members of the society and the proposed scheme for construction of the housing project could not be implemented for several

years, Meanwhile, by an order dated June 3, 1980, the Deputy Registrar of Co-operative Societies, Calcutta Metropolitan Area (Housing), in

exercise of the powers u/s 89(1) of the West Bengal Co-operative Societies Act, 1973, directed the winding up of the said society and appointed

a liquidator u/s 90 of the said Act. Inasmuch as the majority members of the said society never desired winding up of the society at any point of

time, a 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 to

take steps for revival of the society. As such, the majority members of the society by an application dated July 22, 1980, appealed to the

authorities to rescind and/or withdraw the impugned order of winding up. The authorities, however, took no steps for revocation of the winding up

order and revival of the society.

2. Thereafter, the writ Petitioner/opposite parties one Sri Biswanath Banerjee and another moved a writ application before this Court in Co. No.

12079(W) of 1981. By an order dated October 11, 1982, this Court directed the Respondent therein to dispose of the said pending application

for revocation of the winding up order and the revival of the said society, expeditiously. This Court further directed that the liquidator in respect of

the said society should not dispose of the assets of the society in the hands of the liquidator. By an order and award dated October 4, 1983, the

said application for revocation of the winding up order and revival of the said society dated July 22, 1980 and July 30, 1983, were disposed of by

the Deputy Registrar, Co-operative Societies. As a result of the said award, the said two applications stood rejected. Being aggrieved by and

dissatisfied with the said award and/or order dated October 4, 1983, another writ petition was moved before this Court. In the said writ

application, an order was passed by this Court on February 10, 1984, by which the Registrar of Co-operative Societies was directed to consider

personally the application for revocation of winding up order and for revival of the said co-operative society.

3. The Registrar of Co-operative Societies, thereafter, by the order dated March 7, 1984, maintained the said winding up order of the said

society. Against the said award dated March 7, 1984, another writ application was filed before this Court for appropriate relief.

4. By a judgment and order dated October 6, 1988, the said writ application was disposed of. The relevant portion of the said judgment is 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.

5. As no step was taken in terms of the said order, another writ application was filed being Co. No. 13855(W) of 1988. In the said writ

application, prayer was made for directing the said Respondent to act in accordance with law and by directing, inter alia, a meeting of the members

of the said society in terms of the order dated October 6, 1988, passed by a learned Single Judge in Co. No. 4242(W) of 1984 as well as for

keeping the property intact and free encumbrance as well as for appointment of a Special Officer. Upon hearing the said writ application, an order

was passed by a learned Single Judge on December 31, 1988, appointing Sardar Amjad Ali, an Advocate of this Court, as Special Officer to take

charge of the said property of the said society situated at No. 9A, Judges' Court Road, Calcutta-27, with directions to take steps for maintenance

of the said property and keep the same free from encroachment and also directing the said liquidator to convene a meeting of the members of the

said society within certain time for that purpose. The said application ultimately came up for hearing before another learned Single Judge of this

Court on January 12, 1989. The learned Single Judge directed the Special Officer not to hold any meeting of the parties scheduled to be held on

January 12, 1989, as fixed by the Special Officer. The Special Officer was further directed not to take possession of the said property until further

order. Thereafter, an order was passed by the said learned trial Judge after considering the report from the said Special Officer whereby the

Special Officer was directed to take steps for appointing security guards at the said premises belonging to the said society. An appeal was

preferred against that order and the order of the learned trial Judge was stayed. In the said appeal, one Sm. Lakshmi Shivaraman and Ors. on

behalf of Rama Co-operative Housing Society filed an application for being added as parties and also seeking direction on the Special Officer to

hand over the possession of the said property to them. Ultimately, the said appeal in F.M.A.T. No. 404 of 1989 and the writ application being Co.

No. 13855(W) of 1985 were disposed of by the following order:

(1) The interim orders dated 31st December, 1988 and 3rd February, 1989 are both vacated; the Special Officer (Sardar Amjad 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.

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

from the 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.

(3) 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 endorsed, 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.

(4) 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 way of the parties hereto would be required to be obtained in terms

of subsection (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.

(5) 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 6th October 1988 in Co. No. 4242(W) of 1984 by this Court and he will take all other and further

actions in terms of the said order. The meeting will be convened on 24th April, 1989, at 3 p.m. in the office, of the second Appellant (Registrar of

Co-operative Societies, W.B.). The notice of the meeting will be served by registered post with acknowledgment 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 of otherwise. In case the third

Appellant submits a report in favour of the cancelling of the winding up proceedings and second Appellant shall act upon such report in appropriate

orders in connection therewith within a period of fifteen days from the date of the submission of such report.

