

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14544 of 2003

with

SPECIAL CIVIL APPLICATION No 14541 of 2003

with

SPECIAL CIVIL APPLICATION No 13865 of 2003

with

SPECIAL CIVIL APPLICATION No 10948 of 1993

with

SPECIAL CIVIL APPLICATION No 10283 of 1993

with

SPECIAL CIVIL APPLICATION No 13344 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

=====

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 concerned : NO  
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

-----  
KAILASHSINH PRUTHVISINH RAOL

Versus

DISTRICT REGISTRAR CO-OP SOCIETIES (CITY DIVISION)

-----  
Appearance:

1. Special Civil Application No.14544 of 2003  
MR MIHIR JOSHI for MS AMRITA M THAKORE  
for Petitioner No. 1-12  
MR L B DABHI AGP for Respondent No. 1  
NOTICE SERVED BY DS for Respondent No. 2,5  
MR SAURABH G AMIN for Respondent No. 3  
..... for Respondent No. 4

Date of decision: 30/12/2004

ORAL JUDGEMENT

1. RULE. Respective parties are directed to waive service of rule on behalf of the respondents in all the petitions. With the consent of learned counsel for the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioners are the members of the Society. Respondent no.3 Bank filed suit being Lavad Suit No.234 of 1992 before the Registrar's Nominee, Board of Nominees, Ahmedabad for the recovery of an aggregate amount of Rs.62,64,854.35 from the Society. The said suit was filed against the Society and the members of the Society were not made party to the proceedings. The Board of Nominees by award dated 31/01/1997 decreed the suit in favour of respondent no.3 Bank.

3. Appeal No.76 of 1997 was preferred by the Administrator on behalf of the Society before the Tribunal against the aforesaid judgment and award. The Tribunal by judgment and order dated 30/06/2003 rejected the said appeal preferred by the Society.

4. Respondent no.2 herein issued Notices to the petitioners under the Bombay Land Revenue Code, 1879 for the recovery of the said amount along with interest from 1982 onwards and had threatened distraint and sale of the properties and / or arrest or detention of the members for the recovery of the amount in question. Feeling aggrieved by the aforesaid actions of the respondents, the petitioners have preferred these petitions before this Court.

5. Upon hearing Mr.Mihir Joshi learned Sr.Counsel appearing for the petitioners and Mr.Saurabh Amin for the respondent no.3 Bank, it appears that the issue is squarely covered by the decision of this Court in the case of Sureshbhai Babubhai Sunara & Ors. v. Ahmedabad District Co-operative Bank Ltd. & anr. reported in 2003 (4) G.L.R., pg.3707, wherein it has been held that when the members of the Housing Society are allowed to occupy the property and on account of some debt outstanding against the Society which is to be recovered from the property which is under the occupation of the members, it can not be said that the members are not affected or aggrieved by the award of the Nominee. Therefore, in my opinion, the impugned judgment of the Tribunal can not be sustained in the eye of law and deserves to be quashed and set aside.

6. Mr.Saurabh G Amin learned advocate appearing for respondent no.3 Bank has submitted that though the members were not party to the proceedings, but written statement was filed by the Administrator only after decision was taken in the meeting of the General Body of the Society, and therefore, it is now not open for the petitioners to raise such a contention at this stage.

7. In view of the contention raised by Mr.Amin that the matter was discussed in the meeting of the General Body but they were not party to the proceedings, however, while quashing and setting aside the order of both the authorities, it would be just and proper that the petitioners should be directed to deposit some amount out of the outstanding loan, subject to the outcome of the proceedings before the Board of Nominees. Mr.Mihir Joshi learned Sr.Counsel for the petitioners has submitted that to show the bonafides on the part of the petitioners, the petitioners will deposit an amount of Rs.10,000.00 each within a stipulated period.

8. In above view of the matter, ends of justice would be met, if the following directions are issued;

(A) In Special Civil Applications No.14544 of 2003, 14541 of 2003, 13865 of 2003 and 13344 of 2003, the order dated 30/06/2003 passed by the Tribunal in Appeal No.76 of 1997 and the order dated 31/01/1997 passed by the Board of Nominees in Lavad Suit No.234 of 1992 are quashed and set aside.

In Special Civil Application No.10283 of 1993, the order dated 18/09/1993 passed by the Tribunal in Appeal No.89 of 1993 and the order dated 20/09/1989 passed by the Board of Nominees in Arbitration Suit No.684 of 1987 are quashed and set aside.

In Special Civil Application No.10948 of 1993, the order dated 18/09/1993 passed by the Tribunal in Appeal No.145 of 1993 and the order dated 06/02/1989 passed by the Board of Nominees in Arbitration Suit No.959 of 1987 are quashed and set aside.

(B) The petitioners are directed to deposit an amount of Rs.10,000.00 each (Rupees Ten thousand only) within a period of six weeks from

today and the balance amount to be deposited within a period of six weeks thereafter. The aforesaid amount shall be treated as deposit at this stage. If ultimately, decree is passed against the petitioners, then the aforesaid amount shall be adjusted against the decretal amount, and if decree is not passed against the petitioners, then the respondent Bank shall return the said amount to the petitioners.

(C) Only those petitioners will be permitted to be joined as parties to the suit who will deposit the aforesaid amount before the respondent Bank within the stipulated period. If any of the petitioner/s is/are not depositing the aforesaid amount within the stipulated period, then the decree shall stand confirmed against those petitioners/members of the Society.

(D) The amount which is already deposited by the petitioners will be adjusted against the amount so deposited.

(E) On depositing Rs.10,000.00 as aforesaid, it would be open for the petitioners or to the members of the Society to prefer an application before the Board of Nominees for joining them as party respondents in the suit filed by the respondent Bank. The said application, if any, to be filed within a period of two weeks from the date of depositing the aforesaid amount or not later than eight weeks from today.

(F) The Board of Nominees is directed to expedite the hearing of the said suit and to dispose it of, as expeditiously as possible, and preferably within a period of six months from the date of the aforesaid application received from the petitioners.

9. It is made clear that this Court has allowed these petition and has quashed the orders of the Board of Nominees and the Tribunal only on the ground that the petitioners / members were not heard. The parties are at liberty to raise all the contentions before the Board of Nominees including the contentions that have been raised in these petitions. The Board of Nominees in each petition will decide the matter afresh without being influenced by the fact that its earlier order and the order passed by the Tribunal have been quashed and set aside by this Court and will decide the issue afresh in

accordance with law. With the above directions, these petitions stand disposed of. Rule is made absolute to the aforesaid extent in all the petitions.

(K. S. Jhaveri, J.)

pravin/

MISC. CIVIL APPLICATION No 938 of 1996  
in  
SPECIAL CIVIL APPLICATION No 10283 of 1993

In view of the fact that the petitions preferred by the members are allowed, this Misc.Civil Application is not being pressed. It stands disposed of accordingly.

(K. S. Jhaveri, J.)

pravin/

MISC. CIVIL APPLICATION No.1855 of 2003  
in  
SPECIAL CIVIL APPLICATION No 13344 of 2003

In view of the fact that the petitions preferred by the members are allowed, this Misc.Civil Application is not being pressed. It stands disposed of accordingly. Notice is discharged.

(K. S. Jhaveri, J.)

pravin/