

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 1060 of 2012**

1. Kuber Grih Nirman Sahkari Samiti Maryadit, Rohinipuram, Raipur,
Through its Vice Chairman, K.P. Tiwari, S/o Shri Satanand Tiwari,
Aged about 44 yrs. R/o VIP Colony, Shanker Nagar, Raipur (CG)
2. Priyadarshini Grih Nirman Sahkari Samiti Maryadit Through Its
Chairman Rajesh Shrivastava S/o Lt. Shri B.C. Shrivastava Aged
about 65 Years R/o Priyadarshini Nagar Raipur CG
3. Rajiv Grih Nirman Sahkari Samiti Maryadit Through Its Vice Chairman
B.M. Chilamwar S/o Lt. Shri M. P. Chilamwar Aged about 66 Years
S/o Bajaj Colony Katora Talab Raipur CG
4. Ramanuj Tiwari S/o Lt. Shri Jagannath Prasad Tiwari aged about 62
years, Member Priyadarshini Grih Nirman Sahkari Samiti Maryadit R/o
Priyadarshini Nagar Raipur CG
5. Sevak Ram Pandey S/o Lt. Shri G.R. Pandey, aged about 68 years,
Member Kuber Grih Nirman Sahakri Samiti Maryadit R/o Rohinipuram
Raipur CG

---- Appellants**Versus**

1. State of Chhattisgarh, Ministry of Cooperative, Through its Secretary,
DKS Bhawan, Mantralaya, Raipur, CG
2. The Registrar Cooperative Societies Chhattisgarh, Raipur (CG),
Vivekanand Complex, Vivekanand Nagar, Pension Bada Chowk,
Raipur (CG)
3. The Joint Registrar Cooperative Societies Raipur CG

---- Respondents

For Appellants	:	Shri B.P. Gupta, Advocate
For Respondent/State	:	Shri U.N.S. Deo, Government Advocate

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Judgment on Board

Per NAVIN SINHA, C.J.

28/04/2015

1. The present appeal arises from order dated 27.8.2012 in Writ Petition (C) No. 301 of 2012. The Learned Single Judge dismissed the writ petition holding that in absence of any provision in the bye-laws with regard to issuance of a No Objection Certificate (hereinafter called 'the NOC') by the Appellant Society, the orders of the Registrar, Cooperative Societies dated 19.7.2011 and 3.8.2011, prohibiting the Appellants from enforcing obtaining of NOC from it by its members before transfer/sale of property required no interference.

2. The Appellants are Co-operative Housing Societies registered under the Chhattisgarh Co-operative Societies Act (hereinafter called 'the Act') 1960, aggrieved by order dated 19.7.2011 of the Registrar, Cooperative Societies, as communicated through the Joint Registrar dated 3.8.2011. Read together, the two orders provide that the members of Housing Co-operative Societies were facing avoidable difficulties because of the Society requiring them to obtain NOC. There was no provision in the bye-laws for grant of NOC. Investigation by a committee had revealed that the Registration Authorities were requiring NOC from Housing Co-operative Societies when its members sought to sell / transfer the lands to another. The Housing Co-operative Societies were asking for unjustified amounts for the purpose causing inconvenience and dissatisfaction in the members. The practice of NOC served no purpose and not having been provided in the bye-laws, the property must be registered in the name of the purchaser if the

number of the plot was mentioned by entering the name of the transferee in the revenue records. It was the duty of the Society to render all necessary assistance for registration of the transferee / new owner, as the case may be.

3. Learned Counsel for the Appellants submitted that for convenience he shall refer to the bye-laws of Appellant No.1, the others being similar in nature. The Bye-laws of the Society provides for allotment of lands to members for construction of residential houses. Bye-law 5(a) provides who is eligible to become a member, Bye-law 5(b) provides who is not eligible to become a member. A new member can only be made with the approval of the Managing Committee under Bye-law 6 after its satisfaction that the applicant meets the conditions of eligibility. If the application for membership was refused, the deposit made had to be returned under Bye-law 7. The application for membership was to be considered in the first meeting after its receipt by the Managing Committee under Bye-law 9. Under bye-law 9(2), if the application for membership was to be rejected, reasons had to be assigned. Bye-law 43(1) provides for a complete ban on sale / transfer within the first 10 years which did not include mortgage of the property to raise money for construction. Bye-law 43(2)(ii) provides that if it became necessary for a member to sell / transfer the plot within the first 10 years, he was required to give the first option to the Society and was entitled for refund of the payment made by him. The impugned direction is therefore completely contrary to the Bye-laws and will strike at the very root of the structure of the Housing Co-operative Society leading to change in its basic structure if a person not eligible to become a member, purchases from a member and can obtain

registration in his name with the Society having no say in the matter. The Society was also entitled to decline enrolment of any member in case the intention to construct the house was not bonafide. There were other restrictions similar on membership as contained in the Bye-laws.

4. Learned Counsel for the State submitted that the impugned orders are speaking in nature. The Co-operative Societies were misusing their powers and authority, harassing members in granting NOC, demanding unreasonable amounts, causing inconvenience to the members and others. There is no illegality in the impugned order as the Registrar has adequate powers to give directions to the Co-operative Societies under the Act.

