

**2022 LiveLaw (SC) 849**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**UDAY UMESH LALIT; CJI., S. RAVINDRA BHAT; J., J.B. PARDIWALA; J.  
OCTOBER 13, 2022**

**CIVIL APPEAL NO.7261 OF 2022 (arising out of S.L.P. (Civil) No. 506 of 2020)**

**The Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd.  
*versus*  
Sri Aloke Kumar & Anr.**

**Co-operative Societies - West Bengal Co-operative Societies Act, 1940 - It is not open to the Court to sit over the commercial wisdom of the General Body as an Appellate Authority. Merely because one single member in minority disapproves of the decision, that cannot be the basis to negate the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition -Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. (Para 54)**

**Co-operative Societies - Once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body. (Para 53)**

**Constitution of India, 1950 - Part IXB inserted by the Constitution (97th Amendment) Act, 2011 would not be applicable to the local co-operative societies, whereas the same would be applicable to the multi-State co-operative societies and the societies within the Union territories. (Para 45A-45C)**

(With modifications as set out in the Order dated 18.10.2022 passed in M.A. No. 1798 of 2022 in CA No.7261 of 2022)

*For Appellant(s) Mr. Joydeep Mazumdar, Adv. Ms. Shalini Kaul, AOR*

*For Respondent(s) Mr. Sumo Palit, Adv. Mr. Abhigya, AOR Mr. Akhilesh Shrivastava, Adv. Mr. Akash Sharma, Adv. Ms. Sunita Yadav, Adv.*

**J U D G M E N T**

**J.B. PARDIWALA, J.**

1. Leave granted.
2. This appeal is at the instance of a Co-operative Society registered under the West Bengal Co-operative Societies Act, 1940 (for short, 'the Act 1940') and is directed against the judgment and order passed by the High Court at Calcutta (Civil Revisional Jurisdiction, Appellate Side) dated 08.08.2018 in the CO No. 2714 of 2014 by which the High Court rejected the civil revision filed by the Appellant Society herein thereby affirming the order passed by the Civil Judge (Senior Division), 9<sup>th</sup> Court at Alipore, District South 24 Paraganas in the Arbitration Execution Case No. 19 of 2009 dated 17.04.2014.

**FACTUAL MATRIX**

3. The Appellant Society was registered in the year 1945 under the Act 1940 (now governed by the West Bengal Co-operative Societies Act, 2006 as amended up to date, [for short, 'the Act 2006']). The Appellant Society was formed for the purpose of providing housing to the employees of the West Bengal Secretariat and others in accordance with the

bye-laws of the society. The registered office of the Appellant Society at the time of registration was that of the Bengal Secretariat being the Writers Buildings, Calcutta (P.O. Calcutta G.P.O., Thana-Hare Street, Calcutta). At present, the registered office of the Appellant Society is located at No. 1, Gariahat Road, Jodhpur Park, P.S. Lake, Kolkata-700068.

**4.** The Appellant Society purchased a parcel land along with two buildings erected on it on 18.07.1947 from the Official Trustee of Bengal, the Executor of the property of Ketty Graham William admeasuring approximately 80.90 acre. One of the buildings out of the two is used as the administrative building of the Appellant Society and the other building is used for the Girls School. The Appellant Society was registered with multipurpose activities. The administrative building by now is almost 100 years old and is in a dilapidated condition. The certificate issued by the Kolkata Municipal Corporation dated 15.07.2016 along with the photographs of the building would indicate that the same may collapse at any time causing loss to life.

**5.** It appears from the materials on record that sometime in 1960, the entire ground floor portion of the administrative building was let out to the Indian Postal Department for running a post office namely the Jodhpur Park Post Office with current PIN Code 700068. Since then, the Post Office is functioning for the benefit of the members of the Appellant Society as well as the locals at large. Having regard to the fact that the administrative building is in a dilapidated condition and requires urgent repairs and renovations, it was felt by the Appellant Society sometime in the year 2001 that it would be more expedient to demolish the old structure and construct a new building in its place which would be safe for habitation and would allow for more efficient utilisation of the available space/land area.

**6.** In such circumstances referred to above, the Appellant Society invited tenders through an advertisement published in the local dailies for the development of the administrative building through a joint venture with the developer.

