

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5420 of 2000
TO
SPECIAL CIVIL APPLICATION No 5426 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE CO-OP HOUSING FINANCE CORPN LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5420 of 2000
HL PATEL ADVOCATES for Petitioner No. 1
MR SUDHANSHU PATEL, AGP for Respondent No. 1-2,4
MR MK VAKHARIA for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 31/08/2001

ORAL JUDGEMENT

Rule. Mr Sudhanshu Patel, learned AGP for
respondent Nos. 1, 2 and 4 and Mr MK Vakharia, learned
counsel for respondent No.3 waive service of Rule.

2. The Gujarat State Cooperative Housing Finance Corporation Ltd., the petitioner herein, had advanced loans to 11 cooperative housing societies, the names of which are given in impugned order at Annexure A. On account of defaults committed by the said cooperative housing societies, the Housing Finance Corporation Ltd. moved the District Registrar of Cooperative Societies under sec. 107 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act') for passing orders of liquidation against those cooperative societies. The District Registrar accordingly passed those orders after giving an opportunity of hearing to the concerned cooperative housing societies. Such orders of liquidation were passed by the District Registrar of Cooperative Societies on 13-7-1995 pertaining to the following societies:

- (i) Hariganga Cooperative Housing Society Ltd.
- (ii) Delhi Tyre Cooperative Housing Society Ltd.
- (iii) Shanta Park Cooperative Housing Society Ltd.
- (iv) Minal Cooperative Housing Society Ltd.
- (v) Bhaviknagar (Odhav) Cooperative Housing Society Ltd.
- (vi) Indrajit Park Cooperative Housing Society Ltd.
- (vii) Indrajit Park Cooperative Housing Society Ltd.

The said orders are produced at Annexure D to each of these petitions.

3 Aggrieved by the aforesaid orders, the Ahmedabad District Cooperative Bank Ltd. preferred appeals before the Additional Registrar (Appeals), Cooperative Societies, Gujarat State under sec. 109 of the Act. The Ahmedabad District Cooperative Bank Ltd. (hereinafter referred to as 'the District Bank') respondent No.3 herein, contended that the District Bank was also a creditor of the concerned cooperative housing societies as the District Bank had also given loans to the said cooperative societies and, therefore, the orders of liquidation ought not to have been passed without giving an opportunity of hearing to the District Bank. When the Additional Registrar found that the concerned cooperative societies owe substantial amounts to the District Bank also, but the District Registrar or the Administrator of the concerned cooperative housing societies had not considered the said fact and, therefore, the orders dated

13-7-1995 for liquidation of cooperative housing societies were required to be set aside and the matter was required to be decided afresh after hearing the District Bank. All the seven matters were accordingly remanded to the District Register by separate order dated 15-7-1999 passed by the Additional Registrar (Appeals). Those orders are produced at Annexure B to the respective petitions.

4. Aggrieved by the aforesaid orders, the petitioner - Housing Finance Corporation Ltd. preferred revision applications before the State Government under sec. 155 of the Act contending that the orders of liquidation passed by the District Registrar were set aside by the Additional Registrar in appeals without hearing the petitioner - Housing Finance Corporation Ltd. The State Government in revision dismissed the revision applications on the ground that when the matters are merely remanded to the District Registrar and all the parties including the petitioner - Housing Finance Corporation Ltd. and the District Bank are going to be heard on merits, there was no warrant for interference with the orders for remand. The orders dated 28-3-2000 passed by the State Government in the said Revision Applications Nos. 19 to 22, 29 to 32, 37, 40 and 41 of 2000 are at Annexure A to the respective petitions. It is against the aforesaid orders that the present petitions are filed.

5. The learned counsel for the petitioner - Housing Finance Corporation Ltd. has vehemently submitted that looking to the relevant material including the defaults committed by the concerned cooperative housing Societies and noncompliance with several mandatory/statutory requirements, the liquidation order is the only logical and possible order that could be passed for the purpose of recovery of the dues of the petitioner - Housing Finance Corporation Ltd. as well as the dues of the District Bank and, therefore, the Additional Registrar ought not to have set aside the orders passed by the District Registrar and the State Government ought to have interfered with the appellate orders.

Mr Pandya further submits that in any view of the matter, the appeals filed by the District Bank were not maintainable under Section 109 of the Act as only the Committee or any member of the Co-operative Society ordered to be wound up can prefer an appeal under the said provision.

6. On the other hand, Mr. M.K. Vakharia, learned

counsel appearing for the Ahmedabad District Cooperative Bank Ltd. has opposed the petitions and submitted that no prejudice is caused to the petitioner - Corporation by the orders of remand, whereas the orders passed by the District Registrar in the proceedings at the instance of the Housing Finance Corporation Ltd. have resulted into recovery certificates in the name of Housing Finance Corporation Ltd. alone with the result that the Ahmedabad District Cooperative Bank Ltd. may not be able to get any amounts towards the loans advanced by it to the concerned cooperative housing societies. It is submitted that in any view of the matter since the challenge is to the orders of remand, no interference of this Court is called for.

7. Mr. Sudhanshu Patel, learned AGP, for respondents No.1, 2 and 4 submits that since only the orders of remand are passed, the petitions may not be entertained.

8. Having heard the learned counsel for the parties, it appears to the Court that when a serious controversy was raised about maintainability of the appeal, the State Government ought to have deal with the said contention. In any view of the matter, instead of remanding the matter to the State Government for fresh decision, the interests of justice would be served if the impugned orders of the State Government and of the Additional Registrar are set aside and the matters are remanded back to the Additional Registrar for deciding the appeals in accordance with law.

9. Mr Pandya, learned counsel for the petitioner-Gujarat State Co-operative Housing Finance Corporation Ltd. fairly states that the petitioner-Corporation is having the first charge over the properties in question and that after adjusting the recovery amounts against the charges of the petitioner-bank, if any amount is payable to respondent No.3-District Bank, the petitioner Corporation will extend utmost cooperation.

Mr Vakharia for respondent No. 3-District Bank also states that even if the Additional Registrar holds that the appeals by the District Bank were not maintainable, the District Bank would request the Additional Registrar to pass appropriate orders for protecting the interest of respondent No.3-Bank also.

10. It will be open to the parties to make appropriate representations before the Additional

Registrar who shall decide the appeals/representations in accordance with law after giving an opportunity of hearing to the affected parties including the petitioner-Corporation and respondent No.3-District Bank.

11. Mr Dastoor who appears for some of the persons claiming to be members of the concerned Co-operative Housing Societies submits that his clients are also entitled to be heard.

Mr Pandya for the petitioner-Corporation, however, submits that those persons are not required to be heard as they were originally not members of the concerned Co-operative Housing Societies.

This Court does not propose to decide this controversy. It will be open to the clients of Mr Dastoor to make appropriate applications before the appellate authority who shall decide such applications in accordance with law.

12. Accordingly, the impugned orders dated 15.7.1999 passed by the Additional Registrar (Appeals) at Annexure "B" and the impugned orders dated 28.3.2000 passed by the State Government at Annexure "A" are hereby quashed and set aside and the matters are remanded to the Additional Registrar (Appeals) to hear and decide the appeals afresh in accordance with law and in light of the observations made hereinabove.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

zgs/-