6. Pursuant to the said order of the Division Bench, the liquidator of the said; society duly 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 and in the said meeting the

following resolution was passed:

It is unanimously Resolved:

(1) That in the larger interest of the members, Arco Co-operative Housing Society Ltd. (now in liquidation) be forthwith revived and the order of

winding up passed on 3rd June 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 Resolutions passed by the members for revival of the society to enable him to pass necessary orders cancelling the said order of

winding up accordingly.

7. It is stated that, according to the notice, the agenda was for consideration of the request of the members to cancel the winding up proceedings.

But the liquidators placed before the said meeting, the only thing, that is, construction or solution of housing problem which was beyond the scope

of the agenda. The thing which was beyond of the scope was that the liquidator commented that no discussion took place regarding the

construction of any house or solving housing problem. In that meeting it was stated that the scope of the meeting was for consideration where the

winding up proceeding should not be cancelled and that only after the winding up proceedings are cancelled the society is revived. Then the

question of construction of house thereon would arise. The said Liquidator submitted a report to the Deputy Registrar, Cooperative Societies,

stating that he did not find any ground to make the report for rescinding the order of winding up of the said society. This report has been challenged

by a fresh writ application and that the learned trial Judge on consideration of the matter by the judgment and order dated April 15, 1989,

whereby the Registrar of the Co-operative Society was directed to act upon the said resolution for revival of the society dated April 24, 1989 and

for consequential action. On behalf of the Appellant Mr. Milan Chandra Bhattacharyya, the learned Counsel, submitted that the said resolution

dated April 24, 1989, was not valid and that the learned trial Judge had usurped the statutory functions of the Registrar and the State Government

by cancelling the order of winding up of the said society dated June 3, 1980 and directing the revival of the said society. It was submitted by the

Co-operative Society to cancel the registration, of the society and ask the said society to function. It was further submitted that genuineness of the

membership was disputed and as such, there could not be any valid resolution for revival of the, same. It was submitted by the learned Counsel

appearing on behalf of the Respondent/writ Petitioner that the writ Court had jurisdiction in the matter to pass the said order. It was further

submitted that in terms of the order of the Division Bench, the said meeting was convened for deciding the question of revival of the said society

and after the said resolution was passed for revival of the said society after cancellation of the winding up proceedings, the Registrar of Co-

operative Societies had no option to revive the same.

8. In this connection, reference was made to the provisions of Section 93 and Section 99(4) of the West Bengal Co-operative Society Act, 1973

and Rule 150 of the said Rules

which are as follows:

Section 93 : Inquiry by Registrar--(1) the Registrar may at any time of his own motion, hold be 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

(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 co-operative 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

costs, 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 Rule 150:

Meeting 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 proceeding;

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

(2) The members at such meeting, after the 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).

9. In this connection, reference was made to the decision of this Court in the case of Amardeep Co-operative Housing Society and Ors. v. State

of West Bengal and Ors. 96 C.W.N. 958 Per B.P. Banerjee J. Before the learned trial Judge, Sm. Lakshmi Sivaraman and 10 others submitted

an appeal intervention alleging that the said parties had entered into an agreement for sale dated July 13, 1979 and as such they have some right in

the said proceedings. The learned trial Judge considering the prayer for intervention of the said parties and relying upon the decision of the

Supreme Court in the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, Per Fathima Beevi J.

wherein the Supreme Court, inter alia, observed:

The person to be joined must be one whose presence is necessary as the 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 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.

10. Accordingly, the learned trial Judge held that the said Appellant had no locus standi and the application was dismissed. The learned trial Judge

on consideration of the entire matter held as follows:

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 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.

11. 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.

12. It appears from the impugned report at internal p. 7 that the liquidators came to the following conclusions : Five gentlemen claiming to be,

members and one as representative of the creditor attended the meeting on April 24, 1989. 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 Sm. L. Sivaraman and others and the claim of the American Refrigerator Co. Ltd. were pointed out to them. They

absolutely maintained silence on these 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.

13. 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 Co. Ltd., 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.

14. From internal p. 9 of the said report, it appears that the liquidator observed as follows:

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

Chowla Society Ltd. were

penned through in

the middle portion.

3. Mr. S.R. 10.4.69 5 Do Words "hundred

Mehta each

and "Arco Co-

operative

Housing" were

penned through in

the middle portion

4. Mr. S.K. 27.10.7811 do portion. Words

Kapoor "one hundred and

Arco Co-

operative

Housing" were

penned through.

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

Ukil operative Housing

Society" were

penned through.

After referring to the aforesaid candidatures, the liquidator came to the conclusion that these certificates do not conform on the purported

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

15. 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.

16. In my opinion, the impugned report of the liquidator cannot and should not be taken into consideration for the purpose of considering the

revival of the society.

17. 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.

18. 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.

19. 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.

20. In my view, the liquidator or the Registrar or the Registrar was 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 Judges Court Road, Alipore, Calcutta, is

lying ready.

21. 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.

22. Such technical irregularities, in my view, are by all means curable and/or capable of being rectified, once the society is revived.

23. In the instant case, the discrimination in the power has been conferred upon the Registrar and that such discrimination should not be exercised

unless there are compelling reasons. The existence of the power to liquidate is one thing that justification in the exercise of that power is quite

another. On the basis of the merits on records, we do not find that any compelling reasons are here for the Registrar of Co-operative Societies to

exercise with power of liquidation. It appears that the power of liquidation has been exercised in a written amendment merely on the ground that

the co-operative society had not started a building within a certain time. That cannot be the spirit of the legislation, valuable right of the members of

the co-operative society could only be interfered with and cooperative society is not on liquidation unless compelling reason has enacted, the

appeal exists. The Co-operative Societies Act was enacted for the purpose of encouraging the people to form co-operative society and it is

designed to advance the co-operative movement in this connection. Because of the present socio-economic condition of the country, co-operative

movement is necessary to make the social justice meaningful. The co-operative claim is the only claim through which the middle class people can

bet a flat for their residents. Right to live will also become meaning (sic) if right to have a place to live in is there co-operative movement can only

achieve this end. The (sic) of a co-operative society is the last resort and to be resorted only when there is no absolute chance of his (sic). We

cannot construe the provision of liquidation of the co-operative Society to give absolute power upon the Registrar of Co-operative Society to send

co-operative (sic) into liquidation merely on technicalities, namely, the co-operative society had not started construction within a (sic) period. Of

course, if it is found that the co-operative society is highly indebted and the dues of the (sic) could not be paid unless through liquidation

Proceedings in that event, liquidation proceedings could be (sic) to secure the debts of the creditors. In the instant (sic) we do not find any

compelling reasons to send the co-operative society into liquidation. The Act had been enacted for public benefit. The liquidation proceedings must

be only for the purpose of the benefit of the public but we cannot apply the provision of enactment for liquidation in an Act when we do not find

that the society is indebted and/or acted contrary to public interest. The Court must have record to the consequence of a construction of a statute

and if it is found that literal construction of a statute would result in a situation which is not the object of the Act. The Court should construe the same

keeping in mind the purpose of such enactment. The Absurd result is not intended by the rules of construction. The Co-operative Society Act is

nothing but a regulatory Act and unless there are compelling reasons for liquidation of a co-operative society resorting to provision of a liquidation

proceedings of a co-operative society merely on technical grounds should not be resorted to. It should be the endeavour to keep alive a co-

operative society unless it is shown that the co-operative society should not be allowed to continue as it was acting contrary to public interest. It is

clear that the co-operative society is become a society only in paper. In the instant case, there is very valuable lands which have been acquired by

the co-operative society, the prices of the lands have increased to an alarmingly extent and as such the co-operative society, in the facts and

circumstances of this case, must be held to be owner of the substantial property and that when the members of the co-operative society by calling

upon the Registrar of the Co-operative Society in a meeting had adopted a resolution for revival of the co-operative societies by calling upon the

Registrar of the co-operative society to regulated the order of the liquidation, we are of the view that the facts and circumstances do not warrant

that such things should not be done. Accordingly, we agree with the view taken by the learned trial Judge and we do not find any reason to

interfere that the decision of the learned trial Judge is peculiar and accordingly, the appeal is dismissed without any order as to costs.

24. On the prayer of the learned Advocate for the Appellant the operation of this order shall remain stayed for four weeks.

25. Let a xerox copy of this judgment be given to the learned Advocates for the parties on the usual undertaking.

A.K. Chakraborty J.

26. I agree.