**7.** Pursuant to the tender process, the Hi-Rise Apartment Makers Private Limited (for short, 'the Hi-Rise') was declared as the successful bidder. The entire matter was placed before the General Body of the Appellant Society at the Annual General Meeting which was held on 28.04.2002. The meeting was ultimately adjourned to 05.05.2002. At the Annual General Meeting of the Appellant Society convened on 05.05.2002, it was resolved that the Appellant Society would accept the earnest/security money from the Hi-Rise and enter into an agreement accordingly with it for the purpose of demolition of old administrative building and for construction of the new administrative building.

**8.** On 22.06.2002, the Appellant Society issued the work order pursuant to the decision taken in the Annual General Meeting. In the said work order, it was stated that the Appellant Society would enter into an agreement with the Hi-Rise for the demolition of the old dilapidated building and construction of a new administrative building. It was agreed between the Appellant Society and the Hi-Rise that the new structure would be partly residential and partly for commercial purpose.

**9.** It appears that the Respondent No. 1 herein namely Alope Kumar in his capacity as one of the members of the Appellant Society starting creating various hindrances in the way of the Appellant Society and somehow or the other did not allow the Appellant Society to go ahead with the project. It also appears from the materials on record that the Board of the Appellant Society decided to remove the Respondent No. 1 from the primary membership of the society on the ground of having been found acting in a manner prejudicial to the interest of the Appellant Society. Pursuant to the resolution passed by the Board dated

22.10.2002, the Appellant Society sought approval from the Registrar of the Co-operative Societies to remove the Respondent No. 1 from the primary membership of the society.

**10.** It appears that since the Registrar of the Co-operative Societies did not object to the resolution terminating the membership of the Respondent No. 1 herein within six weeks as per Rule 137(2) of the West Bengal Co-operative Societies Rules, 1987 (for short, 'the Rules 1987'), the Board of the Appellant Society terminated the membership of the Respondent No. 1 with effect from 04.12.2002. The Respondent No. 1, being aggrieved with the action taken by the Board of the Appellant Society, filed an appeal before the Registrar of the Co-operative Societies under Rule 137(3) of the Rules 1987.

**11.** The materials on record further reveal that the decision of the Board of the Appellant Society expelling the Respondent No. 1 from the primary membership of the Appellant Society was later set aside.

**12.** On 14.01.2003 the Respondent No. 1 herein filed a dispute case before the Registrar of the Co-operative Societies, West Bengal against the Appellant Society, *inter alia*, praying for the following:

*"a) declaring that all actions of the Board right from the publication of the notice inviting bids, floating of bid documents, the proceedings and resolution in the adjourned Annual General Body of the aforesaid Society held on 5.5.2002 accepting the offer of M/s HiRise Apartment Makers Pvt. Ltd. and acceptance of Earnest Money and security deposit of Rs. 10 lakh from them and thereafter, were illegal and void."*

**13.** The proceedings came to be registered as the Dispute Case No. 47/RCS of 2002-03 filed under Section 95(1) of the West Bengal Co-operative Societies Act, 1983 (for short, 'the Act 1983').

**14.** The Arbitrator vide Award dated 21.12.2004 passed in the Dispute Case No. 47/RCS of 2002-03, *inter alia*, directed as under:

*"1) That the society shall restrain itself from taking any step towards demolishing the existing constructions of the Administrative Building of the society as part of a joint venture with a private promoter/developer, M/s Hi Rise Apartment Makers Pvt. Ltd.*

*2) That special general meeting be called with clear one month's notice ensuring receipts by all the members- discussing the issue in every detail with transparency at every stage being observed to the full, and any resolution taken thereof in favour of the ROC's proposal of this nature be sent to the Registrar of Cooperative Societies, West Bengal for his approval has required under Rule 149(11) of W.B.C.S. Rules, 1987."*

**15.** The Appellant Society in due compliance with the Award dated 21.12.2004 resolved by way of resolution taken in the AGM dated 15.01.2006 to terminate the work orders dated 22.06.2002 issued in favour of the Hi-Rise and refund the security deposit.

**16.** Not satisfied with the Resolution dated 21.12.2004 and the consequent termination of the contractual obligations with the Hi-Rise, the Respondent No.1 filed yet another Dispute Case being the DC No. 15 of 2006 challenging the said Resolution dated 15.01.2006, *inter-alia*, on the ground that the Award dated 21.12.2004 had directed the Appellant Society to hold an "Special General Meeting" and not an "Annual General Meeting".

**17.** Being aggrieved, the Hi-Rise filed Dispute Case No. 11 of 2006 seeking to *inter alia* injunct the Appellant Society from giving effect to the Resolution dated 15.01.2006. The said dispute came to be referred to the Calcutta High Court vide the CO No. 2203 of 2006. Therein the Calcutta High Court vide order dated 22.01.2007 remanded the matter to the Arbitrator for fresh hearing while directing both the parties to maintain *status quo*.

**18.** In the light of the impasse created due to the litigation initiated by the Hi-Rise, it was, *inter alia*, resolved in the AGM held on 27.05.2007 that the Board of the Appellant Society be asked to resolve the dispute with the Hi-Rise and further empowered it to get the administrative building developed through the Hi-Rise as BOT (Build Operate & Transfer) partner based on the revised Terms and Conditions.

**19.** It is important to note that the Resolution dated 27.05.2007 passed at the Annual General Meeting of the Appellant Society has not been challenged till date.

**20.** The Joint Registrar, Co-operative Societies (Housing) on 16.06.2011 accorded permission to the Appellant Society for the construction of Office-cum-Administrative Building pursuant to the Resolution passed in AGM on 27.05.2007.

**21.** On 30.10.2009, the Respondent No. 1 instituted the Arbitration Execution Case No. 19 of 2009 before the Civil Judge, Alipore Court seeking execution of the Award dated 21.12.2004 passed in the DC No. 47/RCS of 2002-03. On 17.04.2014, the Civil Judge *inter alia* declared that the Execution Case was maintainable.

**22.** Being aggrieved, the Appellant Society preferred a Civil Revision before the Calcutta High Court being the CO No. 2714 of 2014 wherein the impugned order came to be passed.

**23.** In view of the aforesaid, the Appellant Society is before this Court.

#### **SUBMISSIONS ON BEHALF OF THE APPELLANT SOCIETY**

**24.** Mr. Joydeep Mazumdar, the learned counsel appearing for the Appellant Society vehemently submitted that the High Court committed a serious error in passing the impugned order. The learned counsel would submit that the final authority of a co-operative society under the Act 2006 is its General Body of Members or its elected representatives. In this regard, the learned counsel invited the attention of this Court to Section 28 of the Act 2006. The learned counsel further submitted that the High Court failed to appreciate one of the cardinal principles of the "Co-operative Movement" that the co-operatives are autonomous organisations and one single member of a co-operative society should not be allowed to hold the entire society at ransom only because of his own whims and caprice.

**25.** The learned counsel argued that the High Court failed to appreciate that there is no material difference between an Annual General Meeting and a Special General Meeting except for the nomenclature in all practical sense. In this regard, our attention was drawn to Rule 21 of the West Bengal Co-operative Societies Rules, 2011 (for short, 'the Rules 2011').

**26.** The learned counsel would submit that the High Court failed to appreciate that there is nothing in the Act and/or Rules which would prevent a Society from taking a pragmatic and practical view of the situation in approaching Developers who would act in the benefit of the larger interest of the members of the Society. It was also argued that the High Court fell into error in taking the view that the resolution dated 15.01.2006 was not transparent. It was also argued that the High Court could not have taken a dismissive view of the order passed by the Joint Registrar, Co-operative Societies (Housing) dated 16.06.2011 permitting the Appellant Society to carry out the demolition/construction of the administrative building pursuant to the resolution dated 27.05.2007. The learned counsel pointed out something very important, that neither the resolution dated 27.05.2007 nor the permission granted by the Joint Registrar dated 16.06.2011 has been challenged by the Respondent No. 1 herein.

**27.** In the last, the learned counsel argued that the Respondent No.1 unilaterally has been stalling the efforts of the Appellant Society to develop the administrative building for the last two decades contrary to the spirit of the very "Co-operative Movement". According

to the learned counsel, the Respondent No.1 has been a true example of a “Dog in the Manger”.

**28.** In such circumstances referred to above, the learned counsel appearing for the Appellant Society prayed earnestly that the impugned judgment and order of the High Court may be set aside and the Appellant Society may be permitted to go ahead with the development of the administrative building in accordance with the plans & the rules and regulations.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1**

**29.** On the other hand, Mr. Soumo Palit, the learned counsel appearing for the Respondent No. 1 vehemently opposed the present appeal submitting that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. In such circumstances referred to above, the learned counsel appearing for the Respondent No. 1 prayed that there being no merit in the present appeal, the same may be dismissed.

### **ANALYSIS**

**30.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order?

**31.** Before advertent to the rival submissions canvassed on either side, we must look into the line of reasoning adopted by the High Court in its impugned order which is as under:

*“25. It is seen that nowhere in the Act or the Rules, the delegation of construction work to third party developers, having commercial interest, is contemplated.*

*26. The entire spirit of the co-operative movement, being that of participation of the members for their own good was missed out in the commercial endeavour of the petitioners to earn quick profits at the expense of the cooperative spirit.*

*27. The arguments of the petitioners, that the first component of the arbitral award becomes academic upon fulfillment of the second, is also not acceptable, since the first component is a continuous restraint, independent of the second. The petitioners have, in any event, flouted both the components of the award by posing to cancel the previous agreement with M/s HiRise and renewing the same agreement in a superficially changed format. The continuation of the earlier joint venture has also been reflected from the project submitted by the petitioners before the Registrar, Co-operative Societies, purporting to seek approval.*

*28. The petitioners also rely on an annual report of an Annual General Meeting held by the petitioner no. 1 Society on May 27, 2007, to impress upon this Court that the award was complied with by the Society in spirit.*

*29. However, apart from the fact that the award contemplated not an Annual General Meeting but a Special General Meeting, the report itself belies the impression sought to be created by the petitioners. It is reflected from the report that the Board of Directors, even in the teeth of the award, did not even consider any other option than to renew the previous agreement with M/s Hi-Rise itself, despite the specific restraint order comprised in the first component of the arbitral award. The project entered into, as reflected from the annual report itself, contemplated only modification of terms of the previous joint venture agreement, and blatantly exhibited the sole purpose of such project to gain merely Rs. 20 million (by virtue of enhancement of the market value of the project being fully commercial). As such, although commerce ipso facto need not be deprecated, the tenor of the arbitral award as well as the spirit of the co-operative movement, as contemplated in the West Bengal Co-operative Societies Act, 2006, was taken for a ride by such acts of the petitioners. The*

resolution taken in such Annual General Meeting was an iteration of the absence of will on the part of the petitioners to comply with the award and the deliberate attempt to carry on with old wine in a new bottle, having the shape of a new-look agreement.

30. As such, it appears that although the impugned order was a bit on the miserly side as far as reasons are concerned, the conclusion arrived at in the said order, as to the execution case being still maintainable in view of non-satisfaction of the arbitral award, was valid.

31. As to the judgments cited by the opposite party on the scope of interference under Article 227 of the Constitution of India, this Court is of the opinion that the principles laid down therein are well-settled. Since no patent jurisdictional error is found in the impugned order, in any event, the said judgments need not be gone into in detail.”

32. Thus, from the aforesaid, it appears that what weighed with the High Court is:

- (1) Neither the Act nor the Rules permits the society to ask a third party to develop its building, more particularly when the party has a commercial interest in the same, and
- (2) The members on their own should have undertaken the commercial activity and that would have been in accordance with the co-operative spirit.

On both the aforesaid counts, the High Court is not correct.

We shall assign reasons hereinafter as to why we are so saying.

33. We shall now look into few provisions of the Act and the Rules. Section 28 of the Act 2006 reads thus:

**“Section 28. Final authority of Co-operative**

**society.**—Subject to the provisions of this Act, the final and ultimate authority of a Co-operative society shall vest in the general body of its members or its delegates or representatives elected under Section 29 of this Act and assembled in a general meeting:

*Provided that where the by-laws of a Co-operative society so provide for representation of self-help group in any meeting of the general body of the Co-operative society, such self-help group shall be represented through one of its members elected in a meeting of the self-help group.”*

34. Rule 21 of the Rules 2011 read as under:-

**“21. Special General Meeting.—**

- (1) The rules pertaining to Annual General Meeting shall apply, mutatis mutandis to a Special General Meeting called under Section 31.
- (2) At a Special General Meeting, no business other than that specified in the relevant notice shall be considered.”

35. We shall now look into the relevant extract of the resolution dated 15.01.2006 which reads as under:-

*“But it resolved that the contract executed by and between the Society and M/s Hi-Rise Apartment Markers Pvt. Ltd., including the work order issued by the Society are to be treated as revoked and cancelled. The Board of Directors is directed to refund the security deposit to the said company after deducting necessary penalties and dues in terms of the said contract.*

*The house further resolved that in supersession of all earlier resolutions of the General Body as well as Board of Directors in connection with the Administrative Building, the Board of Directors is hereby authorized to take all further necessary action such as erection of hoardings etc. for further development/ utilization of the said premises for the best interest of the Society of its members, except letting out, long term in nature under tenancy act.”*

## **SEVEN CARDINAL PRINCIPLES OF CO-OPERATIVE**

**36.** In the case of *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited*, (2015) 8 SCC 1, this Court was called upon to answer the following question:

*"Whether in the absence of a specific provision on removal by no confidence in the Act, Rules or even Byelaws of a Cooperative Society, the Chairperson/ elected office-bearer can be removed by a motion of no confidence, is the short but complex question."*

**37.** For the purpose of answering the aforesaid question, this Court extensively traced the history of the Co-operative Movement in India. The International Cooperative Alliance Statement on the Cooperative Identity was adopted in Manchester, United Kingdom on 23.09.1995. The 'Co-operative' is defined as:

*"A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise."*

**38.** The Statement further provides for the 'seven co-operative principles' as guidelines by which the co-operatives put their values into practice. Following are the principles:

*"1st Principle:*

### ***Voluntary and Open Membership.—***

*Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.*

*2nd Principle:*

***Democratic Member Control.—****Cooperatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.*

*3rd Principle:*

***Member Economic Participation.—****Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.*

*4th Principle:*

***Autonomy and Independence.—****Cooperatives are autonomous, self-help organizations controlled by their members. If they enter to agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.*

*5th Principle:*

### ***Education, Training and Information.—***

*Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of cooperation.* *6th Principle:*

**Cooperation among Cooperatives.—**

*Cooperatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.*

*7th Principle:*

**Concern for Community.—** *Cooperatives work for the sustainable development of their communities through policies approved by their members."*

[Emphasis supplied]

**39.** The co-operative movement in India started at the beginning of the 20th century. Though the movements were also based on some of the values and principles stated above, it appears that the co-operatives in India did not have effective autonomy, democratic functioning and professional management. The National Policy on Co-operatives announced by the Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India adopted in March, 2002, is wholly based on the definition, values and principles stated above. The 97<sup>th</sup> Amendment to the Constitution of India, in fact, gave a constitutional frame to this policy.

**40.** Apart from providing for the right to form co-operative societies to be a fundamental right under Article 19 of the Constitution of India and insertion of Article 43B under the Directive Principles of State Policy on promotion of co-operative societies, the amendment also introduced a new Part IXB on Co-operative Societies. Reference to the Statement of Objects and Reasons of the amendment would give a clear picture as to the need to strengthen the democratic basis and provide for a constitutional status to the co-operative societies. Thus, one has to see the constitutional aspirations on the concept of co-operative societies after the 97<sup>th</sup> Amendment in the Constitution of India which came into effect on 12.01.2012:-

**"STATEMENT OF OBJECTS AND REASONS**

1. *The co-operative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of co-operative societies to their members. Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity. Co-operatives need to run on well established democratic principles and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalize these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.*

2. *The "co-operative societies" is a subject enumerated in Entry 32 of the State List of the Seventh Schedule of the Constitution and the State Legislatures have accordingly enacted legislations on co-operative societies. Within the framework of State Acts, growth of co-operatives on large scale was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development. It has, however, been experienced that in spite of considerable expansion of co-operatives, their performance in qualitative terms has not been up to the desired level. Considering the need for reforms in the Co-operative Societies Acts of the States, consultations with the State Governments have been held at several occasions and in the conferences of State Co-operative Ministers. A strong need has been felt for amending the Constitution so as to keep the cooperatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.*



3. *The Central Government is committed to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it is proposed to incorporate a new Part in the Constitution so as to provide for certain provisions covering the vital aspects of working of co-operative societies like democratic, autonomous and professional functioning. A new article is also proposed to be inserted in Part IV of the Constitution (Directive Principles of State Policy) for the States to endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies. The proposed new Part in the Constitution, inter alia, seeks to empower the Parliament in respect of multi-State co-operative societies and the State Legislatures in case of other cooperative societies to make appropriate law, laying down the following matters, namely:-*

- (a) provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;*
- (b) specifying the maximum number of directors of a co-operative society to be not exceeding twenty-one members;*
- (c) providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;*
- (d) providing for a maximum time limit of six months during which a board of directors of co-operative society could be kept under supersession or suspension;*
- (e) providing for independent professional audit;*
- (f) providing for right of information to the members of the co-operative societies;*
- (g) empowering the State Governments to obtain periodic reports of activities and accounts of cooperative societies;*
- (h) providing for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every co-operative society, which have individuals as members from such categories;*
- (i) providing for offences relating to co-operative societies and penalties in respect of such offences.*

4. *It is expected that these provisions will not only ensure the autonomous and democratic functioning of co-operatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of the law.*

5. *The Bill seeks to achieve the above objectives."*

**41.** By 12.01.2013, all laws on co-operative societies were bound to be restructured in consonance with the 97<sup>th</sup> Amendment of the Constitution of India and, in any case, any provision in the Act or Rules or bye-laws otherwise inconsistent with the Constitution will be inoperative thereafter. Articles 43B and 243ZT are mandates to all the States and the competent authorities to structure co-operative societies as conceived in the Constitution of India, if not already there.

**42.** The first legislation on the co-operative movement in India was the Co-operative Credit Societies Act, 1904 and, thereafter, the co-operative societies emerged in India as State sponsored/promoted institutions. The main objective was only credit intended to relieve the poor agriculturists from the clutches of moneylenders. The first urban co-operative credit society under the Act of 1904 was registered in Kanjivaram in erstwhile Madras province. The traits of democracy were present in the very first legislation through the principle "one man, one vote". Since the first legislation was limited to the credit societies, a new legislation

was introduced 8 years later as "the Co-operative Societies Act, 1912". The restriction regarding registration limited to credit societies was taken away and any society established with the object of promoting the economic interests of its members in accordance with the co-operative principles, or a society established with the object of facilitating the operations of such a society, could be registered.

**43.** Under the Government of India Act of 1919 (Montague Chelmsford Reforms), co-operation became a provincial subject which gave a further impetus to the movement. This gave birth to several co-operative land mortgage banks. The first of its kind was registered in Punjab. Close to independence and thereafter, we see a radical change and increased growth in the co-operative movement. Activities were spread to all spheres of human endeavour, and thus in 2002, National Policy on Co-operatives was announced.

**44.** The co-operative societies having been conferred a constitutional status by the 97<sup>th</sup> Amendment, the whole concept of co-operatives has undergone a major change. In 1993, the local self-governments, viz., panchayats and municipalities were also given constitutional status under Parts IX and IXA of the Constitution of India by the 73<sup>rd</sup> and 74<sup>th</sup> Amendments. The Statement of Objects and Reasons would show that the Constitution wanted the local bodies to function as vibrant democratic units of self-government. After two decades, co-operative societies were given the constitutional status by including them under Part IXB. The main object for the said amendment was also to ensure "their autonomy, democratic functioning and professional management".

**45.** The National Policy on Co-operatives announced in March 2002 has recognized democracy, equality, equity and solidarity as values of co-operatives. Co-operative society has been declared as a democratic institution. Democratic principles have all through been recognized as one of the co-operative principles though the constitutional affirmation of those principles came only in 2012. [Reference : para 39 to para 45 herein — **Vipulbhai M. Chaudhary** (supra)]

**45A**<sup>1</sup>. Before we proceed further with the final analysis of the matter, we need to clarify something important. The decision of this Court in the case of **Vipulbhai M. Chaudhary** (supra) has been referred to by us for a very limited purpose. **Vipulbhai M. Chaudhary** (supra) has referred to the 97<sup>th</sup> Constitution Amendment for the purpose of answering the main question referred to in para 36 above. It is necessary to clarify that the constitutional validity of the 97<sup>th</sup> Constitution Amendment was challenged before the High Court of Gujarat in Writ Petition (PIL) No. 166 of 2012. A Division Bench of the High Court, to which one of us (J.B. Pardiwala, J.) was party declared the Constitution (97<sup>th</sup> Amendment) Act, 2011 inserting Part IXB containing the Articles 243ZH to 243ZT as *ultra vires* the Constitution of India for not taking recourse to Article 368(2) of the Constitution which provides for ratification by the majority of the State Legislatures. The High Court while declaring the amendment as invalid clarified that the other parts of the Constitution (97<sup>th</sup> Amendment) Act, 2011 would not be affected.

**45B**<sup>2</sup>. The judgment of the Gujarat High Court referred to above was carried in Appeal by the Union of India being the Civil Appeal Nos. 9108-9109 of 2014 before this Court which upheld, by majority, the view of the Gujarat High Court to the extent it struck down the entire of Part IXB of the Constitution. However, the majority view declared that Part IXB of the Constitution of India would be operative only insofar as it concerned the multi-State cooperative societies both within the various States and in the Union territories of India.

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<sup>1</sup> Paragraph Added in terms of Order dated 18.10.2022 passed in M.A. No. 1798 of 2022.

<sup>2</sup> Paragraph Added in terms of Order dated 18.10.2022 passed in M.A. No. 1798 of 2022.

**45C<sup>3</sup>**. Thus, the Constitution (97<sup>th</sup> Amendment) Act, 2011 would not be applicable to the local co-operative societies, whereas the same would be applicable to the multi-State co-operative societies and the societies within the Union territories. We only need to clarify that our judgment is not based on the decision of **Vipulbhai M. Chaudhary** (supra) which has now been rendered *per incuriam*. We referred to **Vipulbhai M. Chaudhary** (supra) only for the limited purpose of highlighting the history of the 'Cooperative Movement' in India and the co-operative principles. Our judgment has essentially looked into the exposition of principles of law expounded by this Court in the cases of **Daman Singh v. State of Punjab**, reported in (1985) 2 SCC 670 : AIR 1985 SC 973, and **State of U.P v. Chheoki Employees Co-operative Society Ltd.**, reported in (1997) 3 SCC 681 : AIR 1997 SC 1413, respily.

## **FINAL ANALYSIS**

**46.** We are of the view that the High Court is not correct in saying that the Appellant Society could not have entered into an agreement with a third party developer as the Act or the Rules do not provide for the same. It is too much for the High Court to expect that all the members of the Appellant Society should on their own contribute and undertake the development of the new administrative building. We enquired with the learned counsel appearing for the respective parties as regard the total cost of the project. We were informed that approximately the cost would be Rupees Twenty Crore. What is in the mind of the Respondent No. 1 perhaps is that the members of the Appellant Society should contribute this amount and undertake the construction rather than involving a developer and making the entire project a business venture. It is just next to impossible.

**47.** In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the Court to read the constitutional spirit and concept into the Acts. *"In so far as in its Act Parliament does not convey its intention clearly, expressly and completely, it is taken to require the enforcement agencies who are charged with the duty of applying legislation to spell out the detail of its legal meaning. This may be done either- (a) by finding and declaring implications in the words used by the legislator, or (b) by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation"*. [See : **Bennion on Statutory Interpretation by Francis Bennion**, 6<sup>th</sup> Edn. 136]

**48.** The conventional view is that the legislature alone makes the law. But as Bennion puts it:-

*"The truth is that courts are inescapably possessed of some degree of legislative power. Enacted legislation lays down rules in advance. The commands of Parliament are deliberate prospective commands. The very concept of enacted legislation postulates an authoritative interpreter who operates ex post facto. No such interpreter can avoid legislating in the course of exercising that function. It can be done by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy)"*. [See : **Bennion on Statutory Interpretation by Francis Bennion**, 6<sup>th</sup> Edn. 137]

**49.** According to Donaldson J.:

*"The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the judges do not act as computers into which are fed the statues and the rules for the construction of statues and from whom issue forth the*

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<sup>3</sup> Paragraph Added in terms of Order dated 18.10.2022 passed in M.A. No. 1798 of 2022.

*mathematically correct answer. The interpretation of statutes is a craft as much as a science and the judges, as craftsmen, select and apply to the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing.*" [See : **Corocraft Ltd. v. Pan American Airways Inc.**, (1969) 1 QB 616, p. 638 : (1968) 3 WLR 714 at p. 732 : (1968) 2 All ER 1059]

**50.** In the celebrated case of **Seaford Court Estates v. Asher** reported in (1949) 2 KB 481 : (1949) 2 All ER 155 (CA), Lord Denning has succinctly summarized the principle on the role of the Court. To quote:- (QB pp. 498-99)

*"... Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity... A judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. ... Put into homely metaphor it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

**51.** In **Rattan Chand Hira Chand v. Askar Nawaz Jung (Dead) by Lrs.** reported in (1991) 3 SCC 67, this Court, at paragraph 17 of the judgment, has also dealt with the principles in following words:-

*"17. ... The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed."*

**52.** It is not in dispute that the General Body of the Appellant Society, which is supreme, has taken up a conscious decision to redevelop the administrative building. The General Body of the Appellant Society has also resolved to appoint the Hi-Rise as the developer. Those decisions having not been challenged at all, the Respondent No. 1 being a member of the Appellant Society is bound by the said decisions. The General Body of the Appellant Society has approved the terms and conditions of the development agreement by overwhelming majority. Merely because the terms and conditions of the development agreement are not acceptable to the Respondent No. 1, who could be said to be in minuscule minority cannot be the basis of not to abide by the decision of the overwhelming majority of the General Body of the Appellant Society. The redevelopment of the property is necessitated in view of the fact that the building is in a dilapidated condition with passage of time. The redevelopment thus, in our view, would be a requirement and a necessity and cannot be termed as business. The Appellant Society in such circumstances did not even require to carry out any amendment to the bye-laws or to include the "redevelopment of the buildings" as one of the objects of the Society before taking any decision to redevelop its property.

**53.** By now it is well established position that once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and bye-laws. The member has to speak

through the Society or rather the Society alone can act and speaks for him *qua* the rights and duties of the Society as a body (see : **Daman Singh v. State of Punjab**, reported in (1985) 2 SCC 670 : AIR 1985 SC 973). This view has been followed in the subsequent decision of this Court in the case of **State of U.P v. Chheeki Employees Co-operative Society Ltd.**, reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision, this Court further observed that the member of a Society has no independent right *qua* the Society and it is the Society that is entitled to represent as the corporate aggregate. This Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the Appellant Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the Respondent No. 1. He cannot be permitted to take a stand alone position but is bound by the majority decision of the General Body. Notably, the Respondent No. 1 has not challenged the Resolutions passed by the General Body of the Appellant Society to redevelop the property and more so, to appoint the Hi-Rise as the Developer to give him all the redevelopment rights.

**54.** It was also argued on behalf of the Respondent No. 1 that the property is in a good condition and there is no need to redevelop the existing building. In the first place, as noted earlier, the decision of the General Body of the Society to redevelop the subject property has not been challenged at all. Besides, no provision in the Co-operative Societies Act or the rules or any other legal provision has been brought to our notice which would curtail the right of the Society to redevelop the property when the General Body of the Society intends to do so. Essentially, that is the commercial wisdom of the General Body of the Society. It is not open to the Court to sit over the said wisdom of the General Body as an Appellate Authority. Merely because one single member in minority disapproves of the decision, that cannot be the basis to negate the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition. That is not the grievance made before us. In the present case, the General Body took a conscious decision after due deliberations for many years to redevelop its property. Even with regard to the appointment of the "Hi-Rise" as the Developer, the record shows that it was decided by the General Body of the Society after examining the relative merits of the proposals received from the developers.

**55.** The object of the provision has to be borne in mind. The entire legislative scheme goes to show that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. The Co-operative Movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great Co-operative movement.

**56.** The basic principles of co-operation are that the members join as human beings and not as capitalists. The Co-operative Society is a form of organization wherein persons associate together as human beings on the basis of equality for promotion of economic interest of its members. This movement is a method of doing the business or other activities with ethical base. "Each for all and all for each" is the motto of the co-operative movement. This movement not only develops latent business capacities of its members but produces

leaders; encourages economic and social virtues, honesty and loyalty, becomes imperative, prospects of better life, obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gains for himself. So, in fact, it being a business cum moral movement, and the success of the Co-operative Society depends upon the reality with which one of the members work for the achievement of its objects and purpose. The Committee on Co-operation in India emphasized the moral aspect of co-operation, to quote the words:-

*"The theory of co-operation is very briefly that an isolated and powerless individual can, by association, with others and by moral development support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the Union of forces, material advancement is secured and by united action self reliance is fostered and it from the inter-action of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better arming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism. Cooperation in actual practice must often fall short of the standard aimed at and details inconsistent with co-operative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express that it is the true co-operation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo co-operative edifice, however imposing, which is built in ignorance of co-operative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. Pages 5 and 6 of Theory and Practice of Co-operation in India and Abroad by Kulkarni, Volume 1. Co-operation is a mode of doing business, is at present applied as the solution of many economic problems. Co-operation is harnessed to almost all forms of economic activity. Though co-operation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in a wide range of activities such as production, distribution, banking, supply, marketing, housing and insurance. See Theory and Practice of Co-operation in India and Abroad by Kulkarni Volume 1 Page 2."*

**57.** In the overall view of the matter, we are convinced that the impugned judgment and order passed by the High Court is not sustainable in law and deserves to be set aside. At one point of time, we were inclined to allow this appeal by imposing an exemplary costs on the Respondent No. 1 for unnecessarily dragging the Appellant Society into a frivolous litigation & not allowing the Appellant Society to go ahead with the project for the past almost two decades. However, we refrain from passing such order of costs in the hope that the Respondent No. 1 realises that the development of the administrative building will be for the betterment of the society. No individual member is going to gain anything from the redevelopment. It is the society as an autonomous body which will gain something.

**58.** For the foregoing reasons, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside and it shall now be open to the Appellant Society to proceed further with its project of redevelopment in accordance with the resolutions passed by the General Body from time to time. It is needless to clarify that the first priority should be given to demolish the entire building as the same is in a dilapidated condition.

**59.** There shall be no order as to costs.

**60.** Pending application, if any, also stands disposed of accordingly.