5. We have considered the submissions on behalf of the parties.

6. The Appellant No.1 was registered on 1.12.1990 bearing number 10/3057. The effect of the bye-laws was confined to the municipal limits. Bye-law 2(3) provides for the objectives of the Society which is to allot plots to its members for construction of a residential house. Bye-law 5(a) provides who all are eligible to become members. It provides inter alia, that the applicant must be a resident of the area in which the Society is situated and was agreeable to abide by the bye-laws. He had to deposit a sum of Rs. 500/- and entry fee of Rs. 50/-, had not been declared insolvent, had not been convicted for moral turpitude, had not been dismissed from government service or service of a Co-operative Society, did not possess either in his name or in the name of his wife, minor son, any other residential plot or a house or flat in an apartment, and was not a member of any other Housing Co-operative Society either himself or through his wife. Only one person from a

family could become a member of the Society. Bye-law 5(b) provides who all are not eligible to become members. It includes a person who may have been a member of a Housing Co-operative Society in the State and after allotment of plot and construction of a house had sold it within ten years. A person who either himself, in the name of his wife, minor son or daughter possessed a plot, house or flat in the State. Not more than one person from a family could become a member. The initial members under Bye-law 6 were those who had signed the register of membership and fresh members could only be taken in by the Managing Committee after examining their eligibility to the same.

7. Membership in the Society was therefore not a matter of right but subject to fulfillment of conditions and not suffering from any disqualification, the right being reserved to the Managing Committee of the Society for enrolment, which could not reject it except after recording reasons. The aggrieved had a remedy before the Registrar, Cooperative Societies, under Section 64 of the Act, by raising a dispute. Similarly, if a particular Housing Co-operative Society was enforcing unreasonable conditions for sale / transfer, the aggrieved could move the Registrar again under the aforesaid provision.

8. A sweeping generalization in the impugned order that complaints had been received of Societies imposing difficult conditions while granting NOC cannot be considered sufficient to issue such broad based directions putting at stake the very structure and existence of the Society which may well render its Bye-laws itself redundant. Such a generalized direction in our opinion is arbitrary and violative of Article 14 of the Constitution as also Article 19 (1) (c). The premise that there was no provision for grant of NOC under the Bye-laws is completely

misconceived and destructive of the rights of the members of the Society.

9. The Registrar has directed that if a document for transfer / sale is presented and the number of the plot is mentioned, it has to be registered and entered in the revenue records without the requirement of an NOC from the society. What happens if a member sells the plot or house to a person eligible for membership but before ten years or sells to a person not eligible to become a member of the society, or suffering from disqualification of membership? The net effect would be that he would get indirectly what was not available to him directly. He would acquire property in the Society despite the fact that he did not possess the eligibility to become a member. The Society will have no say in the matter remaining a mute spectator. As their number will spread, the basic edifice and structure of the housing society will itself go into peril. One of the grounds also urged on behalf of the Appellants is that if the requirement for an NOC is removed, any kind of building or structure can come up in the Society with the Society being unable to regulate, as the person raising the construction would not be a member bound by the Bye-laws of the Society.

10. In AIR 1989 Bombay 392 (Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune v. State of Maharashtra) the Registrar of Cooperative Societies under Section 14 of the Maharashtra Co-operative Societies Act, gave directions to the Co-operative Society to amend its bye-laws for permitting construction of apartments by its members allotted plots for construction of residential houses. Considering the bye-laws of the Society, restrictions and conditions of membership, it was held that what was best for the Society was for the

members to decide and not for the Registrar observing at paragraph 8 as follows:

“8....Though, there is undoubtedly dearth of accommodation, that does not enable the State to compel the housing society to act contrary to by-laws or to foist new members who are not acceptable to the existing members of the society. The members have joined the society in accordance with the by-laws and the members join a housing society by ascertaining what would be environment in which they will reside. It is not permissible for the State Government to compel the society to amend its by-laws as to defeat the object of the formation of the society. In the present case, the society was constituted with the object of providing peaceful accommodation to the members....”

It was further held that the powers of the Registrar had to remain subservient to the basic interests of the Society and no directions could be given contrary to the primary interests of the Society.

11. The judgment was affirmed in (2000) 9 SCC 295 (State of Maharashtra v. Karvanagar Sahakari Grih Rachana Sanstha Maryadit) observing as follows:

“5..The contention of the Society is that if the bye-laws are amended, it will destroy the whole concept of the type of the Society as commercialisation of the use of the plots will set in the residential area which is contrary to the concept of the Society itself....”

12. Thus, in our view, what is in the interest of the Society is primarily for the Society alone to decide and it is not for any outside agency to say. Even if the Registrar exercises any statutory powers of issuing directions to a Society, such directions should satisfy the requirement of the interests of the Society.

13. We are therefore of the opinion that the blanket direction issued by the Registrar in the impugned orders are not sustainable and are set

aside. We may not be understood to mean that under no circumstances can the Registrar examine the issue for refusal of NOC by a particular Housing Co-operative Society if a complaint is made before him or brought to his attention. If unreasonable conditions are being imposed, the NOC is denied without valid reasons, the aggrieved not only has the remedy under the Act but the Registrar equally has vast powers under Section 53 and 53-A to take action against the concerned Co-operative Society also. The possibility that there may be an abuse or that there have been errant instances, cannot be sufficient justification for issuing blanket orders of the present nature which may affect the very basic structure of the Society itself and be against its interests.

14. The order under appeal as also the orders of the Registrar 19.7.2011 and 3.8.2011 are therefore held to be unsustainable and are set aside.

15. The appeal is allowed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE